

**SECURITIES AND EXCHANGE COMMISSION**

**(Release No. 35-27962)**

**Filings Under the Public Utility Holding Company Act of 1935, as amended (“Act”)**

**April 27, 2005**

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

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by **May 23, 2005**, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After **May 23, 2005**, 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. (70-10282)**

E.ON AG (“E.ON”), a registered holding company under the Act, located at E.ON-Platz 1, 40479 Düsseldorf, Germany, and certain of its direct and indirect utility

and nonutility subsidiary companies listed in the Application, including E.ON US Holding GmbH (“E.ON US Holding”), a registered holding company and a direct subsidiary of E.ON, also located at E.ON-Platz 1, 40479 Düsseldorf, Germany, and the parent company of E.ON US Investments Corp. (“E.ON US Investments”), a registered holding company and parent of LG&E Energy LLC (“LG&E Energy”), a registered holding company and parent of Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”), all located at 220 West Main Street, Louisville, Kentucky 40202 (collectively, “Applicants”), have filed an application, as amended (“Application”) under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(d) and 13(b) of the Act and rules 20, 26, 42, 43, 45, 46, 52, 53, 87 and 90.

Applicants seek authority for certain financing transactions of E.ON and its associated companies during the period from the effective date of the order granting the Application through May 31, 2008 (“Authorization Period”). The Commission previously provided authorizations for E.ON and certain other entities in the E.ON group (“E.ON Group” or “Group”), on June 14, 2002, to undertake specific financing transactions, which authorizations expire on May 31, 2005 (“2002 Order”).<sup>1</sup>

#### I. Background

E.ON is headquartered in Düsseldorf, Germany, and most of its operations are located in Europe.<sup>2</sup> Applicants state that, in 2003, E.ON reorganized its structure to

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<sup>1</sup> See E.ON AG, et al., Holding Co. Act Release No. 27539 (June 14, 2002).

<sup>2</sup> Applicants state that E.ON had approximately 478,000 shareholders worldwide, as of June 30, 2004, and that E.ON’s shares, all of which are ordinary shares, are listed on all seven German stock exchanges. The shares are also actively traded over-the-counter in London and E.ON’s American Depositary Shares (“ADSs”), each of which represents one ordinary share, are listed on the New York Stock Exchange.

reflect its commitment to an integrated business focusing on power and gas.<sup>3</sup>

E.ON states that, as a result of its decision to focus on power and gas, in the last few years, its core energy business has been reorganized into five new market units, each of which is focused on a market in which E.ON believes it has a strong competitive position: (1) Central Europe, led by E.ON Energie AG (“E.ON Energie”); (2) Pan-European Gas, led by E.ON Ruhrgas AG (“E.ON Ruhrgas”); (3) U.K., led by E.ON UK plc (“E.ON UK”); (4) Nordic, led by E.ON Nordic AB (“E.ON Nordic”); and (5) U.S. Midwest, led by LG&E Energy. E.ON’s non-U.S. business segments (E.ON Energie in Central Europe; E.ON Ruhrgas leading Pan-European Gas; E.ON UK in the U.K.; and E.ON Nordic in Northern Europe) are comprised in part of foreign utility companies, as defined in section 33 of the Act (“FUCOs”).

A. LG&E Energy and the U.S. Midwest Market Unit

E.ON US Holding, the direct subsidiary of E.ON and parent of E.ON US Investments Corp. (together, “Intermediate Companies”), which is the direct parent of

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Applicants state that, unless otherwise noted, amounts expressed in United States dollars (“USD”) are unaudited and have been converted from Euros, for convenience, at an exchange rate of USD 1.2179 = EUR 1.00, the Noon Buying Rate of the Federal Reserve Bank of New York on June 30, 2004. For the six months ended June 30, 2004, E.ON reported consolidated revenues of EUR 25.594 billion (USD 31.171 billion) calculated in accordance with U.S. generally accepted accounting procedures (“US GAAP”). As of June 30, 2004, E.ON had total consolidated assets of EUR 113.958 billion (USD 138.789 billion).

