

shareholders; (ii) increase visibility to investors; and (iii) provide greater liquidity for the Security.

The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued listing and registration on the NYSE under section 12(b) of the Act.³

Any interested person may, on or before May 1, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Jonathan G. Katz,
Secretary.

[FR Doc. 02-9307 Filed 4-16-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27516]

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

April 10, 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 May 6, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/

or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 6, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Pepco Holdings Inc. et al. (70-9947)

Pepco Holdings Inc. ("PHI"), a company not currently subject to the Act; PHI's parent company, Potomac Electric Power Company ("Pepco"), an electric public utility company; Pepco's direct and indirect nonutility subsidiaries ("Pepco Nonutilities"), all located at 701 Ninth Street, 10th Floor, Suite 1300, Washington, DC 20068; Conectiv, a registered public utility holding company; Conectiv's wholly owned electric and gas public utility subsidiaries, Delmarva Power & Light Company ("Delmarva") and Atlantic City Electric Company ("ACE"); Conectiv Energy Holding Company ("CEH"), a registered holding company subsidiary of Conectiv; CEH's wholly owned electric public utility subsidiaries, Conectiv Delmarva Generation, Inc. ("CDG") and Conectiv Pennsylvania Generation, Inc. ("CPGI"); ACE REIT, Inc. ("ACE REIT"), a registered holding company subsidiary of CEH; ACE REIT's wholly owned electric public utility subsidiary Conectiv Atlantic Generation, LLC ("CAG"); Conectiv Energy Supply, Inc. ("CESI") a nonutility holding company subsidiary of CEH and Conectiv's direct and indirect nonutility subsidiaries ("Conectiv Nonutilities"), all located at 800 King Street, Wilmington, Delaware 19801 (collectively, "Applicants"), have filed a joint application-declaration ("Application") under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 13(b), 32, and 33 of the Act, and rules 42, 43, 45, 46, 52, 53, 54, 90 and 91 under the Act in connection with various proposed transactions.

I. Introduction

In a separate file, Applicants request authority for Conectiv and Pepco to merge and situate PHI as a holding company above them ("Merger").¹ Following the Merger, PHI will register as a holding company under section 5 of the Act. After the Merger is complete,

PHI and its subsidiaries ("Subsidiaries," and together with PHI, "PHI System") request authority to engage in various financing through June 30, 2005 ("Authorization Period") including: (i) Issuance by PHI of common stock, preferred stock and preferred stock equivalent securities, long- and short-term debt and guarantees; (ii) issuance of securities by Pepco and Delmarva; (iii) acquisition of up to \$1.5 billion of utility assets by the direct and indirect utility subsidiaries of CEH; (iv) issuance by the Conectiv and Pepco Nonutilities (collectively, "Nonutility Subsidiaries") of securities and guarantees; (v) transactions to manage interest rate risk ("Hedging Transactions"); (vi) the formation of a money pool ("Money Pool"); (vii) the formation and issuance of securities by financing entities; (viii) payment of dividends out of capital surplus; (ix) changes in capital stock of wholly owned subsidiaries and (x) investment in exempt wholesale generators ("EWGs"), as defined in section 32 of the Act and foreign utility companies ("FUCOs"), as defined in section 33 of the Act.

II. Financing Parameters

The proposed transactions will be subject to the following general terms and conditions ("Financing Parameters"):

- The effective cost of money on long-term debt borrowings will not exceed the greater of (i) 500 basis points over the comparable-term U.S. Treasury securities or (ii) a gross spread over U.S. Treasuries that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

- The effective cost of money on short-term debt borrowings will not exceed the greater of (i) 500 basis points over the comparable-term London Interbank Offered Rate ("LIBOR") or (ii) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

- The dividend rate on any series of preferred securities will not exceed the greater of (i) 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of the series of preferred securities or (ii) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

- The maturity of indebtedness will not exceed fifty years. Preferred securities may not have any mandatory redemption provisions.

³ 15 U.S.C. 781(b).

⁴ 17 CFR 200.30-3(a)(1).

¹ See HCAR No. 27511 (March 26, 2002) and file number 70-9913.

