Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective October 24, 2001.

Export-Import Bank of the United States

Special Assistant to the Vice President Congressional and External Affairs. Effective October 1, 2001.

Federal Emergency Management Agency

Policy Advisor for Congressional and Intergovernmental Affairs to the Division Director, Congressional and Intergovernmental Affairs Division. Effective October 18, 2001.

Federal Trade Commission

Deputy Director to the Director, Office of Public Affairs. Effective October 1, 2001.

General Services Administration

Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective October 2, 2001.

White House Liaison to the Chief of Staff. Effective October 29, 2001.

Office of Personnel Management

Special Assistant to the Director, Office of Communications. Effective October 3, 2001.

Special Assistant to the Director, Office of Congressional Relations. Effective October 22, 2001.

Special Assistant to the Chief of Staff. Effective October 22, 2001.

Scheduling and Briefing Coordinator to the Chief of Staff. Effective October 22, 2001.

Special Assistant to the Director, Office of Congressional Relations. Effective October 26, 2001.

Office of the United States Trade Representative

Confidential Assistant to the Deputy U.S. Trade Representative. Effective October 18, 2001.

Deputy Assistant U.S. Trade Representative for Congressional Affairs to the Assistant U.S. Trade Representative for Congressional Affairs. Effective October 31, 2001.

Confidential Assistant to the Chief of Staff. Effective October 31, 2001.

Overseas Private Investment Corporation

Confidential Assistant to the Chief of Staff. Effective October 2, 2001.

Small Business Administration

Special Assistant to the Administrator. Effective October 2, 2001.

Assistant Administrator for Public Communications to the Associate Administrator for Communications and Public Liaison. Effective October 2, 2001.

Senior Advisor for International Trade to the Assistant Administrator for International Trade. Effective October 2, 2001.

Regional Administrator, Region IX, San Francisco to the Administrator, Small Business Administration. Effective October 4, 2001.

Regional Administrator, Region V, Chicago, IL to the Associate Administrator for Field Operations. Effective October 19, 2001.

Assistant Scheduler to the Scheduler for the Administrator. Effective October 22, 2001.

Special Assistant to the Associate Administrator for Communications and Public Liaison. Effective October 22, 2001.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958, Comp., p. 218

Kay Coles James,

Director, Office of Personnel Management.

[FR Doc. 01–31899 Filed 12–28–01; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Plains Resources, Inc., Common Stock, $.10 Par Value), File No. 1–10454

December 21, 2001.

Plains Resources, Inc. a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.10 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Issuer has stated in its application that it has complied with the rules of the Amex by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

On November 6, 2001, the Board of Directors of the Issuer unanimously approved a resolution to withdraw its Security from listing on the Amex and to list it on the New York Stock Exchange, Inc. (''NYSE''). In its application, the Issuer stated that trading in the Security on the Amex ceased on December 20, 2001, and trading in the Security is expected to begin on the NYSE at the opening of business on December 21, 2001. In making the decision to withdraw the Security from listing on the Exchange, the Issuer represents that it seeks to avoid the direct and indirect costs and division of the market resulting from dual listing on the Amex and the NYSE.

The Issuer's application relates solely to the Security withdrawal from listing on the Amex and shall affect neither its approval for trading on the NYSE nor its obligation to be registered under section 12(g) of the Act.[3]

Any interested person may, on or before January 16, 2002 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 01–32080 Filed 12–28–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27482; International Release Series No. 1253]

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

December 21, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(g).

[4] 17 CFR 200.30–3(a)(1).

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 January 17, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After January 17, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

E.ON AG, et al. (70–9961)

E.ON AG (''E.ON''), a German holding company exempt from registration by rule 5 under the Act, located at E.ON-Platz 1, 40479 Düsseldorf, Germany, and Powergen plc (''Powergen''), a U.K. registered holding company located at City Point, 1 Ropemaker Street, London ECY 9HT, United Kingdom, together with subsidiaries of Powergen listed below, have filed a joint application-declaration, as amended, (''Application'') under sections 2(a)(8), 4, 5, 6(a), 7, 9(a)(2), 10, 13, 14, 15, 32 and 33 of the Act and rules 42, 45(a), 52, 53, 54, 80 through 91, 93 and 94 under the Act.

The Application seeks authorizations in connection with E.ON's proposed acquisition of the outstanding voting securities of Powergen (the ''Acquisition'').[1] Authorization is required under sections 9(a)(2) and 10 of the Act because the Acquisition would result in E.ON's indirect acquisition of Powergen's indirect subsidiary LG&E Energy Corp. (''LG&E Energy''), a Kentucky holding company exempt from registration under section 3(a)(1) of the Act, and LG&E Energy's public-utility subsidiary companies, Louisville Gas and Electric Company (''LG&E'') and Kentucky Utilities Company (''KU'').[2] Following the Acquisition, E.ON would register as a holding company under the Act. The other applicants, all registered holding companies, are direct and indirect wholly owned subsidiaries of Powergen: Powergen US Holdings Limited, Powergen US Investments, Powergen Luxembourg sarl, Powergen Luxembourg Holdings sarl, Powergen Luxembourg Investments sarl, Powergen US Investments Corp. (''PUSIC'') (collectively, the ''Powergen Intermediate Holding Companies,'' and, together with E.ON and Powergen, ''Applicants''), all at City Point, 1 Ropemaker Street, London EC2Y 9HT, United Kingdom.

I. Summary

E.ON seeks authorization to acquire all of the issued and outstanding common stock of Powergen. Through the acquisition, E.ON would indirectly acquire LG&E Energy and its direct and indirect subsidiary companies, including its electric utility subsidiary companies, LG&E and KU.[3] E.ON seeks to retain LG&E Energy as a public-utility holding company subsidiary exempt from registration under section 3(a)(1) of the Act. E.ON will register as a holding company following the Acquisition.

In addition, E.ON requests authorization:

(1) To issue loan notes and make certain guarantees in connection with the Acquisition;

(2) To own its existing utility operations as foreign utility companies (''FUCOs''), as defined in section 33 of the Act, and certain nonutility businesses and other businesses to be acquired;

(3) To invest the proceeds from a planned divestiture of certain of its existing nonutility businesses, which may total approximately $35 billion, in exempt wholesale generators (''EWGs''), as defined in section 32 of the Act, and FUCOs;

(4) To obtain bridge loans to finance those EWG and FUCO investments pending receipt of divestiture proceeds;

(5) To issue securities in an amount up to $25 billion for the purpose of making additional investments in EWGs and FUCOs;

(6) To invest up to $5.5 billion in the nonutility businesses that E.ON plans to divest during the three to five years over which E.ON plans to effect their divestiture;

(7) To retain, and continue to make, investments held as reserves against long-term liabilities regarding pensions and nuclear plant decommissioning as being ''in the ordinary course of business'' under section 9(c)(3), in accordance with German corporate practice;

(8) For E.ON and its subsidiaries, Powergen and its subsidiaries and LG&E Energy and its subsidiaries to engage in intrasystem service transactions, subject to certain conditions;

(9) To exempt from the at-cost requirements of section 13 of the Act certain intrasystem service transactions; and

(10) To make certain corporate structure changes in a restructuring after the Acquisition without having to seek specific authority for each change, subject to certain conditions.

In addition, Applicants request the Commission:

(1) To issue an order under section 2(a)(8) of the Act declaring Ruhrgas AG, a partially owned German subsidiary of E.ON, not to be a subsidiary of a registered holding company *viz.*, E.ON;

(2) To disregard certain intermediate holding companies for purposes of the analysis under section 11(b)(2) of the Act; and

(3) To grant an exemption from rule 26(a)(1) under the Act regarding the maintenance of financial statements in conformance with Regulation S–X for any subsidiary of E.ON organized outside the U.S.

II. Parties

A. E.ON

E.ON is an Aktiengesellschaft, the equivalent of a U.S. stock corporation, under the laws of the Federal Republic of Germany. E.ON's shares are traded on all German stock exchanges, the Swiss Stock Exchange and as American Depository Receipts (''ADRs'') on the New York Stock Exchange. E.ON was formed in June 2000 as a result of the merger of German conglomerates VEBA AG (''Veba'') and VIAG AG (''Viag''), which trace their roots to the 1920s. As of December 31, 2000, E.ON was Germany's third largest industrial group, with a market capitalization of approximately Euro 39.5 billion (approximately $35.7 billion) as of April 6, 2001, the last business day before the announcement of the Acquisition.