<sup>3</sup> Applicants state that E.ON’s “on\*top” project was a comprehensive strategic review, the principle elements of which were an analysis of E.ON’s competitive position, the redefinition of its corporate strategy and the design of a revised organizational structure to reflect E.ON’s strategic goals. The on\*top project, among other things, resulted in the transfer of management of LG&E Energy and its utility subsidiaries from Powergen Ltd. (“Powergen”) to E.ON. By order dated November 22, 2004, the Commission authorized Powergen’s deregistration under the Act, as well as the deregistration of its direct and indirect parent holding companies, E.ON UK Holding GmbH and E.ON UK Holding Company Ltd.

LG&E Energy, the holding company for LG&E and KU, E.ON's United States utility subsidiaries (together, "Utility Subsidiaries"). E.ON US Holding, E.ON US Investments and LG&E Energy are registered holding companies. LG&E Energy owns LG&E and KU, as noted above.<sup>4</sup> LG&E is an electricity- and natural gas-utility based in Louisville, Kentucky<sup>5</sup> and KU is an electric-utility based in Lexington, Kentucky.<sup>6</sup> Revenues from the U.S. Midwest market unit were USD 1.173 million (EUR 963 million) for the same period, 3.8% of E.ON's consolidated revenues.

B. Subsidiaries To-Be-Divested

The "to-be-divested" E.ON subsidiaries ("TBD Subsidiaries") are those subsidiaries that E.ON is required to divest under the 2002 Order. Viterra AG ("Viterra"), E.ON's wholly owned real estate group, is engaged in two businesses: residential real estate and real estate development. E.ON currently holds a 42.9% interest in Degussa AG ("Degussa"), a specialty chemical company. In the 2002 Order, E.ON was required to divest Degussa, Viterra and five passive real estate investment vehicles

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<sup>4</sup> LG&E Energy is also engaged in nonutility businesses, through wholly owned subsidiaries LG&E Capital Corp. ("LCC") and LG&E Energy Marketing Inc. ("LEM"). LCC operates one oil-fired and nine coal-fired electricity generation units in western Kentucky through its wholly owned subsidiary Western Kentucky Energy Corp. and affiliates. In addition, through its subsidiaries, LCC operates several other independent power projects in the United States. LCC also owns interests in three Argentine gas distribution companies and stakes in two power plants in the United States through another wholly owned subsidiary, LG&E Power Inc. Applicants state that LG&E Energy is in the process of disposing of its stakes in the power plants held by LG&E Power Inc.

<sup>5</sup> LG&E distributes electricity to approximately 384,000 customers and supplies natural gas to approximately 312,000 customers in Louisville and 17 surrounding counties.

<sup>6</sup> KU serves approximately 482,000 customers in 77 Kentucky counties, approximately 30,000 customers in five counties in Virginia, as well as 12 municipalities and fewer than 10 customers in Tennessee.

managed by Viterra within five years and E.ON states that it continues to expect to meet that requirement.<sup>7</sup>

## II. Summary of the Request

Applicants state that E.ON follows a centralized financing policy and that, as a general rule, external financings will be undertaken at the E.ON level (or through finance subsidiaries under its guarantee).<sup>8</sup> In certain limited circumstances, future external financings may also take place at the subsidiary level. Generally, over time, E.ON intends to refinance outstanding external subsidiary debt that is not consistent with the group financing policy as it comes due with intercompany loans.<sup>9</sup> E.ON also states, however, that the financing of joint ventures or partly-owned companies is generally concluded externally.

Applicants request the following financing authorizations and authorizations for certain related actions, as described further in subsequent sections of this notice,

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<sup>7</sup> The 2002 Order also required the divestiture of several other E.ON subsidiaries within three years. Since the issuance of the 2002 Order, E.ON has divested VEBA Oel AG, Viterra Energy Services, Inc., Stinnes AG, Schmalbach Lubeca AG and the other companies required to-be-divested within three years, with the exception of AV Packaging and Hibernia Gamma Beteiligungsgesellschaft mbH. E.ON states that it intends to complete the divestiture of AV Packaging and Hibernia Gamma Beteiligungsgesellschaft mbH by July 1, 2005, the three year anniversary of E.ON's registration under the Act. From January 1, 2002 to June 30, 2004, the aggregate proceeds received by E.ON from the divestiture of various businesses in connection with its transformation from a diversified company into an energy and utility company were approximately EUR 21.8 billion.

