

Dated: March 9, 2004.

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27808]

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

March 5, 2004.

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 March 29, 2004, 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 March 29, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Exelon Corporation (70-10189)

Exelon Corporation ("Exelon"), a registered holding company; Exelon's public utility subsidiaries: Commonwealth Edison ("ComEd"); Exelon Generation Company, LLC ("Genco"), 300 Exelon Way, Kennet Square, PA 19348; PECO Energy Company ("PECO") 2301 Market Street, Philadelphia, PA 19101; Commonwealth Edison Company of Indiana ("ComEd Indiana"); Exelon's nonutility registered holding company subsidiaries Exelon Energy Delivery Company, LLC ("Delivery") and Exelon Ventures Company, LLC ("Ventures");

and Exelon's nonutility subsidiaries ("Nonutility Subsidiaries")<sup>1</sup> Exelon Business Services Company ("Exelon Business Services"); ECP Telecommunications Holdings, LLC ("ECP Telecommunications"); EEI Telecommunications Holding, LLC ("EEI Telecommunications"); Energy Trading Company; Exelon Capital Partners, Inc. ("Exelon Capital Partners"); Exelon Communications Company, LLC (Exelon Communications"); Exelon Communications Holdings, LLC ("Exelon Communications Holdings"); Exelon Energy Company; Exelon Energy Delivery Company, LLC ("Exelon Energy Delivery"); Exelon Enterprises Company, LLC ("Exelon Enterprises"); Exelon Enterprises Investments, Inc. ("Exelon Enterprises Investments"); Exelon Enterprises Management, Inc. ("Exelon Enterprises Management"); Exelon New Trust Company; Exelon Services, Inc.; Exelon Thermal Development, Inc. ("Exelon Thermal Development"); Exelon Thermal Holding, Inc. ("Exelon Thermal Holding"); Exelon Thermal Technologies Inc. ("Exelon Thermal Technologies"); F&M Holdings Company, LLC ("F&M Holdings Company"); PECO Energy Power Company ("PEPCO"), Susquehanna Power Company, Susquehanna Electric Company; Unicom Power Holdings, LLC ("Unicom Power Holdings"); Unicom Power Marketing, Inc. ("Unicom Power Marketing"); Unicom Investments, Inc. ("UII"); and Adwin Equipment Company ("Adwin") all except PECO and Genco located at 10 South Dearborn Street, Chicago, IL 60603, have filed an application-declaration ("Application") under sections 6(a), 7, 9(a), 10, 12, 13(b), 32, 33, and 34 of the Act and rules 42, 43, 44, 45, 46, 53, and 54 under the Act.

#### I. Background

By order dated October 19, 2000 (HCAR No. 27256) ("Merger Order"), the Commission authorized Exelon to exchange its common stock for the common stock of PECO, followed by a merger of Unicom with and into Exelon ("Merger"). By orders dated November 2, 2000 (HCAR No. 27266) ("November Order") and December 8, 2000 (HCAR No. 27296) ("December Order" and together with the November Order, "Prior Orders"), Applicants were authorized to engage in certain financing transactions through March 31, 2004.

<sup>1</sup>The Utility Subsidiaries, Ventures, Delivery, and the Nonutility Subsidiaries are collectively referred to as "Subsidiaries."

## II. Description of the Parties to the Transaction

### A. Utility Subsidiaries

Applicants state that by March 31, 2004, Exelon will have four operating public utility company subsidiaries ("Utility Subsidiaries"):

1. PECO, a public utility company engaged (i) in the purchase, transmission, distribution and sale of electricity and (ii) in the purchase, distribution, and sale of natural gas in Pennsylvania;
2. ComEd, a public utility company engaged in the purchase, transmission, distribution, and sale of electricity in Illinois;
3. Genco, a public utility company and a registered holding company engaged in the purchase, generation and sale of electricity in Pennsylvania, Illinois and elsewhere; and
4. ComEd of Indiana, a public utility company that has no retail customers.

In addition, Applicants state that Exelon has the following public utility subsidiaries ("Conowingo Companies"):

1. PEPCO, which is also a registered holding company and the parent company of Susquehanna Power Company,
  2. Susquehanna Power Company, and
  3. Susquehanna Electric Company.
- Applicants state that each of the Conowingo Companies is exclusively engaged in owning and/or operating a hydroelectric generation project, the power of which is sold at wholesale. Applicants state that Exelon will cause each of the Conowingo companies to make the necessary filing with the FER to become exempt wholesale generators ("EWGs"), as that term is defined in section 32 of the Act prior March 31, 2004.

### B. Nonutility Subsidiaries

1. Delivery is the intermediate registered holding company for ComEd and PECO;

2. Exelon Business Services Company ("Exelon Business Services"), is the service company for the Exelon System;

3. Ventures, is a registered holding company and a first tier Subsidiary of Exelon which has as wholly owned subsidiaries, Genco and Exelon Enterprises Company, LLC ("Exelon Enterprises"); and

4. Exelon Enterprises, the principal Subsidiary through which Exelon conducts its nonutility businesses.

Applicants state that effective as of January 1, 2001, Exelon effectuated a corporate restructuring ("Restructuring") contemplated in the Merger Order. The Restructuring consisted of the transfer of electric

generating assets of ComEd and PECO to Genco and the transfer of nonutility subsidiaries of PECO and Unicom Enterprises, Inc. to be indirect subsidiaries of Ventures. Applicants state that since the date of the Restructuring, the Exelon system has included four registered holding companies in addition to Exelon: Ventures, which was required for tax purposes to serve as a holding company for Genco and Enterprises; Delivery, which serves to enhance the integration of Exelon's principal state regulated utilities ComEd and PECO; Genco, which controls all of the Exelon system's generating assets including the Conowingo Companies; and PEPCO.

Applicants state that, with the conversion of the Conowingo Companies to EWGs, Genco and PEPCO will no longer own a public utility company subsidiary within the meaning of the Act. Consequently, Applicants request that Genco and PEPCO each receive authorization to de-register under section 5(d) of the Act.

## II. Overview of the Requests

Applicants request authorization to engage in the following financing transactions during the period from the effective date of the order in this filing through April 15, 2007 ("Authorization Period").

i. External issuances by Exelon of common stock, preferred stock, preferred securities ("Preferred Securities"), as defined below, equity linked securities ("Equity Linked Securities"), as defined below, long-term debt, and short-term debt to increase Exelon's capitalization by up to \$8.0 billion over existing capitalization at the time of the order in this matter ("External Limit");

ii. External issuances by Exelon of common stock, preferred stock, Preferred Securities, Equity Linked Securities, long-term debt, and short-term debt to refund or replace existing securities without increasing capitalization;

iii. External issuances of up to 21 million shares of Exelon common stock under Exelon's dividend reinvestment plan, certain incentive compensation plans, and certain other employee benefit plans;

iv. The entering into by Exelon of hedging transactions;

v. External issuances by Genco of membership interests ("Member Interests"),<sup>2</sup> preferred equity interests,

Preferred Securities, Equity Linked Securities, long-term debt, and short term debt to increase its capitalization, subject to the \$8 billion limitation applicable to Exelon, or to refund or replace existing securities without increasing capitalization or to assume certain pollution control obligations currently outstanding for ComEd or PECO;

vi. The formation of financing entities and the issuance by financing entities of securities otherwise authorized to be issued and sold through authority granted in this Application or applicable exemptions under the Act, including intra-system guarantees of securities;

vii. The issuance of intra-system advances and guarantees, to the extent not exempt by rules 45(b) and 52, by Exelon to or on behalf of its Subsidiaries and others, by the Nonutility Subsidiaries to or on behalf of other Nonutility Subsidiaries and others and by the Utility Subsidiaries to or on behalf of the Utility Subsidiary's direct or indirect subsidiaries and others;

viii. Issuances by the Utility Subsidiaries of short-term debt securities (including commercial paper) in an amount not to exceed \$2.7 billion issued and outstanding at any time and external issuances of long-term debt or short-term debt to refund or replace existing securities without increasing capitalization, to the extent not exempt under rule 52;

ix. The entering into of hedging transactions by the Utility Subsidiaries;

x. Modifications to the Utility Money Pool and the Nonutility Money Pool;

xi. Intra-system financings through Ventures, Genco, and Delivery;

xii. Payment of dividends out of capital or unearned surplus by the Nonutility Subsidiaries;

xiii. Payment of dividends out of capital up to \$500 million by Exelon and ComEd;

xiv. Use of up to \$7.0 billion of financings for investments in EWGs and FUCOs;

xv. Payment of dividends out of capital by ComEd of Indiana; and

xvi. Authorization for Genco to become obligated for certain pollution control obligations of PECO and ComEd.

## IV. Parameters for Financing Authorization

Applicants request authorization to engage in certain financing transactions during the Authorization Period for which the specific terms and conditions

are not at this time known, and which may not be covered by rule 52, without further prior approval by the Commission. Applicants propose that the following general terms will be applicable where appropriate to the financing transactions requested ("Financing Parameters"):

### A. Effective Cost of Money on Financings

The effective cost of money on long-term debt of any series will not exceed at the time of issuance the greater of (i) 700 basis points over the yield to maturity of a U.S. treasury security ("Treasury Security") having a remaining term approximately equal to the term of the series of long-term debt or (ii) a gross spread over a Treasury Security that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The dividend or distribution rate on any series of preferred stock and other forms of Preferred Securities or Equity Linked Securities will not exceed at the time of issuance the greater of (i) 700 basis points over the yield to maturity of a Treasury Security having a remaining term equal to the term of such series or (ii) a rate that is consistent with similar securities of comparable credit quality and maturities (or perpetual preferred stock) issued by other companies. The effective cost of money on short-term debt will not exceed the greater of (i) 700 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.

### B. Maturity

Applicants state that the maturity of indebtedness will not exceed 50 years. Preferred stock, Preferred Securities and Equity Linked Securities (other than perpetual preferred stock) will be redeemed no later than 50 years after issuance, unless converted into common stock.

### C. Issuance Expenses

Applicants state that the underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities under authority granted in this Application will not exceed 7% of the principal or total amount of the securities being issued.

<sup>2</sup> Applicants state that because Genco is a wholly owned Pennsylvania limited liability company, it does not have "common stock" but rather has Member Interests in accordance with Pennsylvania

Limited Liability Company Law. Applicants state that the rights attendant to the Member Interests are equivalent to the rights of common stockholders.

*D. Use of Proceeds*

Applicants state that the proceeds from the issuance or sale of securities in external financing transactions will be used for general corporate purposes including (i) the financing, in part, of the capital expenditures of the Exelon system; (ii) the financing of working capital requirements of the Exelon system; (iii) the acquisition, retirement, or redemption under rule 42 of securities previously issued by Exelon or its Subsidiaries or as otherwise authorized by the Commission; (iv) direct or indirect investment in companies authorized under the Act or by rule (including EWGs or FUCOs) or in a separate proceeding; (v) effecting a stock split of Exelon common stock; and (vi) other lawful purposes.

Applicants represent that no financing proceeds will be used to acquire a new subsidiary unless the financing is consummated in accordance with an order of the Commission or an available exemption under the Act.

*E. Common Equity Ratio*

Applicants state that, at all times during the Authorization Period, Exelon, the Utility Subsidiaries, Ventures, and Delivery will each maintain common equity (as reflected in the most recent Form 10-K or Form 10-Q filed with the Commission adjusted to reflect changes in capitalization since the balance sheet date therein) of at least 30% of its consolidated capitalization (common equity, minority interests, preferred stock, short-term debt and long-term debt, excluding securitization obligations, referred to as "Consolidated

Capitalization") ("30% Condition"); provided that Exelon will in any event be authorized to issue common stock (including through a dividend reinvestment or employee benefit plans or by way of stock split), to the extent otherwise authorized in this Application.