For the nine months ended September 30, 2001, E.ON had revenues of Euro 64.3 billion ($58.7 billion) and net income of Euro 1.0 billion ($0.9 billion). As of September 30, 2001, E.ON had net assets of Euro 23.2 billion ($21.2 billion) and a market capitalization of approximately Euro 43.4 billion ($39.6 billion).

[1] E.ON has also filed a separate application with the Commission for approval of its proposed external financing program (File No. 70–9985, ''Financing Application'').

[2] The Commission authorized Powergen to acquire LG&E Energy by order dated December 6, 2000. *See PowerGen plc.* Holding Co. Act Release No. 27291 (''Powergen Order'').

[3] Through the Acquisition, E.ON would also indirectly acquire the common stock that LG&E and KU own (4.9% and 2.5%, respectively) of Ohio Valley Electric Corp. (''OVEC''), an electric utility. OVEC in turn has one wholly owned electric utility subsidiary, Indiana-Kentucky Electric Corp. (''IKEC'').

E.ON's corporate subsidiaries are currently organized into eight separate business divisions: Energy, chemicals, real estate, oil, telecommunications, distribution/logistics, aluminum and silicon wafers. E.ON and all its direct and indirect subsidiaries are referred to as the ''E.ON Group.'' Each business division is responsible for managing its own day-to-day business, while E.ON provides strategic management for E.ON Group members and coordinates E.ON Group activities. E.ON also provides centralized controller, treasury, risk management and service functions to group members, as well as functions relating to communications, capital markets and investor relations.

1. E.ON Energie (Proposed FUCO)

E.ON's energy division, which accounts for 54% of E.ON's total investments, is headed by its wholly owned subsidiary, E.ON Energie AG (''E.ON Energie''). E.ON Energie was formed in July 2000, following completion of the merger between VEBA and VIAG, when E.ON merged the two major energy divisions of those companies. E.ON Energie's core business consists of the ownership and operation of power generation facilities, and the transmission and distribution of electric power, gas and heat and energy-related businesses, including the supply of water and water-related services. At the time of, or prior to, the Acquisition, E.ON intends to qualify E.ON Energie as a ''foreign utility company'' (''FUCO'') as defined in section 33 of the Act.

E.ON Energie conducts its retail energy business through a number of mostly majority-owned subsidiaries and its utility distribution and supply business through a number of majority-owned subsidiaries in Germany.[4] E.ON Energie supplied about one-third of the electricity consumed in Germany in 2000. In 2000, E.ON Energie sold 125.9 billion kWh of electricity in western Germany and 24.1 billion kWh in eastern Germany and exported 19.9 billion kWh.[5] E.ON Energie also conducts a marketing and energy trading business through its wholly owned subsidiary, E.ON Trading GmbH.

Applicants state that E.ON is committed to retain and expand its multi-utility business, which under prevailing European industry practice, includes not only electric and gas service but also water, waste management and other services. Privatized utility functions that E.ON has acquired from municipalities have often included electric, gas, heat and water as part of a bundled service.

E.ON Energie holds stakes in various regional electricity and gas distributors and in municipal utilities (''Stadtwerke''). For historical and political reasons, E.ON Energie rarely owns 100% of the regional utilities or Stadtwerke.

E.ON Energie's principal water-related activities are centered in the German stock exchange-listed company Gelsenwasser, the largest privately held water utility in Germany (based on volume of water deliveries). Gelsenwasser also provides gas utility services. E.ON Energie holds an 80.5% equity interest through its wholly owned subsidiary E.ON Aqua GmbH.

In 2000, E.ON Energie had total revenues of approximately Euro 11 billion ($9.7 billion). Gas and electricity revenues (including district heating) accounted for 89% of these revenues. Of the remaining revenues, 2% were attributable to water activities and 9% were derived from other sales.

2. Gelsenberg AG (Proposed FUCO)

On July 16, 2001, E.ON and BP plc announced that they had reached an agreement to reorganize their oil and gas business. As part of this reorganization and the related transactions, British Petroleum and E.ON have agreed that E.ON will acquire, after January 1, 2002, 51% of Gelsenberg AG (''Gelsenberg''), currently a wholly owned subsidiary of British Petroleum, by means of a capital increase.[6] Beginning on January 1, 2002, British Petroleum will have the option to sell its remaining 49% interest in Gelsenberg to E.ON.

Gelsenberg directly and indirectly owns 25.5% of Ruhrgas AG (''Ruhrgas''), Germany's largest natural gas transmission, storage, distribution and import company, with total sales of approximately 50 billion cubic meters of gas.[7] These operations account for 88% of Ruhrgas' total revenues of Euro 7.3 billion ($6.4 billion). Most of Ruhrgas' remaining revenues of are generated by activities that support the import and transport of gas.

Ruhrgas owns a high-pressure grid that covers nearly all of western Germany. In addition, it owns stakes in regional gas transmission companies, local gas distributors and Stadtwerke in Germany and elsewhere in Europe. Stadtwerke frequently also sell electricity, water and other services. Ruhrgas owns minor stakes of 5% to 9% in four gas fields and a 5% stake in its main gas supplier, the Russian gas company, Gazprom. Ruhrgas supplies gas to E.ON, among others. Ruhrgas also manufactures equipment for the gas industry, such as meters, to assist its customers in their use of Ruhrgas gas and to strengthen its relationship with those customers.

Ruhrgas owns a U.S. manufacturer of metering equipment, American Meter Company of Horsham, Pennsylvania. Applicants state that Ruhrgas is also engaged in gas-related engineering activities in the United States of the type permitted to be acquired under rule 58(b)(1)(vii).

Applicants state that Gelsenberg will certify as a FUCO after the completion of the VEBA Oel divestiture transactions discussed below.

3. Other Nonutility Interests Proposed To Be Retained

a. *Cellular Telephone Providers.* Through two intermediate holding companies, E.ON Telecom GmbH (formerly VEBA Telecom) and VIAG Telecom Beteiligungs GmbH, E.ON holds interests in telecommunications and cellular phone providers in Austria (50.1%) and France (17.5%). E.ON has disposed of most of its telecommunications business activities during 1999 and 2000, but currently intends to retain the cellular phone providers. Exhibit G–1 to the application states that these two companies will apply to the Federal Communications Commission for status

[4] These companies are identified in Exhibit G–1 to the Application.

[5] E.ON Energie's power transmission grid is located in the German states of Schleswig-Holstein, Lower Saxony, North Rhine-Westphalia, Hesse, Bavaria and Mecklenburg-Western Pomerania and reaches from Scandinavia to the Alps. The grid is interconnected with the western European power grid with links to the Netherlands, Austria, Switzerland and eastern Europe. With a system length of over 37,000 km (23,000 miles) and a coverage area of nearly 170,000 square km (66,000 square miles), the grid covers more than one-third of the surface area of Germany.

E.ON Energie owns interests in and operates electric power generation facilities with a total installed capacity of more than 37,000 MW, its attributable share of which is approximately 29,000 MW (not including mothballed, shut down or inactive power plants). On July 12, 2001, E.ON Energie and Verbund, an Austrian utility company, signed a Memorandum of Understanding concerning the establishment of a combined company for hydroelectric power production. To form European Hydro Power (''EHP''), E.ON Energie will contribute its subsidiary, E.ON Wasserkraft GmbH, and Verbund will contribute its stake in Austrian Hydro Power. E.ON Energie will have a 40% share in EHP and Verbund will own the remaining 60%. The new company will own some 200 hydroelectric power plants with a capacity of 9,600 MW. EHP is expected to commence operations by January 1, 2002.

[6] E.ON will acquire Gelsenberg as part of a transaction with BP plc by which E.ON will divest its subsidiary Veba Oel, as described below.