<sup>8</sup> Applicants state that most of the financing transactions of E.ON's market units have been centralized and netted at the parent, or at a direct wholly owned finance subsidiary of the parent, to reduce the Group's overall debt and interest expense.

<sup>9</sup> Applicants state that E.ON's aim is to maximize its financing efficiency and minimize structural subordination issues that would arise if significant external debt was held at the operating subsidiary level.

beginning with the effective date of an order issued in this matter through May 31, 2008 (the Authorization Period).

1. For E.ON, authority to issue and sell equity and certain debt securities, directly or indirectly, in new financing transactions, in an aggregate amount of up to USD 75 billion at any one time outstanding (and which transactions are also subject to the E.ON External Limit, the E.ON Short-term Limit and the E.ON Guarantee Limit (all further described below)):
  - (a) equity and unsecured long-term debt securities in an aggregate amount of up to USD 50 billion at any one time outstanding (exclusive of short-term debt and guarantees) (“E.ON External Limit”), including, but not limited to,
    - (i) common stock and ADSs, preferred stock, preferred securities, equity-linked securities, options, warrants, purchase contracts, units, securities with call and put options and securities convertible into any of these securities;
    - (ii) unsecured long-term debt, including, among other things, subordinated debt and bank borrowings;
  - (b) unsecured short-term debt in an aggregate amount of up to USD 30 billion at any one time outstanding (“E.ON Short-term Limit”); and
  - (c) guarantees, and other credit support, in an aggregate amount of up to USD 40 billion at any one time outstanding (exclusive of guarantees exempt under rules 45(b) and 58(a)(1)) (“E.ON Guarantee Limit”).

2. For E.ON (for itself and on behalf of its subsidiaries) and for its subsidiaries, authority to engage in currency and interest rate transactions for the purpose of hedging (“Hedging Interests”) and certain debt and equity transactions for the purpose of engaging in anticipatory hedging (“Anticipatory Hedging Transactions”), subject to certain limitations.
3. For E.ON and its subsidiaries, authority to continue utilizing certain profit and loss transfer agreements and the consolidated tax filing of E.ON and its German subsidiaries in the manner authorized by the 2002 Order.
4. For E.ON and the E.ON Group (other than the LG&E Group (described below)), authority to:
  - (a) finance the TBD Subsidiaries and E.ON’s nonutility subsidiaries not held within a FUCO group or the LG&E Energy Group (“Retained Nonutility Subsidiaries”) through capital contributions, loans, guarantees, purchases of equity or debt securities or other methods, subject to,
    - (i) an aggregate amount of up to USD 1 billion (through July 1, 2007) (the end of the divestiture period) for TBD Subsidiary investments (“TBD Investment Limit”);
    - (ii) an aggregate amount of up to USD 15 billion for Retained Nonutility Subsidiary investments (“Retained Nonutility Subsidiary Investment Limit”); and
  - (b) For the Retained Nonutility Subsidiaries, to finance their businesses and acquire new businesses (as permitted under the Act, the rules or by Commission order) through the issuance of equity, preferred stock and

debt securities to third parties, subject to the Retained Nonutility  
Subsidiary Investment Limit.

5. For E.ON through the Intermediate Companies (E.ON US Holding and E.ON US Investments) and through the related financing subsidiaries, authority to finance the Intermediate Companies and LG&E Energy and its subsidiaries (including LG&E and KU) (together, “LG&E Energy Group”) by:
  - (a) issuance and sale of securities to E.ON and associate companies (but not companies in the LG&E Energy Group (described below));
  - (b) For E.ON North America Inc. (“E.ON NA”) and Fidelia Corp. (“Fidelia”) (and any of their subsidiaries), issuance and sale of securities to third parties, such as banks, to finance the capital needs of the E.ON Group, including the LG&E Energy Group;
  - (c) For the Intermediate Companies and their subsidiaries, acquisition of securities of other Intermediate Companies and their subsidiaries and the LG&E Energy Group;
  - (d) For the Intermediate Companies and their subsidiaries, issuance of guarantees and other forms of credit support to or for the benefit of another Intermediate Company, its subsidiaries and the LG&E Energy Group, subject to an aggregate amount of up to USD 2 billion at any one time outstanding (exclusive of guarantees exempt under rules 45(b) and 58(a)(1)); and
  - (e) For the LG&E Energy Group, including LG&E and KU, authority,