Applicants state that although PECO has common equity of greater than 30% of Consolidated Capitalization, Applicants note that the Commission in the Prior Orders found that PECO would work to continue to improve its equity ratio as securitization bonds are paid down. Applicants state that they continue to expect PECO's common equity ratio will improve as the securitization bonds are paid down and as Exelon settles the Receivable Contribution (defined below) and that PECO will reach a level of common equity of at least 30% of capitalization by December 31, 2010 (at which time all securitization bonds are expected to be retired and therefore will not be a consideration in the calculation).

Applicants propose that Consolidated Capitalization exclude the impact of securitization bonds outstanding for the benefit of ComEd and PECO in determining compliance with the Commission's 30% test applicable to Exelon, ComEd, and PECO. Applicants state that all securitization bonds are rated "AAA" and have dedicated revenue streams approved by the applicable state commission ensuring that they will be timely paid.

Applicants request that the Commission reserve jurisdiction over the issuance of securities in those circumstances where Exelon, ComEd,

PECO, or Genco do not comply with the common equity criteria of 30% of Consolidated Capitalization pending completion of the record.

*F. Investment Grade Ratings*

Applicants further represent that apart from securities issued for the purpose of funding money pool operations, no guarantees, Member Interests, or other securities, other than common stock, may be issued in reliance upon the authorization to be granted by the Commission under this Application, unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer that are rated, are rated investment grade; and (iii) all outstanding securities of the top level registered holding company, that are rated, are rated investment grade ("Investment Grade Condition"). For purposes of this Investment Grade Condition, a security will be deemed to be rated "investment grade" if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3-1 under the Securities Exchange Act of 1934, as amended.

Additionally, Applicants request that the Commission reserve jurisdiction over the issuance at any time of securities that the Investment Grade Condition is not satisfied.

**V. Financial Condition**

Applicants state that the Exelon system's ratings as of September 2003 from Standard & Poor's, Moody's, and Fitch are as follows:

Company and type of rating	S&P	Moody's	Fitch
<b>Exelon:</b>			
Corporate .....	A-	N/A	N/A
Unsecured .....	BBB+	Baa2	BBB+
Commercial Paper .....	A-2	P-2	F2
<b>ComEd:</b>			
Secured .....	A-	A3	A-
Unsecured .....	BBB+	Baa1	BBB+
Preferred Stock/Trust Securities .....	BBB	baa3	BBB
Commercial Paper .....	A-2	P-2	F2
Transitional Trust Notes .....	AAA	Aaa	AAA
<b>PECO:</b>			
Secured .....	A	A2	A
Unsecured .....	BBB+	A3	A-
Preferred Stock .....	BBB	baa2	BBB+
Trust Securities .....	BBB	baa1	BBB+
Commercial Paper .....	A-2	P-1	F1
Transitional Trust Notes .....	AAA	Aaa	AAA
<b>Genco:</b>			
Corporate .....	A-	Baa1	
Unsecured .....	A-	Baa1	BBB+
Commercial Paper .....	A2	P-2	F2

Applicants state that at September 30, 2003, Exelon's consolidated common equity as a percentage of Consolidated Capitalization was 45.94%. Applicants also state that the Utility Subsidiaries Consolidated Capitalization are as follows: PECO's common equity is 34.25% of Consolidated Capitalization; ComEd's common equity is 47.28% of Consolidated Capitalization; and Genco's common equity is 50.98% of Consolidated Capitalization.

Applicants state that concurrent with the Restructuring, effective January 1, 2001, Exelon transferred assets out of PECO as a reduction of "common stock" (*i.e.*, paid in capital) and contributed to PECO a \$2.0 billion receivable, payable by Exelon, for the purpose of funding future tax payments resulting from collection of competitive transition charges ("Receivable Contribution"). Applicants state that the Receivable Contribution was reflected as an increase to common stock on the PECO balance sheets. However, instead of the offsetting entry being an asset, in accordance with the Commission's Staff Accounting Bulletin 4.G., the Receivable Contribution was recorded as a negative adjustment to shareholders' equity identified as "Receivable from Parent" in the PECO balance sheets. The amount of the increase in common stock was equal to the amount of the reduction in shareholder's equity attributed to the Receivable from Parent. The combined effects of the three entries (reduction of common stock for transfer of assets, increase in common stock for the Receivable Contribution and decrease in common stock for the Receivable Contribution) is to reduce PECO's common equity, as a percentage of total capitalization calculated in accordance with generally accepted accounting principles ("GAAP"). The effect of the Receivable Contribution is included, however, in the 34.25% ratio.

Applicants state that the Receivable Contribution at September 30, 2003 of \$1,661 million is non-interest bearing. Applicants state that as Exelon makes future contributions to PECO in respect of the Receivable Contribution through 2010 in conjunction with the payment of the taxes resulting from the collection of competitive transition charges, and assuming that PECO achieves its projected levels of earnings and pays the projected level of dividends, the reduction in stockholders' equity will reverse, resulting in increases in overall stockholders' equity and increases in the proportion of common stock in total capitalization of PECO.

Applicants state that excluding the effect of the Receivable Contribution and excluding securitization debt from

PECO's capitalization, the equity component of PECO capitalization (calculated in the same manner as Consolidated Capitalization) at September 30, 2003 would be 60.49%. Applicants further state that excluding the effect of the Receivable Contribution and including securitization debt in capitalization, the equity component of PECO capitalization at September 30, 2003 would be 30.79%. Applicants state that PECO continues to expect that its common equity ratio calculated according to GAAP will improve as the securitization bonds are paid down and as Exelon settles the Receivable Contribution and that PECO will reach a level of common equity of at least 30% of capitalization by December 31, 2010 (at which time all securitization bonds are expected to be retired and therefore will not be a consideration in the calculation).

## VI. Description of Specific Types of Financing

### A. Exelon External Financing

Exelon requests authorization to obtain funds externally through sales of common stock, preferred stock, Preferred Securities, Equity Linked Securities, long-term debt, and short-term debt securities not to exceed the \$8.0 billion External Limit. With respect to common stock, Exelon also requests authority to issue common stock to third parties in consideration for the acquisition by Exelon or a Nonutility Subsidiary of equity or debt securities of a company being acquired under an exemption under the Act or specific authorization by another Commission order. In addition, Exelon seeks the flexibility to enter into certain hedging transactions to manage interest rate or price risk.

### B. Common Stock

Exelon requests authority to sell common stock in any one of the following ways: (i) Through underwriters or dealers; (ii) through agents; (iii) directly to a limited number of purchasers or a single purchaser; or (iv) directly to employees (or to trusts established for their benefit), shareholders and others. Applicants request that issuances of common stock under Exelon's employee benefit plans and stock purchase and dividend reinvestment plans not count towards the External Limit. Applicants state that if underwriters are used in the sale of the securities, these securities will be acquired by the underwriters for their own account and may be resold 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. The securities may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by Exelon) or directly by one or more underwriters acting alone. Exelon also states that the securities may be sold directly by Exelon or through agents designated by Exelon from time to time. If dealers are utilized in the sale of any of the securities, Exelon will sell securities to the dealers as principals. Any dealer may then resell such securities to the public at varying prices to be determined by such dealer at the time of resale. If common stock is being sold in an underwritten offering, Exelon may grant the underwriters thereof a "green shoe" option permitting the purchase from Exelon at the same price of additional shares then being offered solely for the purpose of covering over-allotments. Public distributions may be pursuant to private negotiation with underwriters, dealers or agents as discussed above or effected through competitive bidding among underwriters. In addition, Exelon requests that sales may be made through private placements or other non-public offerings to one or more persons. All common stock sales will be with terms and conditions, at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

### 1. Acquisitions

Exelon requests authority to issue its common stock in exchange for the acquisition of the securities of companies engaged in "energy-related businesses" as described in rule 58, exempt telecommunications companies ("ETCs"), as defined in section 34 of the Act, EWGs, and FUCOs or companies whose acquisition is exempt under the Act or authorized in this Application or another filing. Exelon states that certain tax benefits arise out of using common stock for these purchases. The Exelon common stock to be exchanged may be purchased on the open market under rule 42, or may be original issue. Original issue stock may be registered under the Securities Act of 1933, as amended ("1933 Act"), but at present Exelon expects that the common stock would not be registered and the common stock acquired by the third parties would be subject to resale restrictions under Rule 144 under the 1933 Act. Exelon states that the common stock would be valued at market value based upon the closing price on the day prior to the date of

issuance (or, if appropriate, the date of a binding contract providing for the issuance of the common stock) or based upon average high and low prices for a period as negotiated by the parties.

## 2. Stock Split

Applicants further request that Exelon issue its common stock to effect any stock split (which may include a stock split in the form of a stock dividend) approved by its board of directors. In a stock split, shareholders would receive additional shares of common stock in respect of their existing shares (for example, each holder may receive one additional share for each share held in a so called "2 for 1" stock split). Applicants state that the stock split will not increase the equity of the issuer, as no consideration is paid by shareholders, and does not affect any shareholder's proportionate interest in the issuer. Because an increased number of shares will be outstanding after a stock split, the stock's market price normally will reduce to reflect the split (for example in a 2 for 1 split, the price would be expected to fall to one-half the pre-split price). Applicant state that the stock split will be accomplished in accordance with Pennsylvania Business Corporation Act under which Exelon is organized.

Applicants state that Exelon expects to amend its articles of incorporation to effect a stock split and/or increase the number of authorized shares of common stock that may be outstanding in order to accommodate planned and future stock splits. Pennsylvania law, under which Exelon is incorporated, allows a corporation to amend its charter without shareholder vote to effect a stock split and to increase the number of authorized shares to accommodate stock splits. Accordingly, Exelon states that it will not be soliciting shareholders in connection with such amendment to its articles or in connection with declaring or effectuating any stock split and therefore is not seeking any approval under section 12 of the Act or rules 60 through 62 for a solicitation.

Exelon seeks authority to issue an indeterminate number of shares of common stock to effectuate any stock split (including a stock split in the form of a stock dividend), a reclassification of shares or other method permitted by law to effectuate the stock split. Because a stock split does not involve payment of consideration to the issuer or change the dollar value of an issuer's capitalization, Exelon proposes that any stock split will not count towards any limitation on the issuance of securities imposed in this Application.

## C. Preferred Stock, Preferred Securities, and Equity Linked Securities

Exelon requests authority to issue preferred stock and to issue directly or indirectly through one or more Financing Subsidiaries (as defined below) preferred securities, including, specifically, trust preferred securities, or monthly income preferred securities ("Preferred Securities") and to issue equity linked securities, including units consisting of a combination of incorporated options, warrants and/or forward equity purchase contracts with debt, preferred stock, or Preferred Securities ("Equity Linked Securities"). Equity Linked Securities will be exercisable or exchangeable for or convertible, either mandatorily or at the option of the holder, into common stock or indebtedness or allow the holder to surrender to the issuer or apply the value of a security issued by the Applicant as approved by the Commission to such holder's obligation to make a payment on another security of Applicant issued as permitted by the Commission.<sup>3</sup> Any convertible or Equity Linked Securities will be convertible into or linked to only securities that Exelon and its Subsidiaries are otherwise authorized to issue under rule or Commission order. Applicants state that any refunding or replacement of securities where capitalization is not increased from that in place at September 30, 2003 will be through the issuance of securities of the type authorized in this Application.