[7] E.ON currently owns less than a 1% interest in Ruhrgas. E.ON also indirectly holds an additional 18% interest in Ruhrgas through E.ON's interest in RAG AG, discussed below. E.ON's indirect interests in Ruhrgas participate in a voting pool that includes 59% of the voting power of Ruhrgas.

as ''exempt telecommunications companies'' under section 34 of the Act.

b. *RAG AG.* E.ON directly and indirectly owns 39.2 % of the shares of RAG AG (''RAG''), a unique entity created under the auspices of the German government to own all operating coal mines in Germany.[8] RAG owns 18% of Ruhrgas, described above. E.ON proposes to retain its ownership interest in RAG after becoming a registered holding company and requests an order of the Commission under section 2(a)(8) of the Act declaring RAG not to be a subsidiary company of E.ON under the Act.

c. *E.ON North America Inc. and Fidelia Inc.* E.ON North America Inc. (''E.ON NA''), a wholly owned subsidiary of E.ON, has served in the past as the holding company for certain of E.ON's activities in North America, handling certain finance, legal, tax and other service functions. E.ON NA owns Fidelia Inc. (''Fidelia''), a finance company subsidiary organized under Delaware law. Fidelia lends money exclusively to E.ON Group companies in the U.S., including the U.S. subsidiaries of Degussa AG, one of E.ON's to-be-divested subsidiaries, discussed below.

Applicants state that it would be efficient from an operations, tax and financing perspective to integrate E.ON NA and Fidelia under the E.ON U.S. corporate structure post-Acquisition. The proposed restructuring is discussed in section III, infra.

4. Nonutility Subsidiaries To Be Divested (''TBD Subsidiaries'')

E.ON intends to divest certain nonutility subsidiaries and their respective subsidiaries following the Acquisition as part of E.ON's general divestiture program. E.ON explains that its goal is to become a leading global integrated energy and utility company. The TBD Subsidiaries are indicated in E.ON's list of subsidiaries included in Exhibit G–1 to the Application. The activities of the TBD Subsidiaries include chemicals (Degussa AG), real estate (Viterra AG), oil (VEBA Oel), distribution and logistics (Stinnes AG) and aluminum (VAW aluminium AG).[9]

The divestiture of such significant components of E.ON's current business is a major undertaking. Consequently, E.ON proposes to divest Degussa AG and Viterra AG within five years of the date of registration of E.ON as a holding company, and VEB Oel, Stinnes AG and VAW aluminium AG within three years of that date.[10]

Pending divestiture, E.ON proposes to continue to invest in the TBD Subsidiaries to preserve and protect shareholder value and to prevent any diminution in the value or the prospects of the business, until such time as a sale or other exit strategy can be implemented, consistent with the requested order. Accordingly, E.ON intends to redeploy the proceeds of the divestitures in other TBD Subsidiaries and in E.ON's core utility business. E.ON proposes to limit its investments in the TBD Subsidiaries to up to $5.5 billion over the 3–5 year time frame for the contemplated divestitures.

B. Powergen

Powergen is an international integrated energy company with its principal operations in the U.K. and the U.S. Powergen's ordinary shares are listed on the London Stock Exchange and its American Depositary Shares (''ADSs'') are listed on the New York Stock Exchange. Powergen, including its predecessor company, has been a reporting company under the Securities Exchange Act of 1934, as amended (the ''1934 Act''), since 1995 and has filed reports with the Commission in accordance with the requirements of the 1934 Act applicable to foreign private issuers.

For the year ended December 31, 2000, Powergen had revenues of *4,191 million ($6,268 million) and net income under US GAAP of £430 million ($643 million). As at December 31, 2000, Powergen had net assets of £2,286 million ($3,419 million) and a market capitalization of approximately £4.6 billion ($6.9 billion). For the nine months ended September 30, 2001, Powergen had revenues of £4,230 million ($6,210 million) and net income under U.S. GAAP of £152 million ($223 million). As at September 30, 2001, Powergen had net assets of £2,332 million ($3,423 million) and a market capitalization of approximately £4.8 billion ($7 billion).[11] Powergen and all of its direct and indirect subsidiary companies are referred to below as the Powergen Group.[12]

Powergen's two principal subsidiaries are Powergen Group Holdings and Powergen US Holdings Ltd. (''Powergen US Holdings''), both UK companies. Powergen Group Holdings, a FUCO, is the holding company for Powergen's U.K. and international businesses. Powergen Group Holding's wholly owned subsidiary, Powergen UK plc (''Powergen UK'') is one of the UK's leading integrated electricity and gas businesses. As of March 31, 2001, Powergen UK owned or operated approximately 8,200 MW of core generation capacity (of which approximately 7,400 MW is wholly owned and the balance held through joint ventures), and served over three million customer accounts. Powergen's operations in the UK include marketing electricity, gas, telecommunications and other essential services to domestic and business customers; asset management in electricity production and distribution; and energy trading to support those activities. Through Powergen International Ltd, Powergen holds interests in power projects in India and the Asia Pacific Region.

Powergen US Holdings, a registered holding company, is the holding company for Powergen's U.S. business, and is the indirect parent, via the chain of the Powergen Intermediate Holding Companies, of LG&E Energy, which Powergen acquired on December 11, 2000, in accordance with the Powergen Order. PUSIC, one of the Powergen Intermediate Holding Companies, holds all of the outstanding voting securities of LG&E Energy.

LG&E Energy is a holding company exempt by order under section 3(a)(1) of the Act.[13] It is engaged, through its subsidiaries, in power generation and project development; retail gas and electric utility services; and asset-based energy marketing. Its public-utility subsidiary companies, LG&E and KU (the ''Utility Subsidiaries''), serve in the aggregate approximately 857,000 electricity customers and 299,000 gas customers over a transmission and

[8] E.ON has a 37.1% direct interest in RAG; E.ON also has a 2.1% indirect interest in RAG, through its 21% interest in Montan-Verwaltungsgesellschaft mbH, which owns 10% of RAG. RAG owns, indirectly through a subsidiary, RAG Coal International AG, certain coal mines in the Appalachian, Midwestern, and Mountain western regions of the United States that supply certain electric generating units.

[9] Effective October 16, 2001, E.ON sold Klöckner & Co. AG, a wholly owned subsidiary and leading European metal distributor with locations throughout Europe and North America to Balli group of London. Effective November 13, 2001, E.ON sold MEMC Electric Materials Inc., a 71.8% U.S. based-owned subsidiary and a leading worldwide manufacture of silicon wafers.

[10] As part of the reorganization of their oil and gas businesses agreed to by E.ON and BP plc, BP plc will become VEBA Oel's majority shareholder (51%) by subscribing to a capital increase after January 1, 2002. Beginning April 1, 2002, E.ON will have the option to sell its remaining interest in VEBA Oel (49%) to BP plc. Upon completion of this transaction (*i.e.*, after exercising the put option), E.ON will have divested its oil businesses completely.

[11] Amounts originally in pounds were converted at $1.4955:1 pound.

[12] A complete list of the subsidiaries of Powergen and a description of their respective businesses are contained in Exhibit G–2 to the Application.

[13] *See* Powergen Order, *supra* note 2. *See also LG&E Energy Corp.,* Holding Co. Act Release No. 26886 (Apr. 30, 1998) (confirming the exemption).

distribution network covering some 27,000 square miles.[14] LG&E Energy also is engaged through subsidiaries in a variety of nonutility businesses, including independent power generation, foreign utility operations, energy services, and commercial and industrial energy consulting.[15] LG&E Energy and all of its direct and indirect subsidiary companies are referred to below as the LG&E Energy Group.

LG&E engages in the generation, transmission, and distribution of electricity to approximately 364,000 customers in Louisville and 16 surrounding counties. LG&E also purchases, distributes and sells natural gas to approximately 299,000 customers within this service area and in limited additional areas.[16] For the twelve months ended December 31, 2000, LG&E had electric operating revenues of $711.0 million (net of provision for rate refunds), gas operating revenues of $272.5 million, electric operating income of $131.5 million and gas operating income of $17.4 million. For the nine months ended September 30, 2001, LG&E had electric operating revenues of $557.9 million (net of provision for rate refunds), gas operating revenues of $216.1 million, electric operating income of $50.8 million and a gas operating loss of $7.7 million. LG&E is subject to regulation by the Federal Energy Regulatory Commission (''FERC'') and the Kentucky Public Service Commission (the ''Kentucky Commission'').