I. External Financings

A. PHI

Applicants request authority for PHI to issue equity, preferred securities and debt securities in an aggregate amount not to exceed \$3.5 billion outstanding at any time through the Authorization Period ("External Limit"). Applicants seek authority for PHI to issue short-term debt securities in an aggregate amount not to exceed \$2.5 billion ("Short-Term Limit"). Any short-term debt issued through the Authorization Period will count against the External Limit. In addition, Applicants request authority for PHI to issue up to twenty million shares of common stock or options to purchase shares under stock purchase/dividend reinvestment plans and stock-based management incentive and employee benefit plans ("Common Stock Plan Limit").

1. General

Applicants request authority for PHI to issue common stock in an aggregate amount outstanding not to exceed the External Limit at any time during the Authorization Period. Specifically, Applicants propose that PHI issue and sell common stock, options, warrants or other stock purchase rights exercisable for common stock. Common stock issuances may be through (i) underwriting agreements of a type generally standard in the industry; (ii) negotiation with underwriters, dealers or agents; (iii) competitive bidding among underwriters; (iv) private placements or other non-public offerings to one or more persons; (v) directly to employees through employee benefit plans (or to trusts established for their benefit) or (vi) directly to shareholders and others through PHI's stock purchase/dividend reinvestment plans and stock-based management incentive. All common stock sales will be at rates or prices, and under conditions negotiated, 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. PHI also may grant underwriters a "green shoe" option permitting common stock to be offered solely for the purpose of covering over-allotments.

Applicants also propose that PHI issue common stock or options, warrants, or other stock purchase rights exercisable for common stock 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 in this proceeding or a separate proceeding, or is exempt under the Act or rules under the Act.

2. Stock Based Management and Employee Benefit Plans

Applicants request authority for PHI to establish a stock purchase/dividend reinvestment plan that is expected to incorporate the existing features of the plans currently offered by Pepco and Conectiv. Upon consummation of the Merger, the stock purchase/dividend reinvestment plans of Pepco and Conectiv will be terminated (or one company's plan will be adopted by PHI) and participants will be eligible to become participants in PHI's new or adopted plan. Applicants propose that PHI, from time to time during the Authorization Period, issue and/or acquire in open market transactions, or other acceptable method, shares of common stock under stock-based management incentive and employee benefit plans and under a stock purchase/dividend reinvestment plan in an amount not to exceed the Common Stock Plan Limit.

PHI common stock issued to participants in the existing Pepco and Conectiv plans at the time of the Merger will not be included in the calculation of the Common Stock Plan Limit. PHI common stock issued on an ongoing basis to participants in the PHI stock purchase/dividend reinvestment plan will not be included in the calculation of the External Limit.

3. Preferred Securities

Applicants also request authority for PHI to issue preferred securities (including its authorized preferred stock, trust preferred securities or monthly income preferred securities) directly or indirectly through one or more financing subsidiaries. Preferred securities may be convertible or exchangeable into shares of PHI common stock or unsecured indebtedness. Preferred securities may be sold directly through underwriters or dealers in connection with an acquisition in a manner similar to that described for common stock above.

4. Long-Term Debt

Applicants propose that PHI issue unsecured long-term debt securities that may include, but not be limited to, medium-term notes or debentures, under one or more indentures or long-term indebtedness under agreements with banks or other institutional lenders. Any long-term debt security would have a designated aggregate

principal amount, maturity, interest rate 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: (i) May be convertible into any other authorized securities of PHI; (ii) will have maturities ranging from one to fifty years; (iii) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount; (iv) may be entitled to mandatory or optional sinking-fund provisions; (v) may provide for reset of the coupon pursuant to a remarketing arrangement; (vi) 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; (vii) may be called from existing investors by a third party or (viii) 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.

5. Short-Term Debt

Applicants seek authority for PHI to issue short-term debt in an aggregate amount not to exceed the Short-Term Debt Limit. Short-term debt may include (i) borrowings under one or more revolving credit facilities or bank loans; (ii) commercial paper; (iii) short-term notes and (iv) 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 Financing Parameters. If the notional maturity of short-term debt 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"). Applicants propose that PHI issue other types of short-term debt securities generally available in the credit markets, money markets or capital markets, whose specific terms, in all cases, will comply in all regards with the Financing Parameters. Applicants state that all short-term debt issued by PHI will be unsecured.

Applicants request authority for PHI to 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. It is expected 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.

Applicants propose that PHI sell short-term notes through one or more private placements or public offerings primarily to traditional money market investors. Specific terms of any borrowings will be determined by PHI at the time of issuance and will comply in all regards with the Financing Parameters.