Applicants state that Equity Linked Securities may combine a security with a fixed obligation (e.g., preferred stock, Preferred Securities or debt) with a conversion or exchange feature that is exercisable (often mandatorily) within a relatively short period (e.g., three to six years after issuance). These instruments may also be tax advantaged. Applicants state that an Equity-Linked Security may offer a means to raise capital at a lower overall economic or after-tax cost than other types of long-term securities, in that the fixed obligation component may have a lower after-tax cost than straight preferred stock and all or a portion of the interest or dividends paid may be tax deductible or lock in prices at which investors are obligated to purchase common stock or other securities at a future date. From an economic standpoint, these types of

<sup>3</sup> Applicants state for example, an Applicant may issue common stock or common stock warrants linked with debt securities. The holder will be obligated to pay to the issuer an additional amount of consideration at a specified date for the common stock but is authorized to surrender the linked debt security to or for the benefit of the issuer in lieu of the cash payment.

securities also generally carry a lower cost than common equity. Preferred Securities may be issued in one or more series with such rights, preferences, and priorities as may be designated in the instrument creating each series. Applicants state that dividends or distributions on Preferred Securities will be made periodically and to the extent funds are legally available for that purpose, but may be made subject to terms that allow the issuer to defer dividend payments or distributions for specified periods. Preferred Securities may be convertible or exchangeable into shares of common stock or other indebtedness and may be issued in the form of shares or units. Preferred stock, Preferred Securities and Equity Linked Securities may be sold directly or indirectly through underwriters or dealers or in connection with an acquisition in the same manner as that described for common stock in item VI. B. 1. above.

## D. Long-Term Debt

Exelon requests authority to issue unsecured, long-term debt securities in an aggregate principal amount not to exceed the \$8.0 billion External Limit outstanding at any time during the Authorization Period. At September 30, 2003 Exelon had \$15.147 billion of consolidated long-term debt obligations outstanding. Any refunding or replacement of securities where capitalization is not increased will be through the issuance of securities authorized in this Application.

Long-term debt securities may be comprised of bonds, notes, medium-term notes, or debentures or subordinated debentures under one or more indentures ("Exelon Indenture") or long-term indebtedness under agreements with banks or other institutional lenders. Applicants state that any long-term debt security would have a designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, and other terms and conditions as Exelon may determine at the time of issuance. Any long-term debt (i) may be convertible into any other securities of Exelon; (ii) will have maturities ranging from one to 50 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; (vii) may be called from existing investors by a third party; (viii) may be subject to subordination provisions; and (ix) may be entitled to the benefit of positive or negative financial or other covenants. Applicants state that the 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, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding.

Borrowings from banks and other financial institutions will be *pari passu* with debt securities issued under the Exelon Indenture (other than subordinated debentures) and the short-term credit facilities (as described below). Applicants state that specific terms of any borrowings will continue to be determined by Exelon at the time of issuance and will comply in all regards with the Financing Parameters.

#### E. Short-Term Debt

Exelon requests authority to issue and have outstanding at any one time during the Authorization Period unsecured, short-term debt securities in an aggregate principal amount outstanding at any time, when combined with issuances of common stock (other than for benefit plans or stock purchase and dividend reinvestment plans and other than for refunding or replacement of securities where capitalization is not increased as a result thereof from that in place September 30, 2003 (*i.e.*, \$23.883 billion)) under this Application and when combined with issuances of preferred stock, Preferred Securities and Equity Linked Securities and long-term debt, as described in this section not to exceed \$8 billion.

Short-term debt may include institutional borrowings, commercial paper or bid notes and short-term debt issued under the Exelon Indenture or otherwise. Exelon proposes to sell commercial paper, from time to time, in established domestic commercial paper markets. Commercial paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. Exelon states that it expects that the dealers acquiring commercial paper from Exelon will re-offer this paper at a discount to corporate and institutional investors. Institutional investors are expected to include commercial banks, insurance

companies, pension funds, investment trusts, foundations, colleges and universities, and finance companies.

Exelon proposes, without counting against the limit set forth above, to maintain back-up lines of credit or credit facilities in connection with a commercial paper program in an aggregate amount not to exceed the amount of authorized commercial paper.

Exelon proposes that credit lines or credit facilities may be set up for use by Exelon for general corporate purposes in addition to credit lines or credit facilities to support commercial paper as described in this subsection. Exelon will borrow and repay under the lines of credit or credit facilities, from time to time, as it is deemed appropriate or necessary.

#### F. Financing Risk Management Devices

##### 1. Interest Rate Risk

Exelon requests authority 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. Hedges may also include 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 U.S. governmental agency (*e.g.*, Fannie Mae) obligations or LIBOR based swap instruments (collectively, "Hedge Instruments"). The transactions would be for fixed periods and stated notional amounts. Exelon 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 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 the face value of the underlying debt instrument and related interest rate exposure. Exelon states that because transactions will be entered into for a fixed or determinable period, that it will not engage in speculative transactions. Exelon states that it will only enter into agreements with counterparties ("Approved Counterparties") whose senior debt ratings, as published by a national recognized rating agency, are greater

than or equal to "BBB," or an equivalent rating.

##### 2. Anticipatory Hedges

Exelon also requests authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings ("Anticipatory Hedges"), subject to certain limitations and restrictions. Exelon states that 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. Exelon states that 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 ("CBOT"), 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. Exelon or the appropriate Subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. Exelon or the appropriate Subsidiary may decide to lock in interest rates and/or limit its exposure to interest rate increases.

#### G. Accounting Standards

Exelon states that it will comply with Statement of Financial Accounting Standards ("SFAS") 133 ("Accounting for Derivative Instruments and Hedging Activities"), SFAS 138 ("Accounting for Certain Derivative Instruments and Certain Hedging Activities") or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board ("FASB"). Exelon states that Hedge Instruments and Anticipatory Hedges will qualify for hedge accounting treatment under the current FASB standards in effect and as determined at the date Hedge Instruments or Anticipatory Hedges are entered into.

## VII. Financing Subsidiaries

Exelon and the Subsidiaries request authority to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships or other entities ("Financing Subsidiaries")<sup>4</sup> created specifically for the purpose of facilitating the financing of authorized and exempt activities (including exempt and authorized acquisitions) of Exelon and the Subsidiaries. Applicants propose that the Financing Subsidiaries issue long-term debt, Preferred Securities, or Equity Linked Securities to third parties and transfer the proceeds of these financings to Exelon or a Subsidiary. Exelon or a Subsidiary requests authority, if required, to guarantee or enter into support, servicing, or expense agreements ("Expense Agreements") with respect to the obligations of Financing Subsidiaries. Applicants state that under an Expense Agreement, Exelon or a Subsidiary would agree to provide financial support and pay necessary operating expenses of the Financing Subsidiary in order to facilitate the Financing Subsidiaries' agreements with third parties in connection with the Financing Subsidiaries' financing activities approved in this Application. Applicants request authority for the Financing Subsidiaries to pledge revenues or other assets or grant security interests solely to accommodate the intra-system mirror structure of the financings approved in this Application; provided the security will not consist of the assets (other than an income stream in support of the financing) or stock of any operating subsidiary of Exelon. Subsidiaries may also provide guarantees and enter into Expense Agreements, if required, on behalf of Financing Subsidiaries under rules 45(b)(7) and 52, as applicable.

Exelon and the Subsidiaries also request authority to issue and sell to any Financing Subsidiary, from time to time in one or more series, unsecured debentures, unsecured promissory notes, or other unsecured debt instruments ("Notes"). Applicants further request authority for the Financing Subsidiaries to apply the proceeds of any external financing by a Financing Subsidiary plus the amount of any equity contribution made to it from time to time by its parent corporation and other funds that may be available to a Financing Subsidiary in accordance with the authority requested in this Application or obtained in an

exempt financing transaction to purchase Notes. The terms (e.g., interest rate, maturity, amortization, prepayment terms, default provisions, etc.) of the Notes would be designed to parallel the terms of the securities issued by the Financing Subsidiary to which the Notes relate.

Any amounts issued by Financing Subsidiaries to third parties will be included in the External Limit authorized for the immediate parent of the Financing Subsidiaries. However, Applicants request that the underlying intra-system mirror debt (including Notes) and parent guarantee shall not be so included so as to avoid double counting.

In cases where it is necessary or desirable to ensure legal separation for purposes of isolating a Financing Subsidiary from its parent or another Subsidiary for bankruptcy purposes, the ratings agencies require that any Expense Agreement whereby the parent or Subsidiary provides services related to the financing to the Financing Subsidiary be at a market price so that a successor service provider could assume the duties of the parent or Subsidiary in the event of the bankruptcy of the parent or Subsidiary without interruption or an increase of fees. Therefore Applicants seek approval under section 13(b) of the Act and rules 87 and 90 to provide the services described in this paragraph at a market price but only for so long as the Expense Agreement established by the Financing Subsidiary is in place.

## VIII. Utility Subsidiary Financing

### A. ComEd and PECO Short-Term Debt

Authority is requested for ComEd and PECO to each issue unsecured short-term debt, including commercial paper and borrowings under credit lines and credit facilities, in the aggregate amount of \$2.7 billion to be outstanding at any one time during the Authorization Period ("Utility Short-Term Debt Limit"). Applicants state that the Utility Short-Term Debt Limit is not included in the aggregate amount of the External Limit.

ComEd and PECO request authority to sell commercial paper, from time to time, in established domestic commercial paper markets. Commercial paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from ComEd or PECO will re-offer such paper at a discount to

corporate and institutional investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities and finance companies.

ComEd and PECO propose to maintain back up lines of credit in an aggregate amount not to exceed the amount of authorized commercial paper and request that these back up lines of credit or credit facilities not count against the Utility Short-Term Debt Limit. ComEd and PECO request authority to borrow and repay under lines of credit set up for general corporate purposes, from time to time, as it is deemed appropriate or necessary. Subject to the limitations described herein, ComEd and PECO may each engage in other types of short-term financings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

### B. Genco Securities

Applicants state that although Genco is an "electric utility company" under the Act, it is not subject to the jurisdiction of any state commission in connection with the issuance of securities and therefore, all securities issuances for Genco will require approval of the Commission.

Applicants state that the aggregate amount of financing obtained by Genco during the Authorization Period, from issuance and sale of Member Interests, preferred equity interests, Preferred Securities, Equity Linked Securities, long-term debt and short-term debt, as described in this section, and other than for refunding or replacement of securities where capitalization is not increased as a result thereof from that in place at September 30, 2003 (i.e., \$5.790 billion), shall not exceed the \$8 billion External Limit. Any refunding or replacement of securities where capitalization is not increased from that in place at September 30, 2003 will be through the issuance of securities authorized in this Application.

Any issuance of securities by Genco to unrelated third parties under this authorization will reduce, dollar for dollar, the remaining financing authority available to Exelon; provided that issuances to Genco's parent companies reflecting intra-company transactions shall not reduce the authority available to Exelon except to the extent Exelon has issued securities to fund such transactions. Likewise, issuances by Genco related solely to intra-company transactions with its Subsidiaries will not count against Genco's limits to the extent subject to

<sup>4</sup> Applicants propose that existing Financing Subsidiaries be included in the definition of Financing Subsidiaries.

and counted against another financing limit of this authorization.

Applicants state that the manner of sale and other terms for issuances by Genco will be the same as the applicable terms for equivalent securities of Exelon. Applicants state that the specific terms of any securities will be determined by Genco at the time of issuance and will comply in all regards with the Financing Parameters.

Genco proposes that preferred equity interests, Preferred Securities and Equity Linked Securities may be issued in one or more series with such rights, preferences, and priorities as may be designated in the instrument creating each series, as determined in accordance with Genco's governing documents.

Genco proposes that long-term debt securities would be comprised of unsecured bonds, notes, medium-term notes or debentures under one or more indentures ("Genco Indenture") (other than subordinated debentures) or unsecured long-term indebtedness under agreements with banks or other institutional lenders. Borrowings from the banks and other financial institutions or other institutional lenders will be unsecured and rank *pari passu* with debt securities issued under the Genco Indenture and the short-term credit facilities (as described below).

Genco requests authority to issue commercial paper and establish unsecured credit lines or credit facilities. Applicants state that commercial paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from Exelon will re-offer the paper at a discount to corporate and institutional investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, and finance companies.

Genco proposes to set up credit lines or credit facilities used for general corporate purposes in addition to credit lines to support commercial paper as described in this subsection. Genco states that it will borrow and repay under such lines of credit or credit facilities, from time to time, as it is deemed appropriate or necessary. Subject to the Financing Parameters, Genco may engage in other types of unsecured short-term financings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

### C. Financing Risk Management Devices

To the extent not exempt under rule 52, ComEd, PECO, and Genco also request authority to enter into Hedge Instruments and Anticipatory Hedges of the same type and under the same conditions as are requested above by Exelon.