KU engages in the generation, transmission, and distribution of electricity to approximately 464,000 customers in over 600 communities and adjacent suburban and rural areas in 77 counties in central, southeastern and western Kentucky, and to approximately 29,000 customers in five counties in southwestern Virginia.[17] In Virginia, KU operates under the name Old Dominion Power Company. KU also sells electric energy at wholesale for resale to twelve Kentucky municipalities and one Pennsylvania municipality. In addition, KU owns and operates a small amount of electric utility property in one county in Tennessee. For the year ended December 31, 2000, KU had electric operating revenues of $851.9 million and operating income of $128.1 million. For the nine months ended September 30, 2001, KU had electric operating revenues of $647.5 million and operating income of $58.4 million. KU is subject to regulation by the FERC, the Kentucky Commission, the Virginia State Corporation Commission (the ''Virginia Commission'') and the Tennessee Regulatory Authority (the ''Tennessee Commission'').

III. The Proposed Acquisition

Applicants state that acquisitions of U.K. public companies are normally effected by way of tender offer. There is no statutory merger concept in U.K. law. Tender offers for U.K. public companies are regulated by the U.K. City Code on Takeovers and Mergers (the ''City Code'') administered by the Panel on Takeovers and Mergers (the ''Panel'').[18] Although Applicants cannot satisfy the timetable required for tender offers by the City Code, the City Code provides that the Panel may permit the offeror to make a pre-conditional offer announcement, under which the offeror will commence its tender offer only if and when specified conditions, such as receipt of regulatory clearances, are met. In this case, the Panel agreed to the making of a pre-conditional offer announcement by E.ON, under which E.ON will commence its tender offer for Powergen only if and when the relevant United States, European Community and U.K. regulatory approvals have been obtained.[19]

E.ON has, in its announcement of the Acquisition, reserved the right to elect, with the agreement of the Board of Powergen, to acquire the Powergen shares under an alternative U.K. legal procedure known as a ''Scheme of Arrangement.'' This procedure would involve the acquisition of all the outstanding Powergen shares by virtue of an order of the English court under the Companies Act 1985 of the United Kingdom (excluding Northern Ireland), given following approval at a Powergen shareholders' meeting by a majority in number, representing 75% or more in value present and voting, either in person or by proxy, of the Powergen shares. The Scheme of Arrangement would be implemented on the same terms, as applicable, as those that apply to the offer.

Although the timetable for a Scheme of Arrangement is somewhat different from that for a tender offer, Applicants state that similar issues arise in relation to the timing of the approval of the SEC: The court will not grant its order if there are significant conditions outstanding and it may not sanction the Scheme of Arrangement if there has been a substantial passage of time between the date of the shareholders' meeting and the date of the court hearing.

E.ON expects, therefore, that some steps in the Acquisition process would not occur until after an order by the SEC authorizing the Application has been issued. There would be no guarantee, therefore, that the acquisition of Powergen would be consummated following the receipt of the requested order of the Commission, as the shareholders of Powergen may determine that they will not accept the

[14] As noted previously, LG&E and KU own 4.9% and 2.5%, respectively, of the common stock of OVEC, which in turn has one wholly owned subsidiary, IKEC. *See supra* note 2. LG&E and other public utilities organized OVEC and IKEC in 1952 to supply the entire power requirements of the U.S. Department of Energy's gaseous diffusion plant in Pike County, Ohio. All of the electricity sold by OVEC and IKEC is sold either to the U.S. Department of Energy or to the owners of the stock of OVEC (or their subsidiaries, all of which are utility companies). *See Ohio Valley Electric Corp.,* 34 S.E.C. 323 (Nov. 7, 1952). Applicants state that, for each of the three years ended December 31, 1998–2000, LG&E and KU each derived less than 0.2% of net income from their share of the earnings of OVEC.

[15] The Commission approved Powergen's ownership of LG&E Energy's nonutility businesses in the Powergen Order.

[16] The Commission approved Powergen's ownership of LG&E's gas utility business in the Powergen Order.

[17] KU was formerly an exempt holding company by reason of its partial ownership of Electric Energy Inc. (''EEI''). On August 1, 2000, EEI was granted EWG status. *See* 92 F.E.R.C. ¶ 62,079. Consequently, under section 32(e) of the Act, EEI is no longer a public-utility company and KU is no longer a holding company under the Act.

[18] Applicants state that the City Code has no statutory basis but is, in practice, adhered to by parties to takeovers of U.K. public companies.

[19] Requisite approvals include:

(1) A decision by the European Commission not to initiate proceedings under Article 6(1)(c) of the Council Regulation (EEC) 4064/89 (as amended), which governs market concentration and competition in the European Economic Community, or, if such proceedings are initiated, a finding that the concentration is compatible with the common market. (On November 26, 2001 theEuropean Commission authorized the Acquisition.);

(2) An indication by the Director General of the Office of Gas and Electricity Markets in the U.K. that he will not seek modifications to any of the Powergen Group's licenses under the Electricity Act 1989 or the Gas Act 1986 as amended by the Gas Act 1995 and subsequent legislation, including the Utilities Act 2000; that he will not seek undertakings or assurances from any member of the E.ON Group or the Powergen Group except, in each case, on terms acceptable to E.ON acting reasonably; and that in connection with the acquisition by E.ON of Powergen, he will give such consents and/or directions (if any) and/or seek or agree to such modifications (if any) as are, in the reasonable opinion of E.ON, necessary in connection with such licenses;

(3) The expiration of applicable waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976;

(4) The termination of the review and investigation of the offer under the Exon-Florio Amendment to the Defense Production Act of 1950; and

(5) The approval of the Kentucky Commission, the Virginia Commission and the Tennessee Commission under applicable state utility law, the approval of the FERC under the Federal Power Act, and the approval of this Commission under the Act. (All three states and the FERC have approved the Acquisition.).

terms offered by E.ON.[20] Applicants state, however, that it is extremely rare for shareholders of a U.K. public company not to accept an offer that has been recommended by their board.

The Boards of E.ON and Powergen have agreed to the terms of a recommended pre-conditional cash offer to be made by Goldman Sachs International on behalf of E.ON for the capital stock of Powergen.[21] Applicants state that the Board of Powergen intends to recommend to Powergen's shareholders that they accept the offer. There are a number of conditions precedent to the offer.[22]

E.ON proposes to offer £7.65 for each Powergen share and £30.60 for each Powergen ADS (representing four Powergen shares).[23] The offer values the whole of Powergen's capital stock at approximately £5.1 billion ($7.3 billion) (assuming the exercise in full of all outstanding options under Powergen's employee benefit plans). E.ON will acquire Powergen, including its outstanding debt, as at closing. On the basis of the Powergen debt outstanding as at December 31, 2000 of £4.5 billion ($6.4 billion) adjusted for divestitures and announced by Powergen prior to the date of the Agreement, the total value of the proposed acquisition would be £9.6 billion ($13.7 billion).[24]

The offer will extend to all existing issued Powergen shares and to any Powergen shares which are unconditionally allotted or issued prior to the date on which the offer closes (or such earlier date as E.ON may, subject to the City Code, decide), including Powergen shares issued in accordance with the exercise of options under Powergen's employee benefit plans or otherwise. In conjunction with the offer for the Powergen shares, an offer will be made to holders of Powergen ADSs to tender the Powergen shares underlying their ADSs into the offer.

If more than 90% of Powergen shares and Powergen ADSs are tendered or otherwise acquired, E.ON would be able to rely on applicable U.K. law to acquire compulsorily any remaining shares, thus enabling E.ON to acquire 100% of Powergen. If more than 50% of Powergen shares and Powergen ADS, are tendered or otherwise acquired, it would be E.ON's option to declare the offer unconditional, even if E.ON had not acquired the 90% tender that is necessary to implement compulsory acquisition of the dissenting minority.

When the offer becomes unconditional in all respects, Powergen will apply to the London and New York stock exchanges for the Powergen securities to be de-listed. It is anticipated that the cancellation of Powergen's listing on the London Stock Exchange will take effect no earlier than 20 business days after the offer becomes or is declared unconditional in all respects.

To effect the Acquisition, E.ON has established a wholly owned subsidiary, E.ON UK Verwaltungs GmbH (''E.ON UK''), a corporation organized under German law. E.ON UK in turn owns all the outstanding shares of an acquisition vehicle, E.ON UK plc, a corporation organized under the laws of England and Wales, that will acquire all of the outstanding Powergen shares either by tender offer or Scheme of Arrangement, as discussed previously. E.ON UK plc would survive the Acquisition. E.ON would register as a holding company. Powergen would remain a registered holding company, and E.ON UK and E.ON UK plc would also register as holding companies.[25] LG&E and KU would remain first-tier subsidiaries of LG&E Energy and keep their names and headquarters locations. Applicants state that this corporate structure will take into account international tax regulations and clearly separate the domestic utility operations of LG&E and KU from the other businesses of E.ON and Powergen.