PHI proposes to enter into individual agreements ("Bid Note Agreements") with one or more commercial banks that may be lenders under PHI credit facilities. The Bid Note Agreements would permit PHI to negotiate with one or more banks ("Bid Note Lenders") on any given day for the Bid Note Lender, or any affiliate or subsidiary of the lender, to purchase promissory notes directly from PHI.

6. Guarantees

Applicants request authority for PHI to issue guarantees ("PHI Guarantees"), to third parties, obtain letters of credit, enter into support or expense agreements, or otherwise provide credit support with respect to the obligations of Subsidiaries, as may be appropriate in the ordinary course of their respective businesses, and to enter into guarantees of non-affiliated third parties' obligations in the ordinary course of PHI's business in an aggregate amount not to exceed \$3.5 billion ("PHI Guarantee Limit").

A portion of the PHI Guarantees may be in connection with the business of CESI or Pepco Energy Services, Inc. ("PES"), both wholly owned indirect subsidiaries of PHI. CESI conducts power marketing and trading operations and PES provides energy efficiency contracting, building and systems operation and maintenance, as well as conducting gas and electric marketing. In addition, PHI may wish to provide 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. PHI may also provide credit support for PES' construction obligations entered into in the ordinary course of PES's energy contracting business. The portion of the PHI Guarantee Limit to be used on behalf of the trading activities of CESI and PES allows only for a modest increase over the Authorization Period.

Certain of the PHI 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 proposes to 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.

7. Risk Management

Applicants request authority for PHI to enter into, perform, purchase and sell financial instruments intended to reduce or manage the volatility of interest rates, including but not limited to, 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"). Applicants state that the transactions would be for fixed periods and stated notional amounts. PHI would employ interest rate derivatives as a means of prudently managing the risk associated with any of its outstanding debt issued under this authorization or under an applicable exemption by, in effect, synthetically (i) converting variable-rate debt to fixed-rate debt; (ii) converting fixed-rate debt to variable-rate debt and (iii) limiting the impact of changes in interest rates resulting from variable-rate debt. In no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure. Applicants state that they will not engage in any speculative transactions. Applicants state that transactions will be entered

into for a fixed or determinable period. PHI will only enter into agreements with counterparties whose senior debt ratings, as published by a nationally recognized rating agency are greater than or equal to "BBB," or an equivalent rating ("Approved Counterparties").

In addition, Applicants request authority for PHI to enter into interest rate Hedging Transactions with respect to anticipated debt offerings ("Anticipatory Hedges"), subject to certain limitations and restrictions. These 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 (i) a forward sale of exchange-traded Hedge Instruments ("Forward Sale"); (ii) the purchase of put options on Hedge Instruments ("Put Options Purchase"); (iii) a Put Options Purchase in combination with the sale of call options Hedge Instruments ("Zero Cost Collar"); (iv) transactions involving the purchase or sale, including short sales, of Hedge Instruments 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. 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, 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 Anticipatory Hedge transaction at the time of execution. PHI may decide to lock in interest rates and/or limit its exposure to interest rate increases.

B. Pepco and Delmarva External Financing

In addition to the following requests for financing authority, Applicants request authority for Pepco to maintain its existing financing arrangements described in exhibit K-1 to the Application.

1. Short-Term Debt

Applicants request authority for Pepco and Delmarva to issue short-term debt securities in aggregate amounts not to exceed \$300 million and \$275 million for Pepco and Delmarva, respectively, outstanding at any one time during the Authorization Period. Applicants request authority for Pepco and Delmarva to issue the same type of short-term debt securities with the same

financing parameters as requested for PHI in section III.A.5, above.

2. Long-Term Debt and Preferred Securities

Applicants request authority for Pepco to issue an aggregate of up to \$800 million in long-term debt securities and preferred securities during the Authorization Period. Applicants propose that Pepco will issue the same types of long-term debt securities and preferred securities under the same terms as requested for PHI in III.A.4, above, except that Pepco may issue secured as well as unsecured debt securities. It is anticipated that any secured long-term debt issued by Pepco will be under a Mortgage and Deed of Trust Dated July 1, 1936, as amended and supplemented, between Potomac Electric Power Company and The Bank of New York, as Successor Trustee to Riggs National Bank of Washington, D.C. However, Pepco may enter into other similar secured financing arrangements, such as a new mortgage indenture, a fallaway indenture, pursuant to which Pepco would issue debt securities that would be secured by a new series of mortgage bonds until such time as its mortgage indenture was terminated or it secured financing agreements with banks or institutional lenders (*i.e.*, accounts receivable financing or a sale/leaseback of utility property not subject to the mortgage lien). Unsecured long-term debt securities that Pepco may issue, include, but are not limited to, notes, medium-term notes or debentures, under one or more indentures or long-term indebtedness under agreements with banks or other institutional lenders.