### IX. Guarantees and Intra-System Advances

Applicants request authority for Exelon and Genco to enter into guarantees, obtain letters of credit, enter into Expense Agreements or otherwise provide credit support with respect to the obligations of its Subsidiaries and non-affiliated third parties in the ordinary course of business ("Guarantees") in an amount, together with the Nonutility Guarantees and the Utility Guarantees (each defined below), in an aggregate principal amount not to exceed \$6.0 billion outstanding at any one time, excluding obligations exempt under rules 45 and 52, or Guarantees previously authorized under the Prior Orders ("Guarantee Limit").<sup>5</sup> Applicants state that the Guarantee Limit includes Guarantees and other credit support mechanisms by Exelon, Genco, or other Subsidiaries that were previously issued and were outstanding at September 30, 2003 in the amount of \$1.913 billion.

Exelon or Genco, as the case may be, proposes to charge each Subsidiary a fee for each 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 ("Guarantee Fee"). Applicants request that any guarantees or other credit support arrangements outstanding at the end of the Authorization Period will continue until expiration or termination in accordance with their terms.

Applicants request that this Guarantee authority include the ability to guarantee debt. Applicants state that the debt guaranteed will comply with the Financing Parameters or be exempt.

Applicants further request authorization for the Nonutility Subsidiaries to enter into Guarantees with respect to other Nonutility Subsidiaries and non-affiliated third

parties in the ordinary course of their business ("Nonutility Guarantees"), in addition to Guarantees that are exempt under rules 45(b) and 52. Applicants state that Nonutility Guarantees will count towards the Guarantee Limit. Applicants propose that the Nonutility Subsidiary providing any credit support may charge its associate company a Guarantee Fee.

Applicants also request authorization for the Utility Subsidiaries to enter into Guarantees with respect to their direct and indirect Subsidiaries or Nonutility Subsidiaries and non-affiliated third parties ("Utility Guarantees"), in addition to Guarantees that are exempt under rules 45(b) and 52. Applicants state that Utility Guarantees will count against the aggregate Guarantee Limit. The Utility Subsidiary providing credit support may charge its associate company a Guarantee Fee.

Applicants state that certain Guarantees may be in support of the obligations which are not capable of exact quantification. In such cases, Applicants state that they will determine the exposure under the Guarantee for purposes of measuring compliance with the applicable limitation by appropriate means including estimation of exposure based on loss experience or projected potential payment amounts. If appropriate, Applicants state that these estimates will be made in accordance with GAAP and this estimation will be reevaluated periodically.

Applicants request authority to Guarantee the obligations of unrelated third parties ("Third Party Guarantees"). From time to time it is appropriate for Exelon or one of its Subsidiaries to guarantee, as part of their normal business activities, the obligations of a third party with whom Exelon or the Subsidiary has a business relationship. For example, in the case of a sale of a Subsidiary to a third party, the buyer may request that Exelon or a Subsidiary guarantee obligations of the sold Subsidiary to its lenders or other counterparties for an interim period. As another example, when Exelon's predecessor company Unicom was involved in the startup of the Midwest Independent System Operator ("MISO"), Unicom issued a Guarantee of certain interim, pre-startup debt of the MISO. Third Party Guarantees will be Guarantees only of long or short-term indebtedness or Guarantees of performance of contractual obligations of such third parties with whom Exelon has, or had, a business relationship.

<sup>5</sup> Applicants state that these include the guarantee by Exelon of a 12 year promissory note issued by Unicom Investment, Inc. to ComEd for \$2.5 billion under an intercompany agreement relating to the sale of certain fossil generating stations by ComEd ("UII Note"). The UII Note payable by Unicom Investment, Inc., to ComEd, will remain outstanding until terminated in accordance with their terms or agreement of the parties. As of December 31, 2003, there is approximately \$1.1 billion outstanding under the UII Note and the corresponding guarantee.

### X. Dividend Reinvestment Plan and Employee Plans

Exelon proposes, from time to time during the Authorization Period, to issue and/or acquire in open market transactions, or by some other method which complies with applicable law and Commission interpretations then in effect, up to 21 million shares of Exelon common stock under Exelon's dividend reinvestment plan, employee stock ownership plan, certain incentive compensation plans and certain other employee benefit plans described below ("Plans"). Under the Prior Orders Exelon had authority to issue 21 million shares with respect to Plans through March 31, 2004. Through September 30, 2003, Exelon issued 7.986 million shares under this authority.

### XI. Authorization and Operation of the Money Pools

Applicants request authority for Exelon to contribute surplus funds and to lend and extend credit to (i) the Utility Subsidiaries through the Utility Money Pool and (ii) the Nonutility Subsidiaries through the Nonutility Money Pool. Exelon will not be a borrower from either the Utility Money Pool or the Nonutility Money Pool.

#### A. Utility Money Pool

Exelon and the Utility Subsidiaries request authorization to conduct the Utility Money Pool as approved in the Prior Orders, and the Utility Subsidiaries, to the extent not exempted by rule 52, and Exelon Business Services also request authorization to make, from time to time, unsecured short-term borrowings from the Utility Money Pool, to contribute surplus funds to the Utility Money Pool, and to lend and extend credit to (and, if applicable, acquire promissory notes from) one another through the Utility Money Pool. In addition, Applicants request authority for Unicom Investments, Inc. ("UII") to participate in the Utility Money Pool as a lender to the Utility Money Pool, but not as a borrower from the Utility Money Pool. Applicants state that UII was established to invest the proceeds and facilitate a like-kind exchange in connection with ComEd's 1999 sale of several fossil-generation plants. Applicants state that by order dated August 3, 1999 in Docket Nos. 99-0273 and 99-0282, the Illinois Commerce Commission approved that transaction, including UII's role therein. To enable UII to transfer, for use in furthering the business interests of the Utility Subsidiaries, idle cash that might otherwise be trapped at UII, Applicants request that UII be authorized to

participate in Exelon's Utility Money Pool. Applicants state that UII would participate only as a lender to and not as a borrower from the Utility Money Pool.

Applicants state that borrowings from the Utility Money Pool shall be subject to the following limitations during the Authorization Period:

Company	Limitation
ComEd and PECO .....	\$2.7 billion <sup>6</sup>
Genco .....	\$1.0 billion <sup>7</sup>
ComEd of Indiana .....	\$15 million

<sup>6</sup>Applicants state that this is an aggregate limit applicable to ComEd and PECO and is also aggregated with the overall short-term limit for those companies requested herein (i.e., this limit is included in and not in addition to the \$2.7 billion short-term limit request for ComEd and PECO).

<sup>7</sup>Applicants state that this amount is included in, not in addition to, Genco's overall financing limit of \$8 billion.

Applicants state that under the terms of the Utility Money Pool, short-term funds are made available from the following sources for short-term loans to the Utility Subsidiaries from time to time: (i) Surplus funds in the treasuries of Utility Money Pool participants other than Exelon; (ii) surplus funds in the treasury of Exelon ("Internal Funds"); and (iii) proceeds from bank borrowings or the sale of commercial paper by Exelon or the Utility Subsidiaries for loan to the Utility Money Pool ("External Funds"). Applicants state that funds would be made available from these sources in the order that Exelon Business Services, as administrator of the Utility Money Pool, determines to 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 Utility Money Pool participant at any time has surplus funds to lend to the Utility Money Pool or shall lend funds to the Utility Money Pool will 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 such participant's sole discretion.

Utility Money Pool participants propose to borrow *pro rata* from each company that lends, in the proportion that the total amount loaned by each such lending company bears to the total amount then loaned through the Utility Money Pool. On any day when more than one fund source, with different rates of interest, is used to fund loans through the Utility Money Pool, each borrower borrows *pro rata* from each fund source in the Utility Money Pool

in the same proportion that the amount of funds provided by that fund source bears to the total amount of short-term funds available to the Utility Money Pool.

Applicants state that borrowings from the Utility Money Pool require authorization by the borrower's chief financial officer or treasurer, or by a designee thereof. No party is required to effect a borrowing through the Utility Money Pool if it is determined that it could (and has authority to) effect a borrowing at lower cost directly from banks or through the sale of its own commercial paper. Applicants state that no loans through the Utility Money Pool will be made to, and no borrowings through the Utility Money Pool will be made by, Exelon.

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

Applicants state that if only Internal Funds make up the funds available in the Utility Money Pool, the interest rate applicable and payable to or by Subsidiaries for all loans of such Internal Funds is the higher of the rate for high-grade unsecured 30-day commercial paper sold through dealers by major corporations as quoted in *The Wall Street Journal* or the rate then available to the lending company from an eligible investment in readily marketable money market funds or the existing short-term investment accounts maintained by the lender during the period in question. Applicants propose that providing for these alternatives ensures that the lending company does not forego any investment return that it could have obtained by investing in money market funds or other permitted short-term investments instead of the Utility Money Pool. In the event neither rate is one that is permissible for a transaction because of constraints imposed by the state regulatory commission having jurisdiction over the utility participating in the transaction, then the rate shall be a rate that is permissible for the transaction

determined under the requirements of that state regulatory commission.

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

In cases where both Internal Funds and External Funds are concurrently borrowed through the Utility Money Pool, the rate applicable to all loans comprised of such "blended" funds is the composite rate equal to the weighted average of (i) the cost of all Internal Funds contributed by Utility Money Pool participants (as determined under the second-preceding paragraph above) and (ii) the cost of all such External Funds. In circumstances where Internal Funds and External Funds are available for loans through the Utility Money Pool, loans may be made exclusively from Internal Funds or External Funds, rather than from a "blend" of funds, to the extent it is expected that such loans would result in a lower cost of borrowings.

Funds not required by the Utility Money Pool to make loans (with the exception of funds required to satisfy the Utility Money Pool's liquidity requirements) are ordinarily 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 such 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 funds; (vi) bank certificates of deposit; (vii) Eurodollar funds; (viii) short-term debt securities rated AA or above by Standard & Poor's, Aa or above by Moody's Investors Service, or AA or above by Fitch Ratings; (ix) short-term debt securities issued or guaranteed by an entity rated AA or above by Standard & Poor's, Aa or above by Moody's Investors Service, or AA or above by Fitch Ratings; and (x) other investments as are permitted by section 9(c) of the Act and rule 40 thereunder.

Applicants state that the interest income and investment income earned on loans and investments of surplus funds would be allocated among the participants in the Utility Money Pool in accordance with the proportion each participant's contribution of funds bears to the total amount of funds in the Utility Money Pool and the cost of funds provided to the Utility Money Pool by each participant.

Applicants state that each Applicant receiving a loan through the Utility 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 Utility Money Pool may be prepaid by the borrower without premium or penalty.

#### *B. Nonutility Money Pool*

A separate Nonutility Money Pool among Exelon and certain Nonutility Subsidiary companies of Exelon was approved in the Prior Orders, however, Applicants state that Exelon has not established a Nonutility Money Pool. Applicants state that each Nonutility Subsidiary requests authority to participate in the Nonutility Money Pool.

Applicants state that the Nonutility Money Pool is operated on the same terms and conditions as set forth for the Utility Money Pool, except that Exelon funds made available to the Money Pools will be made available to the Utility Money Pool first to the extent it is operated and thereafter to the Nonutility Money Pool. No loans through the Nonutility Money Pool are made to, and no borrowings through the Nonutility Money Pool are made by, Exelon, Ventures, or Delivery.

#### *C. Other Contributions to Money Pool*

Applicants request that Nonutility Subsidiaries that are not currently participating in the Nonutility Money Pool and those that are acquired or formed in the future, ("Other Nonutility Subsidiaries") may lend funds to the Nonutility Money Pool without the need for additional authority from the Commission. Applicants request that the Commission reserve jurisdiction with respect to the participation (other than lending of funds) of Other Nonutility Subsidiaries in the Nonutility Money Pool upon completion of the record.

