

1. The Commission will consider whether to adopt proposed amendments to Form N-4, the registration form for insurance company separate accounts that are registered as unit investment trusts and that offer variable annuity contracts. The amendments would revise the format of the fee table of Form N-4 to require disclosure of the range of total expenses for all of the mutual funds offered through the separate account, rather than disclosure of the expenses of each fund. The Commission will also consider whether to adopt an amendment to the fee table of Form N-6, the registration form for variable life insurance policies that would require disclosure of the range of total expenses for all of the mutual funds offered, consistent with the amendments to the fee table of Form N-4.

2. The Commission will consider whether to propose for comment an amendment to Securities Exchange Act of 1934 ("Exchange Act") Rule 17a-5(c) that would codify relief the Commission granted in a pilot program that exempted broker-dealers from the requirement of Exchange Act Section 17(e)(1)(B) and Rule 17a-5(c) thereunder to send their full balance sheet and certain net capital information to their customers twice a year. To take advantage of the exemption, a broker-dealer must send its customers the net capital information and must provide its customers instructions for obtaining its full balance sheet on its Web site and by request to a toll-free telephone number. The Commission will also consider whether to extend interim relief for three months, to March 31, 2003. The Commission granted the relief as a two-year pilot program ending December 31, 2001 (Exchange Act Release No. 42222, December 10, 1999) and then extended the program for one year, to December 31, 2002 (Exchange Act Release No. 45179, December 20, 2001).

The subject matter of the Closed Meeting scheduled for Thursday, November 14, 2002 will be:

Formal order of investigation;

Institution and settlement of administrative proceedings of an enforcement nature; and

Institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: November 7, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27596]

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

November 5, 2002.

Notice is hereby given that the following filing has 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/declaration for a complete statement of the proposed transaction summarized below. The application/declaration is available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application/declaration should submit their views in writing by November 27, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant/declarant at the address 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 27, 2002, the application/declaration, as filed or as amended, may be granted and/or permitted to become effective.

#### **Allegheny Energy, Inc., et al. (70-10100)**

Allegheny Energy, Inc. ("Allegheny"), a registered public utility holding company, and its registered public utility holding company subsidiary, Allegheny Energy Supply Company, L.L.C. ("AE Supply," and with Allegheny, "Applicants"), both located at 10435 Downsville Pike, Hagerstown, Maryland, have filed an application-declaration under sections 6(a), 7, 12, 32 and 33 of the Act, and rules 46, 53 and 54 under the Act.

#### **I. Background**

Allegheny is a diversified energy company headquartered in Hagerstown,

Maryland. The Allegheny system consists of three regulated electric public utility companies, West Penn Power Company ("West Penn"), Monongahela Power Company ("Monongahela Power") (Monongahela Power also has a regulated natural gas utility division as a result of its purchase of West Virginia Power), and The Potomac Edison Company ("Potomac Edison"), and a regulated public utility natural gas company, Mountaineer Gas Company ("Mountaineer Gas"), which is a wholly owned subsidiary of Monongahela Power (collectively West Penn, Monongahela Power, Potomac Edison and Mountaineer Gas are referred to as the "Operating Companies").

#### **II. Requested Authority**

##### *A. Summary of Requests*

By order dated December 31, 2001 (HCAR No. 27486), as supplemented by HCAR No. 27521 (April 17, 2002) and HCAR No. 27579 (Oct. 17, 2002) (collectively, the "Financing Order"), the Commission authorized, through July 31, 2005 certain financing transactions. Applicants now request authorization (1) to modify the financing conditions set forth in the Financing Order, (2) for AE Supply to pay dividends out of capital surplus in an amount not to exceed \$500 million; and (3) for Allegheny, AE Supply and their respective subsidiaries (other than the Operating Companies) to sell, or otherwise dispose of, utility assets and/or the securities of public utility companies (other than the Operating Companies).

##### *B. Modification of Financing Conditions*

Applicants request that the conditions to the financing authorizations in the Financing Order be modified for the period through December 31, 2003 ("Modified Authorization Period"), by replacing the conditions with the following:

1. the common stock equity ratio of Allegheny, on a consolidated basis, will not fall below 28% of its total capitalization; and the common stock equity ratio<sup>1</sup> of AE Supply, on a consolidated basis, will not fall below 20% of its total capitalization;

2. the effective cost of capital on any security 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 credit quality,

<sup>1</sup> Since AE Supply is a limited liability company, "common stock equity" means, for this purpose, the membership interests of AE Supply.

provided that in no event will the interest rate on any debt securities exceed an interest rate per annum equal to the sum of 12% plus the prime rate as announced by a nationally recognized money center bank;

3. the underwriting fees, commissions and other similar remuneration paid in connection with the non-competitive issuance of any security will not exceed the greater of (a) 5% of the principal or total amount of the securities being issued or (b) issuances expenses that are paid at the time in respect of the issuance of securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality;

4. the maturity of long-term debt will be not less than one year and will not exceed thirty years; and

5. short-term debt will have a maturity of not less than one day and not more than 364 days.