- (i) For LG&E Energy, to issue and sell short-term debt securities in an aggregate amount of up to USD 400 million;
- (ii) For the Utility Subsidiaries, each of LG&E and KU,
  - (a) to issue and sell long-term debt securities having a maturity of two years or less in an aggregate amount of up to USD 400 million and USD 400 million, respectively;
  - (b) to issue and sell short-term debt securities in an aggregate amount of up to USD 200 million and USD 200 million, respectively;
  - (c) to continue to obtain secured intercompany loans from Fidelity in an aggregate amount of up to USD 275 million and USD 215 million, respectively;
  - (d) to guarantee, or provide other credit support, for the obligations of their subsidiaries and other companies in which they have invested (but not exempt wholesale generators, as defined in section 32 of the Act (“EWGs”), exempt telecommunications companies, as defined in section 34 of the Act (“ETCs”), or FUCOs), in an amount of up to USD 200 million and USD 200 million, respectively;
- (iii) For LG&E Energy and its nonutility subsidiaries, to enter into intercompany loans in an aggregate amount of up to USD 1.5 billion (excluding amounts exempt under rules 45(b) and 52) at any one time outstanding (and LG&E Energy will not borrow from its subsidiaries);

- (iv) For LG&E Energy, to issue guarantees and other credit support in an aggregate amount of up to USD 1.5 billion at any one time outstanding (excluding amounts exempt under rule 45(b) and separate from E.ON's External Limit and E.ON's Guarantee Limit); and
  - (v) For the LG&E Energy Group nonutility subsidiaries, to issue guarantees and other credit support in an additional aggregate amount of up to USD 1.5 billion, at any one time outstanding (exclusive of guarantees that may be exempt under rule 45(b) and separate from E.ON's External Limit and E.ON's Guarantee Limit).
6. For Applicants, to continue the existing money pools and intercompany financing arrangements.
  7. For Applicants, authority to form financing entities ("Financing Entities," as defined below) and engage in related transactions.
  8. For Applicants, authority for each company in the E.ON Group (other than EWGs, FUCOs and ETCs), to acquire, redeem or retire its securities (or those of its direct and indirect subsidiaries), either outstanding presently or issued and sold in the future, from time to time.
  9. For Applicants, to continue authority to change the terms of any E.ON Group company's authorized capital stock, issue additional shares, or alter of the terms of any existing authorized security.
  10. For Applicants, authority to continue to pay dividends out of capital or unearned surplus.

11. For Applicants, authority to restructure, consolidate or otherwise reorganize, E.ON's nonutility holdings, which may include the acquisition, directly or indirectly, of securities of one or more intermediate subsidiaries ("Development Subsidiaries," as defined below) organized exclusively for the purpose of acquiring, financing, divesting and/or holding the securities of one or more existing or future nonutility subsidiaries.<sup>10</sup>
12. For Applicants, authority to continue to invest in EWGs and FUCOs up to an aggregate amount of USD 65 billion ("Aggregate EWG/FUCO Financing Limitation").
13. For Applicants, authority to invest in energy-related companies doing business outside the U.S. ("Energy-Related Subsidiaries") in an aggregate amount of up to USD 10 billion ("Energy-Related Subsidiary Investment Limit").

### III. Financing Parameters

Applicants represent that the following general terms will be applicable, where appropriate, to the external financing transactions requested to be authorized in the Application.