#### *D. Operation of the Money Pools and Administrative Matters*

Applicants propose that Exelon Business Services under the authority of the appropriate officers of the

participating companies will continue to handle the operation of the Utility and Nonutility Money Pools, including recordkeeping and coordination of loans. Exelon Business Services administers the Utility and Nonutility Money Pools on an "at cost" basis and maintains separate records for each money pool. Applicants state that surplus funds of the Utility Money Pool and the Nonutility Money Pool may be combined in common short-term investments, but separate records of these funds are maintained by Exelon Business Services as administrator of the pools, and interest is separately allocated, on a daily basis, to each money pool in accordance with the proportion that the amount of each money pool's surplus funds bears to the total amount of surplus funds available for investment from both money pools.

#### **XII. Borrowings by Ventures and Delivery**

Applicants state that Ventures and Delivery are registered holding companies. Ventures is the parent of Enterprises, which holds Nonutility Subsidiaries, and is the parent of Genco. Delivery is the parent of Com Ed and PECO. Applicants state that Ventures and Delivery may have occasion to issue debt or equity securities to Exelon to acquire funds to purchase debt or equity securities of their respective subsidiaries to enable Exelon to add to the capitalization of those subsidiaries. Applicants state that no such issuance by Ventures or Delivery will increase the Exelon system's securities held by third-parties. If Exelon obtains funds to purchase such securities from an external source, Exelon's issuance of securities will be only as approved by the Commission's order in this docket and subject to the limitations imposed in such order, including the overall financing limitation of \$8 billion. All securities issuances by the subsidiaries (*i.e.*, Genco and Enterprises, and PECO and ComEd) to Ventures and Delivery, respectively will be subject to limitations imposed on that company regarding securities issuances and will be within the dollar limitations imposed by the order in this docket, if any. Consequently, there is no need to impose a separate dollar limitation on these conduit securities issuances by Ventures and Delivery. Applicants state that the approval sought for Ventures and Delivery is merely to cover the technical requirement that all their securities issuances be approved even in the case where they are acting as a conduit to invest funds by Exelon in their subsidiaries.

### XIII. Payment of Dividends

#### A. Payment of Dividends Out of Capital by Exelon and ComEd

In connection with the Merger, the Commission authorized each of Exelon and ComEd in the November Order to pay dividends out of additional paid-in capital up to the amount of \$500 million. Applicants state that, subsequent to the Merger, Statement of Financial Accounting Standards ("SFAS") 141, "Business Combinations" and SFAS 142, "Goodwill and Other Intangible Assets," were issued in 2001. SFAS 142 eliminated the amortization of goodwill as was required previously and provides for an annual assessment to determine if goodwill amounts are impaired. Exelon and its Subsidiaries adopted these standards effective January 1, 2002, which resulted in a net write down of goodwill and a charge to income of \$230 million net of taxes. If an analysis discloses an impairment, the company must take an impairment charge. Applicants state that Exelon has performed the analysis each year since 2002, which did not result in any further impairment charge to date.

Exelon and ComEd now request authorization, notwithstanding the above stated accounting changes, (i) to continue to pay dividends out of additional paid-in capital up to the amount of \$500 million and (ii) with respect to current earnings before any deductions resulting from any impairment of either goodwill or other intangibles recognized as a result of the Merger. Applicants state that as of September 30, 2003, neither Exelon nor ComEd has paid any dividends out of additional paid-in capital. Applicants state that if all of the goodwill associated with the Merger were found to be impaired (*i.e.*, \$4.734 billion at September 30, 2003), the *pro forma* common equity ratio of Exelon and ComEd would be 26.8% and 20.1%, respectively.<sup>8</sup> Applicants state that Exelon and ComEd believe that based on anticipated earnings and dividend levels, as well as estimated financings, that neither Exelon nor ComEd will have common equity ratios below 30% of Consolidated Capitalization as a result of any further impairment of goodwill.

<sup>8</sup> Applicants state that the *pro forma* common equity ratio of Exelon and ComEd would be 18.8% and 15.7%, respectively, including securitization obligations.

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

Applicants state that there may be situations in which one or more of the Nonutility Subsidiaries will have unrestricted cash available for distribution in excess of current and retained earnings resulting from a disposition of assets, a restructuring or other accounting charge that eliminated retained earnings or its normal operations (excluding debt financing). Consistent with these considerations, Applicants request authorization for the current and future Nonutility Subsidiaries to pay dividends out of capital and unearned surplus, through the Authorization Period, provided, however, that, without further approval of the Commission, no Nonutility Subsidiary will declare or pay any dividend out of capital or unearned surplus if the Nonutility Subsidiary derives any material part of its revenues from the sale of goods, services or electricity to Utility Subsidiaries.

#### C. Payment of Dividends Out of Capital by ComEd of Indiana

As a result of "push down" accounting in the Merger, \$11 million of the retained earnings of ComEd of Indiana were reclassified as paid in capital. Applicants state that ComEd of Indiana has not recorded any reductions to retained earnings because of operating losses or impairment charges. Applicants state that ComEd of Indiana has excess funds, including funds classified as paid in capital, and has lent funds to the Utility Money Pool so that these amounts might be used by the Utility Subsidiaries of Exelon rather than being trapped as idle cash at ComEd of Indiana. Applicants now request authority for ComEd of Indiana to pay dividends to its parent ComEd, from time to time through the Authorization Period, out of capital and unearned surplus to the extent permitted under state law up to \$32 million provided that ComEd of Indiana's common equity ratio will not fall below 30% of Consolidated Capitalization. Applicants state that this authorization would allow the unneeded funds resulting from the events described in this paragraph at ComEd of Indiana to be permanently applied to ComEd's needs.

#### XIV. Changes of Capital Stock of Majority Owned Subsidiaries

Applicants state that the portion of an individual Subsidiary's aggregate financing to be effected through the sale of stock to Exelon or other immediate

parent company during the Authorization Period under rule 52 and/or under an order issued under this filing cannot be ascertained at this time. Applicants state that it may happen that the proposed sale of capital securities (*i.e.*, common stock or preferred stock) may in some cases exceed the then authorized capital stock of the Subsidiary. In addition, the Subsidiary may choose to use capital stock with no par value. As needed to accommodate such proposed transactions and to provide for future issues, Applicants request authority to change the terms of any 50% or more owned Subsidiary's authorized capital stock capitalization or other equity interests by an amount deemed appropriate by Exelon or other intermediate parent company; provided that the consents of all other shareholders, if any, as required by law, have been obtained for the proposed change. This request for authorization is limited to Exelon's 50% or more owned Subsidiaries and will not affect the aggregate limits or other conditions contained herein. Applicants propose that a Subsidiary would be able to change the par value, or change between par value and no-par stock, or change the form of equity from common stock to limited partnership or limited liability company interests or similar instruments, or from these instruments to common stock, without additional Commission approval. Any such action by a Utility Subsidiary would be subject to and would only be taken upon the receipt of any necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business. Applicants state that Exelon will be subject to all applicable laws regarding the fiduciary duty of fairness of a majority shareholder to minority shareholders in any 50% or more owned Subsidiary and will undertake to ensure that any change implemented under this paragraph comports with these legal requirements.

#### XV. Refinancing and/or Assumption of Pollution Control Obligations

In the Prior Orders, the Commission approved, the assumption by Genco of up to \$369 million of pollution control obligations incurred by PECO in connection with generation facilities that would be transferred to Genco. The generation assets were transferred to Genco effective January 1, 2001. Through September 30, 2003, \$363 million of the originally approved \$369 million has been assumed by Genco.

Applicants now request that Genco assume all remaining outstanding pollution control obligations of PECO

and ComEd. At September 30, 2003, PECO had a total of \$311 million of outstanding pollution control obligations and ComEd had \$589 million, for a total of \$900 million. In addition, all existing generating assets of ComEd were also transferred to Genco as of that date.

Applicants currently contemplate that only the remaining \$6 million of the PECO obligations (of the originally approved \$369 million) and none of the ComEd obligations will be transferred to or assumed by Genco. To maintain flexibility however, Exelon, PECO, ComEd and Genco seek authority for Genco to assume any, all or none of the obligations listed above. In any case where Genco legally assumes these obligations PECO or ComEd, as the case may be, will be released from liability. Whether or not the pollution control facilities constructed with the proceeds of these pollution control obligations are still in service or owned by Genco, the pollution control obligations are consistent with the businesses conducted by Genco. Whether or not the utility is released, any such transfer to or assumption by Genco will have no impact on Exelon's consolidated capitalization. Any such assumption and release will, however, have the effect of decreasing the portion of long-term debt in the capital structure of the transferring utility and will commensurately improve the common equity ratio of ComEd or PECO, as the case may be. In appropriate circumstances the transfer of additional pollution control obligations from PECO will enhance the equity component of its capitalization which will help offset the effects of the Receivable Contribution discussed above.

#### **XVI. De-Registration of Genco and PECO**

Applicants state that by March 31, 2004, the Conowingo Companies will have been converted into EWGs and will therefore no longer be public utility companies under the Act. As a result, Applicants state that Genco will no longer have any public utility company subsidiaries. One of the Conowingo Companies, PEPCO, owns another of the Conowingo Companies Susquehanna Power Company, previously a public utility company expected to be an EWG by March 31, 2004. As a result, Applicants state that PEPCO will no longer have any public utility company subsidiaries by March 31, 2004. Applicants request that Genco and PEPCO each be granted an order de-registering each company under section 5(d) of the Act.

#### **XVII. EWG/FUCO Investment Authority Increase**

Applicants state that under the Prior Orders, Exelon currently has authority to invest up to \$4 billion in EWGs and FUCOs. Applicants state that at September 30, 2003, the consolidated amount of Exelon's aggregate investment in EWGs and FUCOs as that term is defined in rule 53 was \$2.762 billion. At September 30, 2003, the average consolidated retained earnings (calculated as required by rule 53) of Exelon was \$2.450 billion. Applicants state that the resulting permitted aggregate investment under rule 53 currently allowed is insufficient to meet Exelon's current investment level and business plans. Exelon has commitments of \$377 million in connection with an additional EWG investment for AmerGen, which commitment was made on October 3, 2003. Accordingly, Applicants request that Exelon be allowed to invest up to \$7.0 billion in EWGs and FUCOs.

#### **Scottish Power plc, et al. (70-9669)**

Scottish Power plc ("ScottishPower"), a foreign registered holding company, Scottish Power UK Holdings Limited ("SPUK Holdings"), a foreign utility subsidiary of Scottish Power, Scottish Power UK plc ("SPUK"), a foreign utility subsidiary of Scottish Power,<sup>9</sup> and Scottish Power NA 1 Limited and Scottish Power NA 2 Limited, intermediate registered holding companies, all located at 1 Atlantic Quay, Glasgow G2 8SP, Scotland, United Kingdom; PacifiCorp Holdings Inc. ("PHI"),<sup>10</sup> an intermediate registered holding company, PacifiCorp., an electric utility subsidiary of PHI, PacifiCorp Group Holding Company ("PGHC"), an intermediate holding company for PacifiCorp nonutility subsidiaries, and PacifiCorp's nonutility subsidiaries: PPM Energy Inc., Pacific Klamath Energy, Inc.; PacifiCorp Financial Services, Inc.; Energy West Mining Company; Glenrock Coal Company; Interwest Mining Company; Pacific Minerals, Inc.; PacifiCorp Environmental Remediation Company; PacifiCorp Investment Management, Inc.; PAGE Group, Inc.; Enstor, Inc.; Arlington Wind LLC; and Heartland Wind LLC<sup>11</sup>; all located at

<sup>9</sup> SPUK Holdings and SPUK and its subsidiaries are collectively referred to as the "SPUK Holdings Group."