As a subsidiary of E.ON UK and E.ON UK plc, Powergen will remain the immediate parent company of Powergen Group Holdings Ltd., the current ''umbrella'' FUCO in the Powergen Group. Powergen will remain responsible for the development and operation of LG&E Energy, LG&E and KU and, in this manner, develop E.ON's Anglo-American energy and utility

[20] Applicants request the Commission to issue an order authorizing the Acquisition before Powergen's shareholders have indicated whether or not they will accept E.ON's tender offer. Applicants state that they will provide prominent disclosure in the relevant solicitation material distributed to Powergen shareholders that the Commission's authorization of the Acquisition is not an endorsement of the Acquisition or a recommendation by the Commission that Powergen shareholders accept the Tender offer or approve the Scheme of Arrangement.

[21] In connection with the offer, E.ON and Powergen have entered into a letter agreement dated April 8, 2001 (the ''Agreement''), which, among other things, provides that Powergen will not solicit competing proposals and describes the steps that are to be taken to satisfy the preconditions to the offer. Under the Agreement, certain fees may be payable by either E.ON or Powergen to the other in certain circumstances. The Agreement will terminate (and the obligations of the parties, including E.ON's obligation to make the offer, will lapse) if the preconditions are not satisfied by July 9, 2002.

[22] Applicants state that the offer is subject to various conditions (all set forth in Exhibit B–1 to the Application) typical of acquisitions in Europe and the U.S. The conditions include the receipt of acceptances representing at least 90% (or such lesser percentage as E.ON may decide in excess of 50%) in nominal value of the Powergen shares or, in the event the offer is effected through a Scheme of Arrangement, rather than a tender offer, approval at a court-ordered meeting of the Powergen shareholders by a majority in number, representing 75% or more in value present and voting, either in person or by proxy, of the holders of the Powergen shares. In addition, the offer contains standard conditions restricting Powergen and its subsidiaries from issuing additional securities, paying dividends, bonuses or distributions, transferring assets not in the ordinary course of business, changing loan capital, making capital expenditures and other transactions of a long-term, onerous or unusual nature, changing director remuneration, repurchasing shares, changing constitutive documents, instituting bankruptcy and similar proceedings or entering into agreements to effect any of the above transactions, matters or events, subject to certain conditions.

The conditions also contain standard provisions regarding developments material to the Powergen Group, taken as a whole, including adverse changes in the assets, business, financial or trading position or profits of the Powergen Group; legal proceedings having been threatened, announced or instituted by or against or remaining outstanding against any member of the Powergen Group; contingent or other liabilities having arisen; and steps having been taken which are likely to result in the withdrawal, cancellation, termination or modification of any license held by any member of the Powergen Group which is necessary for the proper carrying on of its business.

[23] Applicants state that for U.K. tax purposes, some shareholders of Powergen may prefer to receive a loan note rather than cash from E.ON in return for their Powergen shares. Under U.K. tax law, such shareholders can defer recognition of any capital gains from the sale of their Powergen shares until they redeem the loan notes. In the event the loan notes are used, accepting shareholders of Powergen shares would receive £1 nominal of loan notes for every £1 of cash consideration. The loan notes would be unsecured, and would not exceed in aggregate principal amount issued, $7.3 billion. They have not been, and will not be, registered under the Securities Act of 1933, and will not be offered to U.S. investors. If E.ON elects to make the offer through another member of the E.ON Group, E.ON would guarantee the loan notes. E.ON requests authorization to maintain the loan notes and any associated guarantee in connection with the Acquisition.

[24] Before taking into account future dividends payable to Powergen shareholders, the offer represents a premium of 8.4% over the price of Powergen shares as at the close of business on April 6, 2001 (the last trading day prior to the announcement of the Acquisition); 25.8% over the closing price of Powergen shares on January 16, 2001, the last business day before the announcement of preliminary talks between E.ON and Powergen in relation to the offer) and 35.2% over the average price of Powergen shares over the 6 months ended January 16, 2001.

[25] Applicants state that the German and European utility regulations that affect the E.ON Group apply only to its German and European operating companies and not to the parent holding company, which will register; therefore, there is no conflict between the regulatory scheme under the Act and German or European regulation. Similarly, U.K. utility regulation affecting Powergen (and E.ON following its acquisition of Powergen) would apply only to the U.K. operating companies and not directly to the parent registered holding company. Therefore, there also will be no conflict between the regulatory scheme under the Act and U.K. regulation. As noted previously, in addition to the U.S. Federal and state approvals, the transaction has been reviewed by the European Commission and will be reviewed by the U.K. Office of Gas and Electricity Markets.

business in the context of E.ON's overall group strategy. Although Powergen will cease to own any public-utility companies, Powergen will remain a registered holding company due to its continuing role regarding the LG&E Energy Group.

Powergen will continue to hold an indirect voting equity interest in LG&E Energy through the Powergen Intermediate Holding Companies for a short period of time, not to exceed six months after the Acquisition.[26] This will allow time for E.ON to accomplish a reorganization whereby the ownership of PUSIC, the immediate parent of LG&E Energy, will be transferred to E.ON US Verwaltungs GmbH (''E.ON US''), a wholly owned E.ON subsidiary company. Applicants request authorization to effect the reorganization.

After the Acquisition and the reorganization, E.ON will hold all the outstanding voting stock of LG&E Energy through PUSIC and E.ON U.S. (the ''Intermediate Companies'').[27] PUSIC will remain a registered holding company under the Act and E.ON and E.ON US will register as such. The Powergen Intermediate Holding Companies will cease to own voting securities directly or indirectly in PUSIC or LG&E Energy, although certain arrangements made to finance Powergen's acquisition of LG&E Energy and the operations of LG&E Energy, will remain in place.

Because the Powergen Intermediate Holding Companies will cease to hold direct or indirect voting interests in LG&E Energy, they request that the Commission unconditionally approve their deregistration under section 5(d) of the Act. Applicants further request that the Commission reserve jurisdiction over the proposed deregistration until after the reorganization has been effected and the record is complete in this regard.

Applicants state that maintaining an efficient post-Acquisition structure may require a rapid response to changes in matters such as tax and accounting rules, including by making appropriate revisions after consummation of the Acquisition to add or subtract an intermediate holding company between E.ON and LG&E Energy. They assert that such changes to the ''upper structure'' would not have any material impact on the financial condition or operations of LG&E Energy or its subsidiaries. Applicants request authorization to make such changes after consummation of the Acquisition, subject to the condition that no change (i) will result in the introduction of any third part interests in the upper structure, (ii) will introduce a non-European Union or non-U.S. entity into the upper structure, or (iii) will have any material impact on the financial condition or operations of E.ON or LG&E Energy and its subsidiaries.

Applicants request that, for purposes of the analysis under section 11(b)(2) of the Act, the Commission disregard the Intermediate Companies (PUSIC and E.ON US), neither of which will issue securities to third parties. Applicants assert that these companies are special purpose entities created for the sole purpose of capturing economic efficiencies that might otherwise be lost in a cross-border transaction.

Applicants request that Powergen, E.ON UK and E.ON UK plc also be disregarded for the purposes of the analysis under section 11(b)(2) of the Act. As noted above, all three will be registered holding companies under the Act after the Acquisition. E.ON UK and Powergen will not issue securities to third parties, but will serve merely as financial conduits. E.ON UK plc, however, may issue and sell debt securities, in particular, bonds, to third parties to finance the authorized or permitted activities of the Powergen Group. Bonds issued by E.ON UK plc may be guaranteed by E.ON. Applicants state that financing the Powergen Group through bonds issued by E.ON UK plc is expected to be more cost effective due to tax considerations than financing capital needs through E.ON or another E.ON subsidiary and then lending the funds to E.ON UK plc.