#### A. Effective Cost of Money

Applicants state that the effective cost of money on external debt securities and preferred stock or other types of preferred securities will not exceed the competitive market rates available at the time of issuance for securities having the same or reasonably

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<sup>10</sup> Development Subsidiaries may also engage in development activities ("Development Activities") and administrative activities ("Administrative Activities") relating to the permitted businesses of the nonutility subsidiaries.

similar terms and conditions issued by similar companies of reasonably comparable credit quality.

B. Maturity

Applicants state that the maturity of long-term debt will be between one and 50 years after their issuance. Preferred securities and equity-linked securities will be redeemed no later than 50 years after their issuance, unless converted into common stock. Preferred stock issued directly by E.ON may be perpetual in duration. Short-term debt will have an original maturity of less than one year.

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 will not exceed the greater of: (i) 5% of the principal or total amount of the securities being issued; or (ii) issuance expenses that are generally paid at the time of the pricing for sales of the particular issuance, having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

D. Common Equity Ratio and Investment Grade Ratings

E.ON and LG&E Energy, each on a consolidated basis, and LG&E and KU will maintain common stock equity as a percentage of total capitalization of at least 30%, as reflected in their most recent annual or semiannual report, in the case of E.ON, and, with respect to LG&E Energy and the Utility Subsidiaries, quarterly financial statements prepared in accordance with US GAAP; provided that E.ON in any event will be authorized to issue common stock to the extent permitted as a consequence of this Application.

Applicants further represent that, except for securities issued for the purpose of funding money pool operations, no guarantees or other securities, other than common stock, may be issued in reliance upon the authorization granted by the Commission pursuant to the 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 E.ON that are rated, are rated investment grade. For purposes of this provision (“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 (“NRSRO”), 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. In addition, Applicants request authorization as follows: (i) notwithstanding that at any time the preferred stock of a Utility Subsidiary, if rated, may not be rated investment grade by an NRSRO, such Utility Subsidiary may nonetheless participate in the Utility Money Pool, borrow funds as secured intercompany loans from Fidelity and borrow funds as intercompany loans; and (ii) notwithstanding that at any time the securities of a nonutility subsidiary that are rated are not rated investment grade, such nonutility subsidiary may nonetheless participate in the U.S. Nonutility Money Pool and may borrow funds as intercompany loans. Applicants request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities in reliance upon the authorization granted by the Commission pursuant to the Application at

any time that the conditions set forth in clauses (i) through (iii) above are not satisfied.

E. Use of Proceeds

Applicants state that the proceeds from the proposed financings will be used for general corporate purposes, including: (i) financing investments by and capital expenditures of the E.ON Group; (ii) the funding of future investments in companies that are exempt under the Act or the rules or permitted by Commission order, including EWGs, FUCOs, TBD Subsidiaries, ETCs and Rule 58 Subsidiaries (as defined below); (iii) the repayment, redemption, refunding or purchase by any E.ON Group company of any of its own securities; (iv) financing or refinancing capital requirements of the E.ON Group; and (v) other lawful purposes. Applicants represent that no financing proceeds will be used to acquire the equity securities of any company unless the acquisition has been approved by the Commission or is in accordance with an available exemption under the Act or rules, including sections 32, 33, 34 and rule 58.

IV. The Request

Applicants request the following authorizations during the Authorization Period as described below.

A. E.ON External Financing and Related Transactions

E.ON requests authorization to increase its capitalization through the issuance and sale of securities, including, but not necessarily limited to, common stock, preferred stock, preferred securities, equity-linked securities, options, warrants, purchase contracts, units (consisting of one or more purchase contracts, warrants, debt securities, shares of preferred stock, shares of common stock or any combination of such securities), long-term debt, subordinated debt, lease financing, bank borrowings, securities with call or put

options, and securities convertible into any of these securities, up to an aggregate amount of new financing not to exceed USD 50 billion outstanding at any one time (exclusive of short-term debt and guarantees), the E.ON External Limit, during the Authorization Period; provided that securities issued for purposes of refunding or replacing other outstanding securities (where E.ON's capitalization is not increased as a result) shall not be counted against this limitation.<sup>11</sup> E.ON further proposes that issuances subject to the E.ON External Limit (an aggregate limit of USD 50 billion), the E.ON Short-term Limit (an aggregate limit of USD 30 billion) and the E.ON Guarantee Limit (an aggregate limit of USD 40 billion) would not, in the aggregate, exceed USD 75 billion, during the Authorization Period, which would be consistent with its current overall financing limits.<sup>12</sup>