<sup>10</sup> PHI, Scottish Power NA 1 Limited, Scottish Power NA 2 Limited, and Scottish Power UK Holdings Limited are collectively referred to as the "Intermediate Companies."

<sup>11</sup> The nonutility subsidiaries of PacifiCorp are collectively referred to as the "PHI Nonutility Subsidiary Companies."

Suite 2000, 825 N.E. Multnomah Street, Portland, Oregon 97232 (collectively, "Applicants"), have filed an application-declaration, as amended ("Application"), under sections 6(a), 7, 9(a), 10, 12, 13(b), 32, and 33 of the Act and rules 42, 43, 45, 46, 53, 54, 83, 87, 90, and 91 under the Act.

#### **I. Introduction**

ScottishPower registered as a holding company under the Act following its acquisition of PacifiCorp on November 29, 1999 ("Merger").<sup>12</sup> Applicants request authority to engage in various financing transactions, credit support arrangements, and other related proposals, as more fully discussed below, commencing on the effective date of an order issued in this matter and ending March 31, 2007 ("Authorization Period").

By order dated December 6, 2000 (Holding Co. Act Release No. 27290) ("Financing Order"), the Commission authorized ScottishPower and certain of its subsidiaries to engage in various financing transactions from the date of the Financing Order through March 31, 2004 ("Current Authorization Period").

The Financing Order authorized the Applicants to engage in the following transactions through the Current Authorization Period: (i) External financings by ScottishPower; (ii) certain external financings by PacifiCorp and the PHI Nonutility Subsidiary Companies; (iii) certain intrasystem financings including the creation of a new PacifiCorp utility money pool, and guarantees of the obligations of PacifiCorp subsidiaries and of the subsidiaries of ScottishPower's foreign utility subsidiary, SPUK Holdings; (iv) the payment by PacifiCorp subsidiaries and, in certain circumstances, by PacifiCorp, of dividends out of capital or unearned surplus; (v) increases in the number of shares authorized by PacifiCorp or by any of PacifiCorp's subsidiaries with respect to any capital security of the company, as well as alteration of the terms of any capital security; (vi) the formation of financing entities and the issuance by such entities of securities otherwise authorized to be issued and sold under the authority requested in this filing; and (vii) the formation of PHI to hold the shares of both PacifiCorp and PGHC.

#### **II. Financing Conditions**

Applicants represent that during the Authorization Period the proposed financing transactions, credit support

<sup>12</sup> Because ScottishPower concluded that the Merger was not subject to section 9(a)(2) of the Act, it did not obtain Commission approval for the Merger.

arrangements, and other related proposals will be subject to the following general terms and conditions:

(i) The aggregate amount of external debt and equity issued by the ScottishPower system pursuant to the authority requested in this matter will not exceed \$8 billion, at any one time outstanding;

(ii) ScottishPower's "aggregate investment" in exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs"), as defined in rule 53 under the Act, will not exceed, without prior Commission approval, \$12.5 billion;

(iii) The proceeds from the sale of securities in external financing transactions will be used for the acquisition, retirement or redemption of securities issued by the ScottishPower system, without the need for prior Commission approval and for necessary general corporate purposes including (a) the financing, in part, of the capital expenditures of the ScottishPower system, (b) the financing of working capital requirements of the ScottishPower system, and (c) other lawful general purposes;

(iv) The Total Common Equity<sup>13</sup> of PacifiCorp, as reflected in its most recent annual, quarterly or other periodic earnings report, will not fall below 30% of Total Capitalization.<sup>14</sup> ScottishPower commits to maintain its and PacifiCorp's long-term debt rating at an investment grade level through the Authorization Period. ScottishPower and PacifiCorp will each maintain a Total Common Equity as a percentage of Total Capitalization, measured on a U.S. GAAP basis, of at least 30% through the Authorization Period;

(v) The cost of money (interest rate giving effect to the economic life of the instrument) on debt financings of ScottishPower at the date of issuance will not exceed 300 basis points over that for comparable term U.S. treasury securities or government benchmark for the currency concerned;

(vi) The cost of money (dividend rate giving effect to the economic life of the instrument) on preferred securities of ScottishPower at the date of issuance will not exceed 500 basis points over that for comparable term U.S. treasury securities or government benchmark for the currency concerned.

The Applicants represent that no financing proceeds will be used to acquire a new subsidiary, other than a special purpose financing entity, unless such acquisition is consummated in accordance with an order of the Commission or an available exemption under the Act. The proceeds of external financings will be allocated to companies in the ScottishPower system

<sup>13</sup> Total Common Equity is defined as common stock plus retained earnings and accumulated other comprehensive income, presented on a U.S. Generally Accepted Accounting Principles ("GAAP") basis.

<sup>14</sup> Total Capitalization is defined the sum of Total Common Equity, preferred stock, and long- and short-term debt, including present maturities.

in various ways through intrasystem financing discussed in this Application.

Applicants represent that no guarantees or other securities, other than common stock, may be issued in reliance upon the authorization to be granted by the Commission, unless: (i) The security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer, that are rated, are rated investment grade; and (iii) all outstanding securities of the top level registered holding company, that are rated, are rated investment grade ("Investment Grade Condition"). For purposes of this Investment Grade Condition, a security will be deemed to be rated "investment grade" if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3-1 under the Securities Exchange Act of 1934, as amended, ("1934 Act").

Applicants request that the Commission reserve jurisdiction over the issuance of any such securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities at any time that during the Authorization Period the conditions set forth in clauses (i) through (iii) above are not satisfied.

### III. ScottishPower External Financing

ScottishPower requests authorization to increase its capitalization by issuing and selling from time to time long-term equity and debt securities aggregating not more than \$8 billion at any one time outstanding during the Authorization Period ("External Financing Limit"). This amount would include ScottishPower's existing financing arrangements and would exclude any refinancing of current debt. Such securities could include, but would not necessarily be limited to, ordinary shares, preferred shares, options, warrants, unsecured long- and short-term debt (including commercial paper), convertible securities, subordinated debt, bank borrowings and securities with call or put options. Such financing amount includes ScottishPower's current outstanding equity and debt securities.<sup>15</sup> ScottishPower requests authorization to maintain all existing financial arrangements regarding outstanding equity and debt securities. ScottishPower proposes to also enter

<sup>15</sup> As of September 30, 2003, ScottishPower had outstanding guarantees of \$332 million, long-term debt of \$8.33 billion, short-term debt of \$505 million and common equity of \$9.15 billion.

into currency and interest rate swaps as described below.

#### A. Ordinary Shares

ScottishPower's common stock equity consists of ordinary shares, with a par value of 50 pence each, that are listed on the London Stock Exchange. ScottishPower currently has American Depositary Shares ("ADSs") in the U.S. which trade as American Depositary Receipts ("ADRs") and represent four ordinary shares each. ScottishPower has established a sponsored ADR program in the U.S. and has its ADSs listed on the New York Stock Exchange and registered under the Securities Act of 1933, as amended ("1933 Act").<sup>16</sup>

ScottishPower seeks authority to use its ordinary shares (or associated ADSs) as consideration for acquisitions that are otherwise authorized or exempt under the Act. Among other things, transactions may involve the exchange of parent company equity securities for securities of the company being acquired in order to provide the seller with certain tax advantages. For purposes of the External Financing Limit, ScottishPower ordinary shares used to fund an acquisition of a company through the exchange of ScottishPower equity for securities being acquired would be valued at market value based upon the closing price of the ordinary shares on the London Stock Exchange on the day before closing of the sale or issuance.

Ordinary share financings covered by this Application may occur in any one of the following ways: (i) Through underwriters or dealers; (ii) through agents; (iii) directly to a number of purchasers or a single purchaser; (iv) directly to employees (or to trusts established for their benefit) and other shareholders through ScottishPower system employee benefit schemes; or (v) through the issuance of anti-dilution and/or bonus shares (*i.e.*, stock dividends) to existing shareholders.

In addition to other general corporate purposes, the ordinary shares will be used to fund employee benefit plans. ScottishPower and PacifiCorp currently maintain a number of employee benefit plans for personnel in the ScottishPower system pursuant to which employees may acquire or may

<sup>16</sup> As a result, ScottishPower has registered under the 1934 Act and files the periodic disclosure reports required of a foreign issuer with the Commission. The request contained herein with respect to ordinary shares refers to the issuance of ordinary shares directly, or indirectly, through the ADR program and, for purposes of this request, the ADSs are not considered separate securities from the underlying ordinary shares. As of September 30, 2003 ScottishPower had 1,857,477,594 ordinary shares and one "Special Share" outstanding.

be granted equity interests as part of their compensation.

More particularly, ScottishPower intends to issue ADSs to U.S. employees through PacificCorp Stock Incentive Plan, Compensation Reduction Plan and K Plus Employee Savings and Stock Ownership Plan ("U.S. Plans"). In addition, other share-based plans may be developed to motivate and retain key executives. In addition, ScottishPower intends to issue ADSs to U.S. employees and ordinary shares to U.K. employees through its Executive Share Option Plan 2001 (the U.S./U.K. plan). In addition, ScottishPower intends to issue ordinary shares to its U.K. employees through its Long Term Incentive Plan, its Executive Share Option Scheme, its Sharesave Scheme and its Employee Share Ownership Plan (the "U.K. Plans").

ScottishPower requests authority to issue approximately 82 million ordinary shares to employees under its existing plans, the U.S. Plans, the U.K. Plans and such additional plans created after the date of the requested order in this matter that may be developed for the purposes stated above. Securities issued by ScottishPower under all of the plans will be included within the External Financing Limit and will be valued, if ordinary shares, at market value based on the closing price on the London Stock Exchange on the day before the award. Securities issued that are not ordinary shares will be valued based on a reasonable and consistent method applied at the time of the award.<sup>17</sup>

#### B. Preferred Stock

ScottishPower proposes to issue preferred stock from time to time during the Authorization Period. Any such preferred stock would have dividend rates or methods of determining the same, redemption provisions, conversion or put terms and other terms and conditions as ScottishPower may determine at the time of issuance, provided that the cost of money (dividend rate giving effect to the economic life of the instrument) on preferred stock of ScottishPower, when issued, will not exceed 500 basis points over that for comparable term U.S. treasury securities or government benchmark for the currency concerned. In addition, all issuances of preferred stock will be at rates or prices based

upon or otherwise determined by competitive capital markets.

#### C. Debt

##### 1. Long-Term Debt

The Applicants propose to issue unsecured debt securities from time to time during the Authorization Period. Any debt securities would have the designation, aggregate principal amount, interest rate(s) or method of determining the same, terms of payment of interest, redemption provisions, non-refunding provisions, sinking fund terms, conversion or put terms and other terms and conditions as are deemed appropriate at the time of issuance, provided however, that the cost of money (interest rate giving effect to the economic life of the instrument) on debt financings will not exceed 300 basis points over that for comparable term U.S. treasury securities or government benchmark for the currency concerned.

##### 2. Short-Term Debt

ScottishPower also seeks authority to issue additional short-term debt in the form of commercial paper, promissory notes and/or other forms of short-term indebtedness in an aggregate principal amount at any one time outstanding not to exceed \$2 billion ("Short-term Debt Limit"). ScottishPower proposes to establish from time to time new committed bank lines of credit, provided that only the principal amount of any borrowings outstanding under these new committed bank lines of credit will be counted against the proposed Short-term Debt Limit. Credit lines may be set up for use by ScottishPower for general corporate purposes in addition to credit lines to support commercial paper. ScottishPower will borrow and repay under these lines of credit, from time to time, as it is deemed appropriate or necessary. All borrowings under these credit lines will mature in less than one year. ScottishPower may also engage in other types of short-term financing, including borrowings under uncommitted lines, generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

ScottishPower may also sell commercial paper in established U.S. or European commercial paper markets, from time to time, and this commercial paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is

expected that the dealers acquiring commercial paper from ScottishPower will reoffer such 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.