3. Guarantees

Applicants request authority for Pepco to enter into guarantees ("Pepco Guarantees") under the same conditions as requested for the PHI Guarantees. The Pepco Guarantees will count against the PHI Guarantee Limit, exclusive of any guarantees and other forms of credit support that are exempt under rule 45(b) and rule 52(b); provided however, that the amount of Nonutility Guarantees in respect of obligations of any subsidiaries acquired under rule 58 ("Rule 58 Subsidiaries") shall remain subject to the limitation of rule 58(a)(1). Applicants state that certain of the guarantees may be in support of obligations that are not capable of exact quantification. In these cases, Pepco 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. Applicants request authority for Pepco to charge its associate company a fee for each guarantee provided on its behalf determined in the same manner as specified above for guarantees issued by PHI.

4. Risk Management

Applicants request authority for Pepco and Delmarva to enter into, perform, purchase and sell Hedge Instruments and Anticipatory Hedges according to the same limitations and requirements applicable to PHI described above, to the extent not exempt under rule 52.

C. CEH

Applicants request authority for CEH, a subsidiary of CEH or a financing entity established by CEH ("collectively, "CEH Companies") to fund the generation activities of the CEH Companies during the Authorization Period to issue preferred securities, long-term debt and short-term debt in an aggregate amount not to exceed \$1.5 billion outstanding at any time during the Authorization Period ("Genco Limit"). Any issuance of securities by the CEH Companies to unrelated third parties will count towards the PHI Financing Limit, except those issued by associate companies or the PHI System Money Pool. Any then outstanding short-term debt issued by the CEH Companies will be included in the calculation of the PHI Short-Term Debt Limit.

1. Preferred Securities

Applicants request authority for the CEH Companies to issue preferred stock or other types of preferred securities in one or more series with rights, preferences and priorities as may be designated in the instrument creating each series. 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 that allow the issuer to defer dividend payments for specified periods. Preferred Securities may be sold directly through underwriters or dealers in connection with an acquisition in a manner similar to that described for common stock above.

2. Long-Term Debt

Applicants propose that the CEH Companies issue long-term debt securities including, but not limited to, 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 may be secured

by the CEH Companies' generation assets or unsecured. Any long-term debt security would have a designation of 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 the CEH Companies may determine at the time of issuance. Any long-term debt (i) may be convertible into any authorized securities of the CEH Companies; (ii) will have maturities ranging from one to fifty years; (iii) 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; (iv) may be entitled to mandatory or optional sinking-fund provisions; (v) may provide for reset of the coupon pursuant to a remarketing arrangement; (vi) may be subject to tender to the issuer for repurchase or be subject to the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event and (vii) may be called from existing investors by a third party.

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 the issuer at the time of issuance and will comply in all regards with the parameters for financing authorization set forth above. Associated placement, underwriting, or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding.

3. Short-Term Debt

Applicants request authority for the CEH Companies to issue the same types of short-term debt securities under the same terms as requested above for PHI. CEH Companies may, without counting against the limits set forth above, maintain back-up lines of credit. Outstanding external short-term debt issued by CEH Companies will be included in the calculation of the PHI Short-Term Debt Limit.

4. Guarantees

Applicants request authority for CEH to enter into guarantees of the obligations of its subsidiaries under the same terms as the PHI Guarantees and for subsidiaries of CEH or financing entities established by CEH to issue guarantees to external lenders in support of their financing activities (collectively, "CEH Guarantees"). The CEH Guarantees will count towards the

PHI Guarantee Limit, exclusive of any guarantees and other forms of credit support that are exempt under rule 45(b) and rule 52(b). In no event will any CEH Guarantees involve the pledging of any utility property.