Applicants request that the financing authorizations granted in the Financing Order not be subject to the requirement that Allegheny and/or AE Supply maintain a common stock equity ratio above 30%, or above the levels stated in B.1. above. Rather, Applicants request that the financing authorizations granted in the Financing Order remain effective without regard to the common stock equity levels of Allegheny and/or AE Supply. Applicants request that the Commission reserve jurisdiction over the common stock equity ratio level to be maintained as a condition to the financing authorization for Allegheny and AE Supply below 28% in the case of Allegheny and 20% in the case of AE Supply.

Applicants request authorization to issue debt securities at an interest rate in excess of an interest rate per annum equal to the sum of 12% plus the prime rate as announced by a nationally recognized money center bank. Applicants request that the Commission reserve jurisdiction over any higher interest rate to be applicable to any debt securities to be issued under the Financing Order.

Applicants request that the financing authorizations granted in the Financing Order not be subject to the requirement that Allegheny maintain its senior unsecured long-term debt ratings, and the rating of any commercial paper that may be issued, at investment grade level, as established by a nationally recognized statistical rating organization. Applicants further request that Allegheny and AE Supply be authorized to issue short-term debt and/or long-term debt under those circumstances when the debt, upon

issuance, is unrated or is rated below investment grade.

Applicants commit to file in a timely manner an application with the Commission if, or to the extent that, Applicants will seek relief from the requirement that they maintain a common stock equity ratio of at least 30% after December 31, 2003.

#### *C. Payment of Dividends Out of Capital Surplus*

Applicants also request authorization for AE Supply to pay dividends out of capital surplus of up to \$500 million during the period ending December 31, 2003. Specifically, AE Supply proposes to declare and pay dividends to Allegheny only to the extent required by Allegheny to repay outstanding indebtedness in an aggregate principal amount of up to \$365 million and to pay AE Supply's approximate proportionate share of interest on the outstanding notes of Allegheny in the amount of \$11.625 million. To the extent that Allegheny does not require proceeds of dividends from AE Supply to repay these obligations, Applicants request that the Commission reserve jurisdiction over the declaration and payment of dividends by AE Supply out of capital surplus up to an aggregate amount of \$500 million.

Applicants anticipate that, to meet the liquidity needs of Allegheny, AE Supply will be required to pay dividends in excess of its current and retained earnings. Allegheny and AE Supply represent that AE Supply will not declare or pay any dividend out of capital surplus in contravention of any law restricting the payment of dividends. In addition, AE Supply will comply with the terms of any credit agreements and indentures that restrict the amount and timing of distributions by AE Supply to its members.

#### *D. Sale of Utility Assets*

Applicants request authorization to sell securities of the public utility subsidiaries, other than the Operating Companies, held directly or indirectly by Applicants and to sell utility assets of Applicants and/or their subsidiaries, other than the Operating Companies. At this time Applicants cannot identify the specific assets to be sold. The identity of the assets to be sold will depend upon, among other things, market conditions.<sup>2</sup> As a result of the extraordinary circumstances existing in the merchant power market at this time, Allegheny and AE Supply need

<sup>2</sup> Applicants have included as an exhibit to SEC File No. 70-10100 a list of all of AE Supply's utility assets and securities of public utility companies.

flexibility as they proceed with the asset sale program. Thus, Applicants request that the Commission reserve jurisdiction over the authorization to sell the securities of public utility companies, other than the Operating Companies, held directly or indirectly by Applicants, and to sell utility assets of Applicants and their subsidiaries, other than the Operating Companies. Applicants commit to submit an amendment to the Application in this matter seeking authorization of the Commission for any asset disposition subject to Commission jurisdiction.

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. 34-46764; File No. SR-Amex-2002-81]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Member Transaction Charges for Exchange-Traded Funds

November 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 3, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Amex proposes to amend the Exchange Equity Fee Schedule relating to transaction charges imposed on Exchange specialists and Registered Traders for transactions in Exchange-Traded Funds ("ETFs") for which the Exchange pays non-reimbursed fees to third parties.

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.