#### D. Hedging Transactions

##### 1. Interest Rate Hedges

In order to protect the ScottishPower system from adverse interest rate movements, the interest rate on the debt portfolio is managed through the use of fixed-rate debt, combined with interest rate and cross currency swaps, options and option-related instruments with a view to maintaining a significant proportion of fixed rates over the medium term. The proportion of debt at fixed rates is varied over time and within policy guidelines, depending on debt projections and market levels of interest rates. The resulting position as of September 30, 2003, was that 95% of the ScottishPower system borrowings were at fixed rates of interest. ScottishPower requests authorization to enter into interest rate and currency hedges in order to reduce or manage interest rate cost and foreign exchange exposures, subject to certain limitations and restrictions, through the Authorization Period.<sup>18</sup>

##### 2. Anticipatory Hedges

ScottishPower also requests authorization to enter into anticipatory hedges, subject to certain limitations and restrictions. ScottishPower produces accounts according to UK GAAP (Internal Accounting Standards

<sup>18</sup> Interest rate and currency hedges would only be entered into with counterparties ("Approved Counterparties") whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's, Fitch Investor Service or Duff and Phelps. Interest rate hedges will involve the use of financial instruments commonly used in today's capital markets, such as interest rate and currency forwards, futures, swaps, caps, collars, floors, and structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of government or agency (*e.g.*, FNMA) obligations or LIBOR-based swap instruments. Transactions would be for fixed periods and stated notional amounts. Fees, commissions or other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an interest rate and currency hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

<sup>17</sup> ScottishPower's corporate structure contains a special share that is currently owned by the U.K. Government ("Special Share"). The Special Share may only be held by the U.K. Government or persons acting on its behalf. It is a single non-voting share that prevents amendments to ScottishPower's Memorandum and Articles of Association. Those documents in turn restrict certain classes of persons from owning more than a prescribed shareholding in ScottishPower.

("IAS") with effect from April 1, 2005 or such later date as IAS becomes effective) but produces a reconciliation to U.S. GAAP which will comply with Statement of Financial Accounting Standard ("SFAS") 133 (Accounting for Derivative Instruments and Hedging Activities) and SFAS 138 (Accounting for Certain Derivative Instruments and Certain Hedging Activities) or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board ("FASB"). Because of the international nature of ScottishPower's business and the complex nature of its debt portfolio it cannot represent that each interest rate and currency hedge and each anticipatory hedge will qualify for hedge accounting treatment under the current FASB standards in effect and as determined as of the date such interest rate and currency hedge or anticipatory hedge is entered into but it is their intention to achieve such hedge accounting treatment wherever possible. The Applicants will also comply with any future FASB financial disclosure requirements associated with hedging transactions.<sup>19</sup>

#### IV. Intermediate Companies

Each of the Intermediate Companies is seeking authorization to continue to issue and sell securities to, and acquire securities from, its immediate parent, subsidiary companies and fellow Intermediate Companies, respectively. Each of the Intermediate Companies and ScottishPower is also seeking authorization to continue to issue guarantees and other forms of credit support to direct and indirect subsidiaries. In no case would the Intermediate Companies or ScottishPower borrow, or receive any extension of credit or indemnity from any of their respective direct or indirect subsidiary companies. The interest rates and maturity dates of any debt security issued by PacifiCorp to its immediate parent company will be designed to

<sup>19</sup> Anticipatory hedges would only be entered into with Approved Counterparties and would be utilized to fix and/or limit the interest rate or currency risk associated with any new issuance through (i) a sale of exchange-traded government futures contracts, government obligations and/or a forward swap (each a "Forward Sale"); (ii) the purchase of put options on government obligations (a "Put Options Purchase"); (iii) a Put Options Purchase in combination with the sale of call options on government obligations (a "Collar"); (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (v) some combination of a Forward Sale, Put Options Purchase, Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory hedges.

parallel the effective cost of capital of ScottishPower.

Authority is also sought for ScottishPower to form new intermediate holding company entities<sup>20</sup> and the issuance and acquisition by such entities of securities in order to permit both reinvestment and repatriation of the profits of PacifiCorp and the PHI Nonutility Subsidiary Companies to ScottishPower in an efficient manner. ScottishPower will continue to be the ultimate owner of PacifiCorp and the PHI Nonutility Subsidiary Companies.

#### V. PacifiCorp and PHI Nonutility Subsidiary Company Financings

Applicants state that the existing financing arrangements, with the exception of the commercial paper transactions discussed below, of PacifiCorp and the PHI Nonutility Subsidiary Companies are exempt under rule 52 and therefore, do not require Commission authorization and will remain in place. The Applicants request, to the extent the Commission has jurisdiction, to maintain all its financing authority through the Authorization Period.<sup>21</sup> PacifiCorp and the PHI Nonutility Subsidiary Companies financing authority requested below is in addition to the External Financing Limit requested by ScottishPower for the ScottishPower system.

##### A. Existing Intercompany Arrangements

Currently, PacifiCorp and the PHI Nonutility Subsidiary Companies have two intercompany lending arrangements. The first loan agreement allows for loans between PacifiCorp and certain of its associate companies. This intercompany loan agreement has been authorized by the Oregon Public Utility Commission ("OPUC") up to \$200 million for loans by PacifiCorp and unlimited amounts for loans to PacifiCorp. These loans are payable on demand, are evidenced by notes and with interest at PacifiCorp's short-term borrowing rate whether the loan is to or from PacifiCorp. The second loan agreement allows for loans up to \$350 million to be made among PGHC and certain of its associate companies. These loans are payable on demand and, if

<sup>20</sup> None of the above-mentioned to-be-formed foreign based intermediate companies will be a party to PacifiCorp and PHI Nonutility Subsidiary Companies' consolidated tax allocation agreement, thereby creating any issues under rule 45 of the Act.

<sup>21</sup> As of September 30, 2003, SPUK Holdings Group has outstanding long-term debt of \$3.86 billion, short-term debt of \$75 million and common equity of \$2.51 billion, presented on a U.S. GAAP basis. In addition, ScottishPower has outstanding guarantees in the amount of approximately \$332 million, presented on a U.S. GAAP basis.

from PGHC, bear interest at a negotiated rate or PGHC's short-term borrowing rate plus a margin (depending on the ratings of the borrower) or at PGHC's short-term borrowing rate if the borrower is PGHC.<sup>22</sup> Applicants request authorization, to the extent not exempt under rule 52, to continue their use of the existing loan agreements through the Authorization Period.

##### B. Short-Term Debt

Authority is requested for PacifiCorp to issue commercial paper and promissory notes not to exceed the aggregate amount of \$1.5 billion to be outstanding at any one time during the Authorization Period. This level of debt authority has been authorized by the Federal Energy Regulatory Commission ("FERC") and all of the state utility commissions regulating PacifiCorp's revolving credit agreements.<sup>23</sup> The OPUC has not authorized the issuance of the commercial paper because it is not jurisdictional.

PacifiCorp requests authority to enter into short-term financing arrangements described above through the Authorization Period. Subject to the limitations set forth in the Application, commercial paper borrowings will be tailored to mature at such time as excess funds from PacifiCorp are expected to become available for loans through the existing intercompany borrowing arrangements.

#### VI. Guarantees and Loans

ScottishPower and the Intermediate Companies request authorization to the extent necessary under the Act to enter into guarantees, obtain letters of credit, enter into guarantee-type agreements, make loans or capital contributions, or otherwise provide credit support with respect to the obligations of PacifiCorp and the PHI Nonutility Subsidiary Companies and the SPUK Holdings Group as may be appropriate to enable such system companies to carry on their respective authorized or permitted businesses and to maintain, to the extent not exempted under rule 45, all existing guarantee and loan

<sup>22</sup> Borrowings from PGHC will bear interest on the outstanding principal amount thereof, for each day from the date such borrowing is made until it becomes due, at a rate per annum equal to the prime rate for such day plus a margin (depending on the ratings of the borrower) as agreed to from time-to-time by PGHC and the borrower and set forth in the ledger maintained by PGHC; however, in no event will the borrower's rate exceed PGHC's cost of short-term funds for such day plus 3/8%.

<sup>23</sup> PacifiCorp is regulated by the Public Utilities Commission of the State of California, the Idaho Public Utilities Commission, the Public Service Commission of Utah, the Washington Utilities and Transportation Commission, the Public Service Commission of Wyoming, and OPUC.

arrangements through the Authorization Period.<sup>24</sup> Such credit support may be in the form of committed bank lines of credit. Such guarantees and credit support to be made to the SPUK Holdings Group will be included in the aggregate investment of ScottishPower for the purposes of rule 53. The cost of such guarantees and loans will be at market rates or parallel the cost of obtaining the liquidity necessary to support the guarantee or loan, as the case may be.

In addition, authority is requested for the PHI Nonutility Subsidiary Companies to enter into similar arrangements with one another, to the extent not exempted under rule 45. Guarantees, capital contributions, and loans entered into by ScottishPower and the Intermediate Companies and the PHI Nonutility Companies will be subject to a \$8 billion limit ("Guarantee Limit") (not included in the \$8 billion external Financing Limit), based upon the amount at risk. Such guarantees will include ScottishPower's currently outstanding guarantees.

## VII. Other Transactions

### A. Financing Entities/Special Purpose Entities

Authority is sought for ScottishPower and PacifiCorp and the PHI Nonutility Subsidiary Companies to organize new corporations, trusts, partnerships or other entities created for the purpose of facilitating financings through their issuance to third parties of income preferred securities or other securities authorized hereby or issued pursuant to an applicable exemption through the Authorization Period. Request is also made for these financing entities to issue such securities to third parties in the event such issuances are not exempt pursuant to rule 52. Additionally, request is made through the Authorization Period to (i) issue debentures or other evidences of indebtedness by any of ScottishPower or PacifiCorp and the PHI Nonutility Subsidiary Companies to a financing entity in return for the proceeds of the financing; (ii) acquire voting interests or equity securities issued by the financing entity to establish ownership of the financing entity, by any of ScottishPower or PacifiCorp and the PHI Nonutility Subsidiary Companies; and (iii) guarantee by the Applicants of such financing entity's obligations in connection with such acquisition. Each

of ScottishPower and PacifiCorp and the PHI Nonutility Subsidiary Companies also may enter into expense agreements with its respective financing entity, pursuant to which it would agree to pay all expenses of such entity. All expense reimbursements would be at cost.<sup>25</sup> Applicants seek authorization for such expense reimbursement arrangements under section 7(d)(4) of the Act, regarding the reasonableness of fees paid in connection with the issuance of a security, and/or under section 13 of the Act and the rules thereunder to the extent the financing entity is deemed to provide services to an associate company.

Any amounts issued by such financing entities to third parties pursuant to this authorization will count against the external financing limits authorized in this matter for the immediate parent of such financing entity. However, the underlying intra-system mirror debt and parent guarantee will not count against the External Financing Limit or the separate ScottishPower Guarantee Limit.

Applicants also request authorization to acquire, directly or indirectly, the equity securities of one or more financing/special purposes subsidiaries ("Financing/Special Purpose Subsidiaries") organized exclusively for the purpose of acquiring, financing, and holding the securities of, one or more existing or future nonutility subsidiaries. Financing/Special Purpose Subsidiaries may also provide management, administrative, project development and operating services to these entities.

Financing/Special Purpose Subsidiaries may be corporations, partnerships, limited liability companies or other entities in which ScottishPower, directly or indirectly, may have a 100% interest, a majority equity or debt position, or a minority debt or equity position. Financing/Special Purpose Subsidiaries would engage only in businesses to the extent that ScottishPower is authorized, whether by statute, rule, regulation or order, to engage in those businesses. ScottishPower commits that the requested authorization will not result in the entry into a new, unauthorized line of business by the SPUK Holdings Group or PacifiCorp and the PHI Nonutility Subsidiary Companies.