A portion of the CEH Guarantees may be issued in connection with the business of CESI, a wholly owned direct subsidiary of CEH. CESI conducts power marketing and trading operations. CEH may wish to provide credit support in connection with the trading positions of CESI entered into in the ordinary course of CESI's energy marketing and trading businesses. The portion of the PHI Guarantee Limit represented by CEH Guarantees allows only for a modest increase in the energy trading activities of CESI.

CEH Guarantees may be in support of obligations that are not capable of exact quantification. In these cases, CEH 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. CEH may charge each of its subsidiaries a fee for any guarantee provided on its behalf. The fee will not be greater than the cost, if any, of obtaining the liquidity necessary to perform the guarantee for the period of time the guarantee remains outstanding.

5. Financing Risk Management Devices

CEH or a financing subsidiary established by CEH, request authority to enter into, perform, purchase and sell interest rate management devices and Anticipatory Hedges subject to the limitations and requirements applicable to PHI described above in section III.A.7.

6. Utility Property Financing

Conectiv, CAG, CDG and any new utility company established by Conectiv ("New Utility Subsidiary"), are currently authorized to acquire up to \$1 billion of utility property.² Authorization was granted for (i) Conectiv to fund CEH, (ii) CEH in turn to fund CDG, ACE REIT and any established New Utility Subsidiary and

(iii) ACE REIT to fund CAG through the issuance of debt or equity securities to, and the acquisition of those securities by, their respective parent companies in an aggregate amount not to exceed \$1 billion. Further, authorization was granted for CAG, CDG and the New Utility Subsidiaries to borrow up to \$1 billion (less any debt or equity securities issued to their respective parent companies) from the Conectiv money pool to fund acquisitions of utility property. As of December 31, 2001, no utility property has been acquired under this authorization.

PHI requests that the authorizations previously granted in the Conectiv Financing Orders for CAG, CDG and the New Utility Subsidiaries to acquire and fund up to \$1 billion of utility property be consolidated in this file. For purposes of this request, the acquisition of utility property by CAG, CDG, CPGI and the New Utility Subsidiaries (but not Pepco, Delmarva or ACE) would include any newly constructed facilities, any property acquired from unaffiliated third parties and any property acquired from associated companies that are public utility companies or EWGs. Any acquisition of utility property made under the Conectiv Financing Orders will count against the authorization for the acquisition of utility property sought in this Application.

D. Conectiv Financing

1. Existing Financing Arrangements

Applicants request that Conectiv maintain certain financing arrangements in place following the merger. These financing arrangements are more fully described in exhibit K-2 to this Application.

2. Guarantees

Applicants request authority for Conectiv to enter into guarantees of the obligations of its subsidiaries ("Conectiv Guarantees") under the same terms and conditions as requested for PHI above in section III.A.6. The Conectiv Guarantees will count towards the PHI Guarantee Limit, exclusive of any guarantees and other forms of credit support that are exempt pursuant to rule 45(b) and rule 52(b).

A portion of the Conectiv Guarantees may be in connection with the business of CESI, a wholly owned, indirect subsidiary of Conectiv. CESI conducts power marketing and trading operations. Conectiv may wish to provide credit support in connection with the trading positions of CESI entered into in the ordinary course of CESI's energy marketing and trading

businesses. The portion of the PHI Guarantee Limit represented by Conectiv Guarantees allows only for a modest increase in the energy trading activities of CESI.

Certain of the Conectiv Guarantees may be in support of obligations that are not capable of exact quantification. In these cases, Conectiv 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.

Applicants propose that Conectiv 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.

E. Nonutility Subsidiary Financings

Applicants request that certain Nonutility Subsidiaries maintain financing arrangements currently in place following consummation of the Merger. These financings are more fully described in exhibit K-2 to the Application.

In order to be exempt under rule 52(b), any loans by PHI, CEH or Conectiv to a Nonutility Subsidiary, or by one Nonutility Subsidiary to another, must have interest rates and maturities that are designed to parallel the lending company's effective cost of capital. However, in the limited circumstances where the Nonutility Subsidiary making the borrowing is not wholly owned, directly or indirectly, by PHI, authority is requested for PHI, CEH, Conectiv or a Nonutility Subsidiary, as the case may be, to make loans to those Nonutility Subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. The Nonutility Subsidiary receiving the loan in this situation will not sell any services to any associate Nonutility Subsidiary unless the transaction is exempt from the "at cost" standard by rule or Commission order.