Applicants state that any third party debt issued by E.ON UK plc would be consolidated into E.ON's consolidated financial statements and would count against the financing limits for E.ON's external financing program set forth in the application that E.ON has filed with the Commission in File 70–9985 for approval of its proposed financings (the ''Financing Application''). The debt issued by E.ON UK plc would be reflected in E.ON's consolidated financial statements, and in the Financing Application. E.ON will commit to a minimum 30% equity to total capitalization level. Applicants assert that in effect, especially in the case where such debt is backed by an E.ON guarantee, E.ON UK plc would function as a financing subsidiary for E.ON, and the debt of E.ON UK plc should be treated as E.ON debt for purposes of determining compliance with section 11(b)(2) of the Act. In other words, Applicants assert that E.ON UK plc, together with E.ON UK and Powergen, should be viewed as financing conduits that may be ''looked through'' for purposes of determining compliance with section 11(b)(2).

As discussed in section II.A.3.c., *supra,* Applicants propose that, following the Acquisition, E.ON NA and Fidelia will be integrated under the E.ON U.S. corporate structure. In addition, Fidelia, which holds the cash proceeds of certain divestitures of E.ON's nonutility businesses in the U.S. will continue to hold such funds for use in future U.S. acquisitions, as permitted or authorized by the Commission. Further, Fidelia may lend funds to other companies in the E.ON Group, except as prohibited under the Act.[28] This would avoid repatriating the funds to Germany and exposure to the risks of currency value fluctuations. To effect the restructuring, E.ON would transfer the E.ON NA shares to E.ON U.S., which, in turn, would transfer the shares to PUSIC. For tax reasons, debt of E.ON NA to E.ON may be cancelled, or E.ON may contribute assets to E.ON NA, in connection with the restructuring transactions.

IV. Financing of the Acquisition

E.ON proposes to finance the Acquisition with cash on hand, the proceeds of liquidating certain readily marketable assets, funds from E.ON's existing lines of credit or the issuance and sale of long-term or short-term debt securities or bank lines of credit. Powergen, LG&E Energy and its subsidiaries, including LG&E and KU, will not borrow or issue any security, incur any debt or pledge any assets to finance any portion of the purchase price paid by E.ON for Powergen shares.

[26] As a result of Powergen's acquisition of LG&E Energy, Powergen and the Powergen Intermediate Holding Companies registered as public-utility holding companies under Section 5 of the Act. The Powergen Intermediate Holding Companies are Powergen US Holdings Limited and Powergen US Investments, corporations organized under the laws of England and Wales, Powergen Luxembourg sarl and Powergen Luxembourg Holdings sarl, corporations organized under the laws of Luxembourg, and Powergen US Investments Corp., a Delaware corporation (''PUSIC''). PUSIC currently holds all of the outstanding voting securities of LG&E Energy, and will continue to do so after the Acquisition.

[27] Applicants state that this ownership structure is preferable from a tax law perspective because it avoids holding a U.S. asset through another foreign jurisdiction. They state that current German tax regulations with regard to controlled foreign corporations discourage German corporations from holding assets through multi-tier subsidiaries located in multiple jurisdictions.

[28] Applicants' filing in SEC File No. 70–9985 (the ''Financing Application'') describes the proposed financing plan for the E.ON Group, including Fidelia, in greater detail.

V. EWG/FUCO Financings and Investments

Applicants seek authorization (i) to retain existing investments in FUCOs [29] and energy-related businesses; (ii) to invest the proceeds from divestitures (including any divestitures occurring since the June 2000 merger of Veba and Viag, as well as future divestitures), which may total approximately $35 billion, in exempt wholesale generator (''EWG'') and FUCO activities without including those investments in E.ON's Aggregate EWG/FUCO Financing Limitation (as defined below);[30] and (iii) to enter into transactions to finance additional investments in EWGs and FUCOs in an amount up to $25 billion.

The authorization requested in (ii), above, would also include authorization for E.ON to issue and sell securities to finance EWG and FUCO investments pending the receipt of divestiture proceeds (''Bridge Loans''); provided that upon the receipt of such proceeds, the Bridge Loans or securities with an equivalent principal amount are retired, redeemed or otherwise paid down such that the aggregate EWG and FUCO investment under the authorization requested in (ii) does not exceed the cash proceeds from divestitures. The $35 billion Bridge Loan authorization, plus the $25 billion additional investment amount referred to in (iii) above, are referred to in the aggregate as the ''Aggregate EWG/FUCO Financing Limitation.''

A. Reinvestment of Proceeds From Divestitures

As discussed previously, E.ON intends to divest significant nonutility assets. E.ON requests authorization to reinvest the proceeds of those divestitures, estimated to be $35 billion in eligible EWG and FUCO assets. Applicants state that eligible FUCO assets will include non-U.S. electric and gas utilities as well as energy-related and other related activities and assets. Because the receipt of divestiture proceeds will not always coincide with the opportunity to invest in additional EWG or FUCO assets, Applicants also request authorization for E.ON to enter into bridge financing arrangements and to make Bridge Loans of up to $35 billion. In this way, attractive investment opportunities can be pursued pending the ultimate receipt of divestiture proceeds. Upon receipt of the divestiture proceeds, E.ON would retire, redeem or otherwise pay down the Bridge Loans or securities with an equivalent principal amount, so that E.ON's aggregate EWG and FUCO investment under the authorization to reinvest divestiture proceeds does not, in fact, exceed the proceeds from the divestitures.

B. Additional Investment in EWGs and FUCOs

In addition to retention of E.ON's existing FUCO and energy-related investments and the reinvestment of the proceeds of divestitures, Applicants request authorization to finance additional EWG/FUCO investments in an aggregate amount of up to $25 billion. These financings may include the issue or sale of a security for purposes of financing the acquisition or operations of an EWG or FUCO, or the guarantee of a security of an EWG or FUCO.[31] Applicants state that E.ON will not issue additional debt securities to finance EWG or FUCO acquisitions if upon original issuance E.ON's senior debt obligations are not rated investment grade by at least two of the major rating agencies (*i.e.*, Standard & Poor's Corporation, Fitch Investor Service and Moody's Investor Service). E.ON, LG&E and KU will also each maintain a capital structure in which common equity comprises at least 30% of consolidated capitalization.

As of December 31, 2000, E.ON had an ''aggregate investment,'' as the term is defined in rule 53(a) under the Act, in EWGs and FUCOs of $6.009 billion.[32] This investment represents 44% of E.ON's *pro forma* consolidated retained earnings of $13.805 billion as of December 31, 2000, as adjusted for the Acquisition and determined in accordance with U.S. GAAP.[33] In addition, the combined LG&E Energy Group and Powergen aggregate investment in EWGs and FUCOs as of December 31, 2000 is $1.048 billion. The combined E.ON, Powergen and LG&E Energy aggregate investment ($7.057 billion) represents approximately 51% of E.ON's *pro forma* consolidated retained earnings.

On a pro forma basis to reflect the Acquisition and the reinvestment of the estimated proceeds of divestitures ($35 billion) in FUCO investments, E.ON's ''aggregate investment'' in EWGs and FUCOs as of December 30, 2000 would be approximately $42.057 billion, or approximately 305% of E.ON's pro forma consolidated retained earnings at December 31, 2000, calculated in accordance with U.S. GAAP. Additional investments in EWGs and FUCOs in an amount up to $25 billion, would result in total aggregate investment of approximately $67.057 billion, or 486% of E.ON's pro forma consolidated retained earnings at December 31, 2000.

VI. Investments in Portfolio Securities

E.ON Group companies, particularly E.ON Energie, hold significant investments as reserves against long-term liabilities, specifically, pension and, for E.ON Energie only, nuclear decommissioning obligations. These investments, which currently total approximately Euro 9 billion ($7.9 billion), include publicly traded common stocks of other companies. Large parts of the investments are held through investment funds. Applicants request that the Commission authorize E.ON and its FUCO and nonutility subsidiaries located in Germany to retain these investments under section 9(c)(3) of the Act as being ''in the ordinary course of business'' of a German company. The requested relief would not apply to the Powergen Group or the LG&E Energy Group.