A.1. Common Stock, Preferred Stock, Preferred Securities and Equity-linked Securities

E.ON requests authorization to issue and sell common stock, options, warrants or other stock purchase rights exercisable for common stock.<sup>13</sup> E.ON also proposes to issue common stock and/or purchase shares of its common stock (either currently or under forward contracts) in the open market or through negotiated purchases for purposes of: (i) reissuing such shares at a later date pursuant to stock-based plans which are maintained for stockholders, employees and directors; or (ii) managing its capital structure. E.ON

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<sup>11</sup> These financing transactions will be valued at the time of issuance.

<sup>12</sup> See note 1, above. The Commission's 2002 Order placed an overall limit on E.ON's external financing of USD 75 billion. That limit applied E.ON's aggregate issuances of equity, long- and short-term debt securities and guarantees.

<sup>13</sup> Public distributions may be pursuant to private negotiation with underwriters, dealers or agents, or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons.

further requests authorization to use its common stock and other equity instruments to fund employee benefit plans and in connection with dividend reinvestment plans currently in existence or that may be formed during the Authorization Period.<sup>14</sup>

E.ON also requests authorization to issue preferred stock directly and/or issue, indirectly, through one or more financing subsidiaries, other forms of preferred securities (including, without limitation, trust preferred securities or monthly income preferred securities), equity-linked securities in the form of stock purchase units (which combine a security with a fixed obligation (e.g., preferred stock or debt) with a stock purchase contract that is exercisable (either mandatorily or at the option of the holder or a combination of both) within a relatively short period (e.g., three to six years after issuance)). Applicants state that these transactions will be subject to the E.ON External Limit.

#### A.2. Long-term Debt

E.ON also requests authorization to issue unsecured long-term debt that may be issued directly through a public or private placement, or indirectly, through one or more financing subsidiaries, in the form of notes, convertible notes, medium-term notes or debentures under one or more indentures or long-term indebtedness under agreements with banks or other institutional lenders.<sup>15</sup> Applicants state that these transactions will be subject to the E.ON External Limit.

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<sup>14</sup> E.ON states that it currently maintains a stock-based compensation plan that issues stock appreciation rights (“SARs”), authorized by the Commission’s 2002 Order, and it proposes to issue shares of its common stock to satisfy its obligations under its stock-based plans, as they may be amended or extended, and similar plans or plan funding arrangements adopted in the future without additional Commission order.

<sup>15</sup> The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to the long-term debt of a particular series, as



### A.3. Short-term Debt

E.ON requests authority to issue and sell from time to time, directly or indirectly through one or more Financing Entities, unsecured short-term debt, including commercial paper and bank borrowings, in an aggregate principal amount at any time outstanding not to exceed USD 30 billion, the E.ON Short-term Limit; provided that securities issued for purposes of refunding or replacing other outstanding short-term debt securities (where E.ON's capitalization is not changed as a result) shall not be counted against this limitation.

E.ON requests further authorization to issue and sell, from time to time, directly or indirectly through one or more Financing Entities, unsecured short-term debt, an aggregate amount at any time outstanding of up to the E.ON Short-term Limit, in the form of commercial paper, notes issued to banks and other institutional lenders, and other forms of unsecured short-term indebtedness. Applicants state that short-term borrowings under credit lines will have original maturities of less than a year from the date of each borrowing. Applicants state that these transactions will be subject to the E.ON External

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well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding at the time of issuance.

Limit.