F. Guarantees by Nonutility Subsidiaries

Applicants request authority for the Nonutility Subsidiaries to provide guarantees and other forms of credit support to other Nonutility Subsidiaries ("Nonutility Subsidiary Guarantees"). The Nonutility Subsidiary Guarantees will count against the \$3.5 billion PHI Guarantee Limit, along with the PHI Guarantees, Pepco Guarantees, CEH Guarantees and Conectiv Guarantees. Applicants request authorization for a Nonutility Subsidiary providing credit

² Conectiv and its subsidiaries currently have various authorizations under orders dated February 26, 1998 (HCAR No. 26833), August 21, 1998 (HCAR No. 26907), September 28, 1998 (HCAR No. 26921), October 21, 1998 (HCAR No. 26930), November 13, 1998 (HCAR No. 26941), December 14, 1999 (HCAR No. 27111), August 17, 2000 (HCAR No. 27213), June 7, 2001 (HCAR No. 27415) and March 22, 2002 (HCAR No. 25707) collectively, "Conective Financing Orders". Since it was formed under the authority granted in the Conectiv Financing Orders, CPGI is also a New Utility Subsidiary.

support to charge an associate company a fee for each guarantee provided on its behalf, determined in the same manner as specified above for guarantees issued by PHI.

G. PHI System Money Pool

Applicants request authorization to establish a system Money Pool. Applicants further request authorization for the Subsidiaries 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 one another through the Money Pool. Applicants request authority for PHI, Conectiv, CEH and ACE REIT to contribute surplus funds and to lend and extend credit to the Money Pool. Applicants state that no loans through the Money Pool would be made to, and no borrowings through the Money Pool would be made by PHI and Conectiv.³

Under the proposed 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: (i) surplus funds in the treasuries of lenders to the Money Pool ("Internal Funds") and (ii) proceeds from the issuance of short-term debt securities by lenders to the Money Pool which are loaned to the Money Pool ("External Funds"). Funds would be made available from such sources in such order as 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 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.

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 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 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 thirty 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. If more than one Money Pool participant had made available External Funds on a certain 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 these "blended" funds would be a composite rate equal to the weighted average of the cost of all the External Funds.

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: (i) Interest-bearing accounts with banks; (ii) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements; (iii) obligations issued or guaranteed by any state or political subdivision thereof, provided that these obligations are rated not less than "A" by a nationally recognized rating agency; (iv) commercial paper rated not less than "A-1" or "P-1" or their equivalent by a nationally recognized rating agency; (v) money market mutual funds; (vi) bank certificates of deposit; (vii) Eurodollar funds and (viii) other investments as are permitted by section

9(c) of the Act and rule 40 under the Act.

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, 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 request authority for Pepco and Delmarva to borrow up to \$300 million and \$275 million, respectively, at any one time outstanding, from the Money Pool. Any short-term debt borrowed from the Money Pool by Pepco and Delmarva will count against each company's short-term debt authority requested in section III.B.1, above.

H. Intrasystem Financing

Applicants expect that PHI, CEH, Conectiv and the Nonutility Subsidiaries will lend funds, extend credit, make capital contributions and open account advances without interest to Nonutility Subsidiaries. Applicants state that these transactions will typically be exempt under rules 52(b) and 45(b). However, if intrasystem transactions are not exempt under rules 52(b) and 45(b), Applicants request that the company making a 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 currently held by the borrowing company, including an allocated share of commitment fees and related expenses. If the borrowing company has no outstanding borrowings, then the interest rate shall be predicated on the Federal Funds effective rate of interest as quoted daily by the Federal Reserve Bank of New York.

In the limited circumstances where the Nonutility Subsidiary effecting the borrowing is not wholly owned by PHI, CEH, Conectiv, or a Nonutility Subsidiary, directly or indirectly, Applicants request authority for PHI, CEH, Conectiv, or a Nonutility Subsidiary to make loans to these 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 such loans

³ Applicants state that CEH and ACE REIT are temporarily registered as holding companies under the Act due to lack of authorization to designate their subsidiaries' generation assets as EWGs. CEH and ACE REIT currently are authorized to borrow from Conectiv's money pool by order dated June 7, 2001 (HCAR No. 27415) and seek authority to borrow from the Money Pool until the later of a period of one year from the date of the Merger or the receipt of EWG authorization requested in this Application. Applicants further state that CEH and ACE REIT will be deregistered after their respective public utility subsidiaries are certified as EWGs.

are made to a Nonutility Subsidiary, such Nonutility Subsidiary will not provide any services to any associate Nonutility Subsidiary unless such transaction is exempt from the "at cost" standard by rule or Commission order.