Applicants state that German law does not require, and German companies, including E.ON, do not, in practice, segregate the investments and funds they hold with respect to these kinds of liabilities. To ensure that the relief requested is appropriately matched to a continuing need in the ordinary course of business, E.ON proposes to make equity investments for the purposes of funding future employee benefit and nuclear decommissioning expenditures only if, at the time of investment, the actuarial value of the prospective obligations exceeds the aggregate amount of the investments that will be held by E.ON immediately after the investment has been made. Further, E.ON will not accumulate an affiliate interest in the equity of any company purchased to fund the reserves. During the year 2002, E.ON will divest shares held in companies in which E.ON holds an affiliate interest to reduce E.ON's

[29] For purposes of this discussion, ''FUCOs'' is deemed to include all foreign businesses which qualify for FUCO status but for the fact that the appropriate notice has not yet been provided to the Commission. E.ON states that it intends to provide all such notices to the Commission at the time of the consummation of the Acquisition.

[30] Although the proceeds of divestitures could be invested in EWGs and FUCOs, they would not be limited to such uses and could be used to finance the activities of the E.ON Group generally, as authorized or permitted under the Act.

[31] The specific types of financings are described in the Financing Application.

[32] Currently, E.ON has no EWG investments and its FUCO investment is in E.ON Energie only. E.ON's aggregate investment in E.ON Energie reflects the book value of E.ON's investment, including loans, in E.ON Energie as of December 31, 2000. As of September 30, 2001, E.ON's aggregate investment in E.ON Energie was $6.147 billion.

[33] E.ON's *pro forma* solidated retained earnings would be $13.805 billion as of December 31, 2000. As of September 30, 2001, E.ON's pro forma consolidated retained earnings would be $11.679 billion.

interest below 5%.[34] Furthermore, on a going forward basis, E.ON's additional net investments in its reserves will be limited to 25% common stocks.[35] E.ON's annual report on Form U5S will include a statement reconciling the reserve investments with the related long-term liabilities. The statement will indicate the asset class breakdown of the reserves.

VII. Intrasystem Provision of Services

A. LG&E Services and the LG&E Energy Group

In the Powergen Order, the Commission found that LG&E Services, Inc.(''LG&E Services'') met the requirements of section 13(b) of the Act. LG&E Services will remain a first-tier wholly owned subsidiary of LG&E Energy, will become the service company under section 13 of the Act for the E.ON Group upon completion of the Acquisition, and will continue to provide services to the members of the LG&E Energy Group. Except as otherwise authorized, the operation of LG&E Services will conform to the authorization granted in the Powergen Order.

B. Services Provided by Members of the Powergen Group and Members of the E.ON Group

Applicants state that, after the Acquisition, Powergen and other members of the Powergen UK Group (Powergen Group Holdings and all of its direct and indirect subsidiaries) will continue to provide services to the LG&E Energy Group. For example, members of the Powergen UK Group will provide management services in the areas of internal audit, tax and treasury; and consultation regarding engineering, research and development projects and transmission best practices. Applicants also expect that E.ON and other members of the E.ON Group, especially E.ON Energie, will provide services to LG&E Services and other members of the LG&E Energy Group after the Acquisition.[36] Those services would generally be limited to high-level management, administrative and technical services.

Applicants state that E.ON does not intend to render services to its subsidiaries at a charge and will not allocate to the LG&E Energy Group companies, or charge them for, any general overhead costs incurred at the E.ON or Powergen level.[37] Applicants state that, to the extent that costs for services provided by members of the Powergen UK Group or the E.ON Group (other than E.ON and Powergen) can be attributed to a specific member of the LG&E Energy Group, that member will be charged such cost directly. Billing and coordination of services would be performed by LG&E Services, as described below. The costs for the service will be directly assigned, distributed or allocated by activity, project, program, work order or other appropriate basis. The service provider will use appropriate policies and procedures to assure that all costs are identified and attributed to particular projects, programs or work orders for purposes of direct cost allocation. As required by rule 91 under the Act, the costs allocated across the businesses served by any service provider will represent the total true cost of providing the corporate service. The costs considered in the allocation will include: (1) Total payroll and associated costs; (2) materials and consumable costs; (3) building and facilities costs; (4) information systems infrastructure costs; and (5) other departmental costs. Records related to services provided by any service provider to the LG&E Energy Group companies will be made available to the Commission staff for review.

Applicants state that, to the extent that any services cannot be directly attributed to a specific LG&E Energy Group company, members of the LG&E Energy Group will pay a share of the costs of services that benefit them. The portion of the costs attributable to the LG&E Energy Group companies will be determined using measures that reflect the relevant contribution and size of the individual businesses. With respect to costs incurred at the Powergen Group level, allocation of group costs will by done using four measures (revenues, operating profit, employee numbers and net assets) and group costs will be allocated equally across the four measures. Revenues are adjusted to exclude the income resulting from sales of purchased power within the LG&E Energy Group. Powergen will use figures from the latest published accounts to calculate the percentage of revenues, operating profit, employee numbers and net assets on an annualized basis, and these four percentages will be averaged to calculate the group allocation.

Applicants state that LG&E Services will generally act as the gatekeeper or coordinator for services flowing to and from the LG&E Energy Group. Applicants expect that the majority of costs billed by members of the Powergen Group to the LG&E Energy Group will be paid initially by LG&E Services, which will then charge the appropriate service recipient. LG&E Services will allocate the costs of service among the LG&E Energy Group using one of several methods. The method of cost allocation varies based on the department rendering the service. The cost allocation methods used by LG&E Energy Services are described in Exhibit J–1 to the Application.

Applicants state that, except as otherwise authorized by the Commission, all services provided by members of the E.ON Group and/or the Powergen Group to LG&E Services and the other members of the LG&E Energy Group will be billed at cost and in accordance with fair allocation methods, in accordance with section 13 of the Act and the related rules. If a service provider provides services for the benefit of a specific LG&E Energy Group company, the charge applicable to that company will be specifically identified in the invoice. Otherwise, the service provider's charges will be allocated to individual LG&E Energy Group companies through LG&E Services' allocation procedures.

C. Exemptions for Transactions with Nonutility Companies

Each member of the E.ON Group, the Powergen Group and the LG&E Energy Group (including LG&E Services) requests authorization under section 13(b) of the Act to provide services and sell goods to nonutility companies in the LG&E Energy Group, the Powergen Group and the E.ON Group, at fair market prices determined without regard to cost, and requests an exemption under section 13(b) of the Act from the cost standards of rules 90 and 91 as applicable to these transactions, in any case in which the nonutility subsidiary purchasing these goods or services is:

[34] E.ON holds an interest above 5% in a company, which it plans to divest in 2002 by either selling the stock or issuing a bond that would be exchangeable for the stock of the company or cash. Applicants state that the terms of the exchange offer, including when the exchange would be triggered, have not yet been determined.

[35] This limit will be applied over the course of E.ON's fiscal year and will be based on the value of the investments at the time they were made.

[36] Applicants do not expect that significant services or goods would be provided by members of the E.ON Group other than E.ON and E.ON Energie to LG&E Services or other companies in the LG&E Energy Group.

[37] Applicants state that, if in the future E.ON seeks to charge its costs for general administrative services relating to its corporate-wide objectives, policies and activities, including costs of senior management, shareholder services, investor relations, corporate affairs, strategic planning and business development, E.ON will file an application setting forth allocation methods and describing the proposed transactions in further detail.

(1) 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;

(2) An EWG which sells electricity at market-based rates which have been approved by the FERC, provided that the purchaser is not a public-utility company in the LG&E Energy Group;

(3) A ''qualifying facility'' (''QF'') within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), 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 directly for resale, and/or (b) to an electric utility company other than a public utility in the LG&E Energy Group at the purchaser's ''avoided cost'' as determined in accordance with PURPA regulations;

(4) 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 a public-utility company in the LG&E Energy Group; or

(5) A subsidiary engaged in rule 58 activities or any other nonutility subsidiary that (a) is partially owned by a member of the LG&E Energy Group, the Powergen UK Group or the E.ON Group, (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to the non-utility subsidiaries described in clauses (1) through (4) immediately above, or (c) does not derive any part of its income from a public-utility company within the LG&E Energy Group.

VIII. Reporting

Applicants state that under German law, E.ON must prepare and publish consolidated financial information at least semi-annually. Applicants propose to provide rule 24 certificates on a semiannual basis, consistent with the frequency of financial reporting required in Germany. The rule 24 certificates will be provided to the Commission within 180 days after the end of E.ON's fiscal year and within 60 days of the end of its second fiscal quarter and will contain paper copies of E.ON's filings of Form 20–F and reports to shareholders. The semiannual reports provided to the Commission in rule 24 filings under this Application will be organized so that all columns showing amounts in Euros in financial statements or tables are accompanied by parallel columns showing U.S. dollar amounts.