Financing/Special Purpose Subsidiaries would be organized for the purpose of acquiring, holding and/or financing the acquisition of the securities of, or other interest in, one or

more EWGs, FUCOs, subsidiaries engaged in rule 58 activities ("Rule 58 Company"), energy-related subsidiaries, or Exempt Telecommunications Companies ("ETCs"). Financing/Special Purpose Subsidiaries may also engage in development activities ("Development Activities") and administrative activities ("Administrative Activities") relating to the permitted businesses of the nonutility subsidiaries.

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

A Financing/Special Purpose Subsidiary may be organized, among other things, (i) to facilitate the making of bids or proposals to develop or acquire an interest in any EWG, FUCO, Rule 58 Company, energy-related subsidiary, ETC; (ii) after the award of the a bid proposal, to facilitate closing on the purchase or financing of the acquired company; (iii) at any time subsequent to the consummation of an acquisition of an interest in any company in order, among other things, to effect an adjustment in the respective ownership interests in business held by ScottishPower or PacifiCorp and the PHI Nonutility Subsidiary Companies and non-affiliated investors; (iv) to facilitate the sale of ownership interests in one or more acquired nonutility companies; (v) to comply with applicable laws of foreign jurisdictions limiting, or otherwise relating to, the ownership of domestic companies by foreign nationals; (vi) as a part of financial optimization or tax planning; or (vii) to further insulate PacifiCorp from operational or other business risks that

<sup>24</sup> PacifiCorp, the PHI Nonutility Subsidiary Companies and certain members of the SPUK Holdings Group, entered into most of their respective guarantees and loan arrangements prior to the completion of the Merger.

<sup>25</sup> External financing will be subject to the financing limits proposed in this Application.

may be associated with investments in nonutility companies.

To the extent that these transactions are not exempt from the Act or are otherwise authorized or permitted by rule, regulation or order, ScottishPower requests authorization for the Financing/Special Purpose Subsidiaries to provide management, administrative, project development and operating services to direct or indirect subsidiaries at cost in accordance with section 13 of the Act and related rules, including rules 90 and 91. ScottishPower also proposes, however, that development subsidiaries would provide services and sell goods at fair market prices, under an exemption from the at-cost standard of section 13(b) of the Act and rules 90 and 91 under the Act, when the associate company receiving the goods or services is:

(i) A FUCO or foreign EWG that does not derive any income, directly or indirectly, from the generation, transmission or distribution of electric energy for sale within the United States;

(ii) An EWG that sells electricity to nonassociate companies at market-based rates approved by the FERC;

(iii) A qualifying facility ("QF") that sells 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 the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA");

(iv) A domestic EWG or QF that sells electricity to nonassociate companies at cost-based rates approved by the FERC or a state commission; and

(v) A Rule 58 Company 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 (i) through (iv), 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.

#### B. Corporate Restructuring

ScottishPower anticipates that as it continues to review the combined operations of the ScottishPower system, it may prove prudent to continue to reorganize its nonutility companies. Specifically, ScottishPower proposes to engage in corporate restructuring or reorganization of its nonutility companies without prior Commission approval. Restructuring could involve the acquisition of one or more new Financing/Special Purpose Subsidiaries

to acquire and hold direct or indirect interests in any or all of ScottishPower's existing or future authorized nonutility businesses. Restructuring could also involve consolidation, redemption and the retirement of the securities of such nonutility businesses or the transfer of existing subsidiaries, or portions of existing businesses, among the ScottishPower group companies and/or the reincorporation of existing subsidiaries in a different jurisdiction. The restructuring may also take the form of a nonutility subsidiary selling, contributing or transferring the equity securities of a subsidiary or all or part of the subsidiary's assets as a dividend to another nonutility subsidiary and the acquisition, directly or indirectly, of the equity securities or assets of a subsidiary, either by purchase or by receipt of a dividend.

#### C. Changes in Capital Stock of Majority Owned Subsidiaries

The portion of the aggregate financing of PacifiCorp or an individual wholly owned subsidiary of PacifiCorp and the PHI Nonutility Subsidiary Companies to be effected through the sale of equity securities to its immediate parent company during the Authorization Period cannot be determined at this time. It may happen that the proposed sale of capital securities may in some cases exceed the then authorized capital stock of PacifiCorp or such PHI Nonutility Subsidiary Company. In addition, PacifiCorp or such PHI Nonutility Subsidiary Company may choose to use other forms of capital securities. Capital stock includes common stock, preferred stock, other preferred securities, options and/or warrants convertible into common or preferred stock, rights, and similar securities. As needed to accommodate the sale of additional equity, Applicants request the authority to increase the amount or change the terms of any wholly owned subsidiary of PacifiCorp and the PHI Nonutility Subsidiary Companies authorized capital securities, without additional Commission approval. The terms that may be changed include dividend rates, conversion rates and dates, and expiration dates. Applicants note that each of the Intermediate Companies will be wholly owned directly or indirectly by ScottishPower and that none will have third-party investors. Applicants request authorization to make changes to the capital stock of PacifiCorp or any wholly owned subsidiary of PacifiCorp and the PHI Nonutility Subsidiary Companies.

#### D. Payment of Dividends

Applicants state that there may be situations in which one or more of the PHI Nonutility Subsidiary Companies will have unrestricted cash available for distribution in excess of current and retained earnings. Consistent with these considerations, the Applicants request authorization for the current and future PHI Nonutility Subsidiary Companies to pay dividends out of capital and unearned surplus, through the Authorization Period, provided, however, that, without further approval of the Commission, no PHI Nonutility Subsidiary Company will declare or pay any dividend out of capital or unearned surplus if the PHI Nonutility Subsidiary Companies derives any material part of its revenues from the sale of goods, services or electricity to PacifiCorp. In addition, the PHI Nonutility Subsidiary Companies will not declare or pay any dividend out of capital or unearned surplus unless it: (i) Has received excess cash as a result of the sale of its assets; (ii) has engaged in a restructuring or reorganization; and/or (iii) is returning capital to an associate company.

The Applicants request authority for PacifiCorp to continue to pay dividends out of capital and unearned surplus to the extent of the proceeds it received from the sale of assets outside of its regulated utility business.<sup>26</sup> Distributions out of capital and unearned surplus from the PHI Nonutility Subsidiary Companies would allow available funds to be utilized where appropriate within PacifiCorp and the PHI Nonutility Subsidiary Companies consistent with PacifiCorp's commitment to maintain its Total Common Equity to be at least 30% through the Authorization Period.

#### E. EWGs and FUCOs

ScottishPower has adopted a corporate structure that separates its existing foreign operations from its U.S. utility operations. The organization of foreign activities under SPUK, and U.S. utility activities under PacifiCorp, reflects ScottishPower's intent to develop these two business areas in a financially independent manner. To that end, ScottishPower is seeking authority to finance EWG and FUCO investments

<sup>26</sup>In 2001, PacifiCorp and certain of its associate companies completed the sale of its FUCO investments in Australia. The requested authority would allow the proceeds from any such sale to be distributed by PacifiCorp to its shareholder. PacifiCorp and its associate companies have not completed the above-mentioned dividend payments to its shareholder from the proceeds of the sale of the Australian FUCOs. The Applicants continue to believe that any such distribution would not have an adverse effect on PacifiCorp's utility operations or the public interest.

and operations in an aggregate amount of up to \$12.5 billion at any one time outstanding, during the Authorization Period.<sup>27</sup> The \$12.5 billion represents approximately 420% of the ScottishPower system's consolidated retained earnings. As of September 30, 2003, 100% of the ScottishPower system consolidated retained earnings on a U.S. GAAP basis was \$3.14 billion.<sup>28</sup>

<sup>27</sup> As noted above, most of ScottishPower's FUCO investments are held through SPUK Holdings.

<sup>28</sup> Converting at £1.00: \$1.661, the closing exchange rate at September 30, 2003.

#### F. Tax Allocation Agreement

The Applicants ask the Commission to approve an amended agreement for the allocation of consolidated tax among PHI, PacifiCorp and the PHI Nonutility Subsidiary Companies ("Tax Allocation Agreement").

The proposed Tax Allocation Agreement requires approval because it now provides for cash payment to certain associate companies and provides for the retention by the U.S. parent of the U.S. tax filing group of certain tax attributes resulting from payments it has made, rather than the allocation of these losses to the subsidiaries in the U.S. tax filing group without compensation. PHI seeks to retain only the benefits of tax losses that have been generated by it in connection with the merger of ScottishPower with PacifiCorp. As a result of the merger with PacifiCorp, PHI now generates tax benefits from the interest expense on the acquisition-related debt that is non-recourse to PacifiCorp and is unrelated to the financing of operations.

#### VIII. Service Company Approvals

PacifiCorp has been providing administrative, management, technical, legal and other support services to its subsidiaries for many years. In addition, there have been occasions when subsidiaries of PacifiCorp have provided services to PacifiCorp or to other PHI Nonutility Subsidiary Companies. PacifiCorp now proposes to continue these arrangements, with PacifiCorp providing services to the PHI Nonutility Subsidiary Companies and other associate companies in the holding company system pursuant to rule 87 under the Act. PHI Nonutility Subsidiary Companies propose to provide services to PacifiCorp pursuant to section 13(b). All service transactions, as explained above, will be priced at cost in accordance with section 13 of the Act and the rules under the Act. In the event that the market rate of the services is less than cost, neither

PacifiCorp nor the PHI Nonutility Subsidiary Companies will provide such services. PacifiCorp also proposes to engage in service activities with SPUK and certain members of the SPUK Holdings Group.

In addition, SPUK or another member of the SPUK Holdings Group proposes to perform services for PacifiCorp and the PHI Nonutility Subsidiary Companies. All service transactions will be priced at cost in accordance with section 13 of the Act and the rules thereunder.

PacifiCorp and the PHI Nonutility Subsidiary Companies request authorization under section 13(b) of the Act to provide services and sell goods to its members and the SPUK Holdings Group at fair market prices determined without regard to cost, and request an exemption under section 13(b) from the cost standards of rules 90 and 91 as applicable to these transactions, in any case in which the non-utility subsidiary purchasing these goods or services is:

(i) A FUCO or foreign EWG which derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(ii) An EWG which sells electricity at market-based rates which have been approved by the FERC, provided that the purchaser is not PacifiCorp;

(iii) A QF that sells electricity exclusively (a) at rates negotiated at arms' length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, and/or (b) to an electric utility company at the purchaser's "avoided cost" as determined in accordance with PURPA regulations;

(iv) A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser is not PacifiCorp; or

(v) A Rule 58 Company or any other non-utility subsidiary that (a) is partially owned by a member of the PHI Nonutility Subsidiary Companies or the SPUK Holdings Group, provided that the ultimate purchaser of such goods or services is not PacifiCorp, (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to the nonutility subsidiaries described in clauses (i) through (iv) immediately 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.

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

**Jill M. Peterson,**  
Assistant Secretary.

[FR Doc. 04-5587 Filed 3-11-04; 8:45 am]

**BILLING CODE 8010-01-U**

## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### Verdisys, Inc.; Order of Suspension of Trading

March 10, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Verdisys, Inc. ("Verdisys") because of questions regarding the accuracy and adequacy of assertions by Verdisys, and by others, in periodic and current filings and press releases to investors, concerning, among other things: (1) The company's business operations related to its lateral drilling services; and (2) the company's anticipated and actual revenues.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in securities related to the above company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in all securities, as defined in section 3(a)(10) of the Securities Exchange Act of 1934, issued by the above company, is suspended for the period from 9:30 a.m. e.s.t. on Wednesday, March 10, 2004, and terminating at 11:59 p.m. e.s.t. on Tuesday, March 23, 2004.

By the Commission.

**Jill M. Peterson,**

Assistant Secretary.

[FR Doc. 04-5783 Filed 3-10-04; 2:49 pm]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49371; File No. SR-Amex-2004-12]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Audit Committee Meeting Requirements Applicable to Registered Closed-End Management Investment Companies

March 5, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 13, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC")

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

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