If these loans are made to a Nonutility Subsidiary, such 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: (i) The Nonutility Subsidiary is a FUCO or an EWG that derives no part of its income, directly or indirectly, from the generation and sale of electric energy within the United States; (ii) the Nonutility Subsidiary is an EWG that sells electricity at market-based rates that have been approved by the Federal Energy Regulatory Commission ("FERC") or the relevant state public utility commission, provided that the purchaser is not one of Pepco Holdings' regulated public utility subsidiaries; (iii) the Nonutility Subsidiary is a "qualifying facility" ("QF") under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), that sells electricity exclusively at rates negotiated at arm's length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, or to an electric utility company (other than one of Pepco Holdings' regulated public utility subsidiaries) at the purchaser's "avoided costs" as determined under the regulations under PURPA; (iv) the Nonutility Subsidiary is an EWG or QF that sells electricity at rates based upon its cost of service, as approved by the FERC or any state public utility commission having jurisdiction, provided that the purchaser of the electricity is not one of Pepco Holdings' regulated public utility subsidiaries or (v) the Nonutility Subsidiary is engaged solely in the business of developing, owning, operating and/or providing services to a company described in clauses (i)–(iv) above. In the event 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.

I. Financing Subsidiaries

Applicants request authority for PHI and the Subsidiaries to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships, or other entities ("Financing Subsidiaries") created specifically for the purpose of facilitating the financing of the authorized and exempt activities

(including exempt and authorized acquisitions) of PHI and the Subsidiaries. Applicants request authority for the Financing Subsidiaries to issue short-term debt, long-term debt, preferred securities or equity securities to third parties and transfer the proceeds of these financings to PHI or their respective parent Subsidiaries. If required, Applicants propose that PHI or a Subsidiary, guarantee or enter into support or expense agreements with respect to the obligations of the Financing Subsidiaries. Applicants request authority for each of the Subsidiaries to enter into an expense agreement with its respective Financing Subsidiary, under which it would agree to pay all expenses of the Financing Subsidiary. Any amounts issued by the Financing Subsidiaries to third parties under this authorization will be included in the overall external financing limitation authorized for the immediate parent of the Financing Subsidiary, however, the underlying intrasystem mirror debt and parent guarantee shall not be included.

J. Changes in Capital Stock of Wholly Owned Subsidiaries

The portion of an individual Subsidiary's aggregate financing to be effected through the sale of stock to PHI or another immediate parent company during the Authorization Period cannot be ascertained at this time. It may happen that the proposed sale of capital 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.

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, as needed to accommodate these proposed transactions and to provide for future issues. A Subsidiary would be able to change the par value, or change between par value and no-par stock, without obtaining additional Commission approval. Any action by a Utility Subsidiary (other than CAG, CDG and the New Utility Subsidiaries) 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.

K. Investments in EWGs and FUCOs

Conectiv has authorization to invest proceeds of securities issuances in EWGs in amounts not to exceed \$350

million ("Conectiv EWG Project Limit").⁴ As of June 30, 2001, Conectiv had investments in EWGs of \$156.3 million. Conectiv has no investments in FUCOs. As of June 30, 2001, Conectiv states that it was in compliance with the requirements of the Conectiv Financing Orders as they relate to investments in EWGs.

As of June 30, 2001, Pepco had investments in EWGs of \$31.2 million, which consisted of investments in the Benning Road and Buzzard Point power generation plants. As of December 21, 2001, Pepco had investments in FUCOs of \$643.1 million in FUCOs. These investments consist of interests in projects located in the Netherlands, Australia and Austria and were made under long-term leveraged leases.

Applicants request that the authorizations previously granted by the Commission for Conectiv to invest in EWGs continue in effect upon consummation of the Merger pending authorization of the request for further investment in EWGs and FUCOs described in the Application. Applicants further request that Pepco maintain its current investments in FUCOs.

