

any asset-based charges (excluding any such charges that are for premium taxes) deducted under the terms of the owner's Contract for that fiscal period, exceed the sum of: The annualized rate of the corresponding Replaced Fund's total operating expenses, as a percentage of such replaced Fund's average daily net assets, for the twelve months ended December 31, 2002; plus the annual rate of any asset-based charges (excluding any such charges that are for premium taxes) deducted under that Contract for such twelve months.

4. Applicants request an order of the Commission pursuant to section 26(c) of the Act approving each of the Substitutions. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Conclusion

Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that, for the reasons stated in the application, their exemptive requests meet the standards set out in Section 6(c) and that an order should, therefore, be granted.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-28849 Filed 11-18-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27760]

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

November 13, 2003.

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 December 8, 2003, 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 December 8, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc. (70-10179)

Allegheny Energy, Inc. ("Allegheny"), a registered holding company, 10435 Downsville Pike, Hagerstown, Maryland 21740, has filed an application-declaration ("Application") under sections 6(a), 7, 9, and 12(e) of the Act and rule 54 under the Act.

Allegheny seeks authority to issue common stock and options to purchase common stock under Allegheny's Long-Term Incentive Plan ("LTIP"). Allegheny was previously authorized by order dated May 29, 1998 (Holding Co. Act Release No. 26879), ("LTIP Order") to issue and sell, through December 31, 2010, up to 10 million shares of its common stock, par value \$1.25 per share ("Common Stock"), under the LTIP.

Although the LTIP has not materially changed since it was approved by the Commission,¹ the authorization to issue stock under the Plan has been

¹ Allegheny amended the LTIP in September 1998 to allow for the issuance of stock options as payments for Performance Awards in addition to payments in Common Stock and cash. Although the original LTIP provided for the issuance of stock options as payment for other awards, payments for Performance Awards were more limited. The LTIP Order, however, generally authorized Allegheny to issue both stock and stock options as payments for all awards under the LTIP. Allegheny, therefore, subsequently amended the LTIP to provide for the issuance of stock options as Performance Awards.

undermined by Allegheny's current financial status. At the time of the LTIP Order, the criteria of rule 53 under the Act were satisfied by Allegheny, and, therefore, the Commission did not consider the effect of capitalization or earnings of any Allegheny exempt wholesale generator ("EWG") or foreign utility company ("FUCO") in granting its authorization. Allegheny no longer satisfies certain of the standards set forth in rule 53. Specifically, Allegheny's increased level of investments in EWGs and FUCOs, as described below, was conditioned on compliance with certain financing requirements that are currently not satisfied. Also, Allegheny's consolidated retained earnings have decreased over the four most recent quarterly periods, and Allegheny has reported operating losses attributable to EWG and FUCO investments in excess of the limitations set forth in rule 53(b).

Allegheny, therefore, seeks authority to continue issuing Common Stock under the LTIP. Allegheny requests that the Commission authorize it to issue up to 8 million shares of Common Stock (decreased from 10 million) under the LTIP through December 31, 2010. The stock would be issued according to the same terms and conditions set forth in the LTIP Order. As explained in that order, the LTIP was adopted by Allegheny in 1998 to attract and retain key employees and directors and motivate performance.

I. Description of the LTIP

The LTIP is administered by the Management Compensation and Development Committee ("Committee"), which may delegate to an executive officer the power to determine the employees (other than himself or herself) eligible to receive awards. The Committee may from time to time designate key employees and directors to participate in the LTIP for a particular year. As approved in the LTIP Order, the LTIP authorizes Allegheny to issue up to 10 million shares of Common Stock, subject to adjustments for recapitalizations or other changes to Allegheny's common shares. In this Application, Allegheny requests authority to issue up to 8 million shares of Common Stock under the LTIP. No participant in the LTIP may be granted more than 600,000 shares (or rights or options in respect of more than 600,000 shares) in any calendar year. For purposes of this limit, shares subject to an award that is to be earned over a period of more than one calendar year will be allocated to the first calendar year in which these shares may be earned.