Applicants state that they will file Form U5S annually within 180 days of the close of E.ON's fiscal year. In addition, as required by the 1934 Act, and the Securities Act of 1933, as amended, respectively, E.ON will file Form 20–F and reports on Form 6–K containing material announcements as made. To maintain a consistent presentation of financial information, the Applicants propose that the Form U5S filing will contain: (1) U.S. GAAP financial statements for all the LG&E Energy Group companies; and (2) U.S. GAAP financial statements or financial statements in the format required by Form 20–F for (a) E.ON, on a consolidated basis, and (b) any intermediate holding companies. The reporting requirements imposed by the Commission will enable the Commission to oversee the operations of the E.ON companies, including intrasystem transactions. All amounts expressed in Euros shall be converted to U.S. dollars. Form U5S filings will state amounts in U.S. dollars.

E.ON also will report annually, as a supplement to the Form U5S, service transactions among the E.ON system companies. That report will contain the following information:

(1) A narrative description of the services rendered by members of the E.ON Group or the Powergen Group for the LG&E Energy Group, by the members of the LG&E Group for the E.ON Group or the Powergen Group, and by the members of the LG&E Energy Group for each other (other than as reported on Form U–13–60);

(2) Disclosure of the dollar amount of services rendered according to category or department;

(3) Identification of companies rendering services and recipient companies; and

(4) Disclosure of the number of LG&E Energy Group employees engaged in rendering services to other E.ON system companies on an annual basis, stated as an absolute and as a percentage of total employees.

Applicants also request an exemption from rule 26(a)(1) under the Act, regarding the maintenance of financial statements in conformance with Regulation S–X, for any subsidiary of E.ON organized outside the U.S. Applicants state that E.ON will comply with Rule 53(a)(2)(ii), which requires each majority-owned FUCO subsidiary of a registered holding company to maintain its books, records and financial statements in conformity with U.S. GAAP and requires the registered holding company to provide the Commission with access to such books and records. For each non-majority owned FUCO subsidiary, Applicants state that E.ON will endeavor to comply with Rule 53(a)(2)(iii), which requires either U.S. GAAP books, records and financial statements or, upon request, for E.ON to provide a description and quantification of material variations from U.S. GAAP if another comprehensive body of accounting principles is followed.

Applicants also will report annually, as a supplement to the Form U–13–60 filed by LG&E Services, service transactions among E.ON system companies (excepting the LG&E Energy Group) and the LG&E Energy Group. The report will contain the following information:

(1) A narrative description of the services rendered by individual E.ON system companies (excepting the LG&E Energy Group) to the LG&E Energy Group and by the LG&E Energy Group to other E.ON system companies

(2) Disclosure of dollar amount of services rendered according to category or department;

(3) Identification of companies rendering service and recipient companies, including disclosure of the allocation of services costs among the companies of the LG&E Energy Group; and

(4) Disclosure of the number of LG&E Energy Group employees engaged in rendering services to other E.ON system companies on an annual basis, stated as an absolute and as a percentage of total employees.

With regard to its investments in EWGs and FUCOs, E.ON proposes to report the following information in its semiannual rule 24 certificates:

(1) A calculation of the ratio of E.ON's aggregate investment in EWGs and FUCOs to E.ON's average consolidated retained earnings (both as determined in accordance with Rule 53(a));

(2) A statement of aggregate investment as a percentage of the following: total capitalization, net utility plant, total consolidated assets and market value of common equity, all as of the end of that semiannual period;

(3) A statement of E.ON's authorized EWG and FUCO investment limit and the amount of unused investment authority based on the aggregate investment as of the date of the report;

(4) Consolidated capitalization ratios as of the end of that semiannual period;

(5) The market-to-book ratio of E.ON's common stock at the end of that semiannual period;

(6) An analysis of the growth in consolidated retained earnings, which segregates total earnings growth attributable to EWGs and FUCOs from

that attributable to other E.ON subsidiaries; and

(7) A statement of revenues and net income of each of E.ON's EWGs and FUCOs for the twelve months ended as of the end of that semiannual period, with an indication of which EWGs and FUCOs were acquired during the reporting period.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–32074 Filed 12–28–01; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25324; 813–202]

Greenwich Street Employees Fund, L.P., et al.; Notice of Application

December 21, 2001.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (''Act'') exempting applicants from all provisions of the Act and the rules and regulations under the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (except for certain provisions of paragraphs (a), (b), (e), and (h)), and section 36 through 53, and the rules and regulations under those sections.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain limited partnerships and other entities (each a ''Partnership'') formed for the benefit of key employees of Citigroup Inc. and its affiliates from certain provisions of the Act. Each Partnership will be an ''employees'' securities company'' within the meaning of section 2(a)(13) of the Act.

Applicants: Greenwich Street Employees Fund, LP (''Initial Partnership''); Citigroup Inc.; Citigroup Employee Fund of Funds I, LP; Citigroup Employee Fund of Funds (US–UK) I, LP; Citigroup Employee Fund of Funds (Cayman) I, LP; Citigroup Employee Fund of Funds (DE–UK) I, LP; SSB Capital Partners I, LP; SSB Capital Partners (US–UK) I, LP; SSB Capital Partners (Cayman) I, LP; and SSB Capital Partners (DE–UK) I, LP.

FILING DATES: The application was filed on February 10, 1999 and amended on August 18, 1999, October 31, 2000, April 16, 2001 and December 20, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 15, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 399 Park Avenue, New York, New York 10043.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Citigroup Inc. is a financial holding company whose businesses provide a broad range of financial services. Citigroup Inc. and its affiliates (as defined under rule 12b–2 under the Securities Exchange Act of 1934 (''Exchange Act'')) (''Citigroup'') have organized and will organize Partnerships primarily for the benefit of eligible current and former employees, officers, directors, and persons on retainer of Citigroup (an ''Eligible Employee''). The Partnerships are part of a program designed to create capital building opportunities that are competitive with those at other financial services firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership is voluntary.

2. A Partnership will be a limited partnership, a limited liability company, business trust or other entity organized under the laws of Delaware or another state. Citigroup also will form Partnerships organized under the laws of jurisdictions outside the United States to create the same investment opportunities for Eligible Employees who are not U.S. residents. The Partnerships will be operated in accordance with their respective limited partnership agreements or other organizational documents (each, a ''Partnership Agreement''). Each Partnership will be formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act and will operate as a closed-end management investment company, which may be diversified or non-diversified.

3. Each Partnership will be managed, operated and controlled by its general partner, managing member or other similar entity (''General Partner''). Each General Partner, with the exception of the Initial General Partner (as defined below), will be a Citigroup entity. The General Partner or another entity will serve as investment adviser (''Investment Adviser'') to a Partnership. The Investment Adviser will be (a) registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''), (b) exempt from Advisers Act registration requirements by virtue of section 203(b)(3) of the Advisers Act, or (c) excluded from the definition of investment adviser under the Advisers Act because it is a bank or a bank holding company (as defined in the Bank Holding Company Act of 1956). Any entity serving as Investment Adviser to any Partnership (other than the Initial Partnership as described below) will be a Citigroup entity.

4. The Initial Partnership is a limited partnership that first offered Interests (as defined below) in Feburary 1999. The Initial Partnership invests concurrently with Greenwich Street Capital Partners II, LP (''Fund II'') and other investors organized or managed by Citigroup or its designees that generally co-invest with Fund II (''Fund II Co-Investors''). Pursuant to their respective limited partnership agreements, the Initial Partnership, Fund II and Fund II Co-Investors must each, to the extent possible, make investments in securities of portfolio companies on a *pari passu* basis with each other on the same terms and at the same times and dispose of such securities at the same time, on the terms and conditions no more favorable than the terms and conditions of any other such disposition by any other such party. Both the Initial Partnership and Fund II are advised by GSCP (NJ), LP (''Initial Investment Adviser''). The Initial Investment Adviser is wholly owned by individuals who are managing members of Greenwich Street Investments II, L.L.C., which is the general partner of the Initial Partnership (''Initial General Partner'') and the