After the Merger, Applicants seek authority to finance additional EWG and FUCO investments in an aggregate amount of up to 100 percent of PHI's consolidated retained earnings plus \$3.5 billion ("PHI Exempt Project Limit") during the Authorization Period. These financings may include the issuance or sale of securities for the purpose of financing the acquisition or operations of an EWG or FUCO or the guarantee of a security of an EWG or FUCO.

L. Payment of Dividends out of Capital or Unearned Surplus

1. PHI and Conectiv

Applicants propose that PHI and Conectiv 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. Applicants request that the Commission reserve jurisdiction over this proposal pending completion of the record.

2. Utility Subsidiaries

Applicants propose that the Utility 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. Applicants request that the

⁴¹ See HCAR No. 27213 (August 17, 2000).

Commission reserve jurisdiction over this proposal pending completion of the record.

3. Nonutility Subsidiaries

Applicants propose that the Nonutility Subsidiaries (including CEH, ACE REIT, CAG, CDG, CPGI and the New Utility Subsidiaries upon the receipt of EWG status) 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.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45727; File No. SR-Amex-2002-08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to Specialist Unit Fees

April 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on February 7, 2002, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On March 13, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.³ On March 18, 2002, the Amex submitted Amendment No. 2 to the

proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to modify its Member Fee Schedule to pass through to Amex specialist units any fee paid by the Exchange to a third party in connection with the listing and trading of a security allocated to such specialist unit.

The text of the proposed rule change, as amended, is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with the listing and trading of certain securities on the Exchange, the Exchange may be required to pay fees to third parties as a condition to listing. For example, the Exchange may pay license fees to index providers to list index options or exchange-traded funds based on a stock index. The Exchange may also pay other types of fees to third parties in connection with a particular listing.

The Exchange proposes to pass such fees through to the Amex specialist unit

allocated a security for which the Exchange pays such fees. This fee, which will be included in the Amex Member Fees Schedule under "Membership Fees," will be applicable to any securities traded on the Exchange for which the Exchange pays a fee in connection with Amex listing or trading, including equities, options, structured products, exchange-traded funds and Trust Issued Receipts.

The Exchange currently imposes license fees on a per transaction basis applicable to specialists and registered options traders in connection with trading of options on the Nasdaq 100 Index Tracking Stock (symbol QQQ), Nasdaq 100 Index (symbol: NDX), Mini NDX (symbol: MNX), and options on S&P 100 iShares (symbol: OEF). These fees were filed with the Commission in SR-Amex-2001-101.⁵ The Exchange represents that it will not pass through fees to the specialist unit that the Exchange pays to third parties, if the Exchange imposes a license fee on a per transaction basis with respect to the allocated security, (e.g., the Options Licensing Fee imposed under the Options Fee Schedule, as described in SR-Amex-2001-101).

The Exchange represents that any fee passed through to the specialist unit pursuant to this filing will reflect only actual costs incurred by the Exchange in connection with Exchange listing or trading of the allocated security. Such fee could be imposed in connection with any security traded on the Exchange, whether a listed security or a security traded pursuant to unlisted trading privileges. The fee is not intended to cover any form of payment for order flow by the Exchange (in the event the Exchange determines to engage in such payment), and any imposition of fees on members or member organizations to permit the Exchange to recoup such payment would be filed separately with the Commission pursuant to Rule 19b-4.⁶

2. Basis

The Exchange believes the proposed rule change, as amended, is consistent with section 6 of the Act,⁷ in general, and with section 6(b)(4) of the Act,⁸ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

⁵ See Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001).

⁶ 17 CFR 240.19b-4.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 12, 2002 ("Amendment No. 1"). In Amendment No. 1, the Amex: (1) Removed its discretion to waive all or a portion of the proposed fee; (2) described its existing license fees and their application; (3) explained that the proposed fee is intended to recoup costs incurred by the Exchange; (4) represented that the proposed fee will be imposed on any security traded on the Exchange, whether listed or traded pursuant to unlisted trading privileges; and (5) asserted that the proposed fee is not intended to cover any form of payment for order flow.

⁴ See letter from Claire McGrath, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 14, 2002 ("Amendment No. 2"). In Amendment No. 2, the Amex added rule text and a made a conforming change to the purpose section stating that it would not pass through any proposed fee to a specialist unit allocated a security if the Exchange imposes a license fee on such specialist unit on a per transaction basis with respect to trading in the same security. The Amex also made a technical correction to the purpose section. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on March 18, 2002, the date the Amex filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).