A.4. Interest Rate, Currency and Certain Equity Risk Management Devices

E.ON requests authorization to enter into, perform, purchase and sell financial instruments intended to manage the volatility of interest rates and currency exchange rates, including but not limited to swaps, caps, floors, collars and forward agreements or any other similar agreements (“Hedging Instruments”). E.ON would employ Hedging Instruments as a means of prudently managing the risk associated with any of the outstanding debt issued by it or any of its associate companies under the authority requested in the Application or an applicable exemption by, for example: (i) converting variable rate debt to fixed rate debt; (ii) converting fixed rate debt to variable rate debt; (iii) limiting the impact of changes in interest rates resulting from variable rate debt; and (iv) providing an option to enter into interest rate swap transactions in future periods for planned issuances of debt securities.

E.ON also proposes to enter into Hedging Instruments with respect to anticipated debt or equity offerings (“Anticipatory Hedges”), subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into on-exchange or off-exchange with Approved Counterparties, and would be used to fix and/or limit the interest rate or currency exchange rate risk associated with any proposed new issuance.<sup>16</sup>

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<sup>16</sup> Applicants state that Anticipatory Hedges may include: (i) a forward sale of U.S. or European Economic Area (“EEA”) Treasury futures contracts, U.S. or EEA Treasury obligations and/or a forward swap (each a “Forward Sale”); (ii) the purchase of put options on U.S. or EEA Treasury obligations (“Put Options Purchase”); (iii) a Put Options Purchase in combination with the sale of call options on U.S. or EEA Treasury obligations (“Zero Cost Collar”); (iv) transactions involving the purchase or sale of U.S. or EEA Treasury obligations; 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.

E.ON's subsidiaries also propose to enter into Hedging Instruments or Anticipatory Hedges to hedge interest rate or currency exposures, subject to the limitations described above.

A.5. Guarantees

E.ON requests authorization to provide guarantees with respect to debt securities or other contractual obligations of any subsidiary, as may be appropriate in the ordinary course of the subsidiary's business, up to an aggregate principal or nominal amount not to exceed USD 40 billion at any one time outstanding (the E.ON Guarantee Limit), exclusive of any guarantees and other forms of credit support that are exempt under rules 45(b) and 52(b); provided, however, that the amount of guarantees in respect of obligations of any EWGs and FUCOs or companies engaged or formed to engage in proposed energy-related businesses, and proposed companies exempt under rule 58 under the Act ("Rule 58 Subsidiaries") shall remain subject to the limitations of rules 53(a)(1) and 58(a)(1), as applicable.

E.ON requests authorization for the E.ON Group (other than the LG&E Energy Group) to charge each subsidiary (other than an LG&E Energy Group company), a fee for the period of time that a guaranty is outstanding, the fee to be based upon market rates, which take into account credit risk, where it may be necessary to operate its business efficiently under applicable regulations.<sup>17</sup> E.ON represents that the amount of

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<sup>17</sup> Where regulations are not applicable, or for any guarantee of an LG&E Energy Group company, E.ON may charge the subsidiary a fee for each guarantee that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the guarantee (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses) for the period of time that it remains outstanding.

guarantees for obligations of any Rule 58 Subsidiaries shall remain subject to the limitations of rule 58(a)(1).

A.6. Profit and Loss Transfer Agreements

Applicants request that the Commission continue to authorize the profit and loss transfer agreements of E.ON and its German subsidiaries.

B. Subsidiary Financing and Related Transactions

B.1. TBD Subsidiaries and Retained Nonutility Subsidiaries

The E.ON Group (other than the LG&E Energy Group) request authorization to finance the TBD Subsidiaries and the Retained Nonutility Subsidiaries through capital contributions, loans, guarantees, purchase of equity or debt securities or other methods throughout the Authorization Period. The Retained Nonutility Subsidiaries also propose to finance their respective businesses and the acquisition of new businesses (as permitted under the Act or the rules or by Commission order), through the issuance of equity, preferred stock and debt securities to third parties.

Applicants propose that, in connection with the financing of the TBD Subsidiaries, they be authorized to make investments in an aggregate amount of up to USD 1 billion (the TBD Investment Limit), through July 1, 2007 (the end of the divestiture period). In addition, Applicants propose that financing of, and investments in, the Retained Nonutility Subsidiaries, be authorized in an aggregate amount of up to USD 15 billion.

B.2. LG&E Energy Group Companies and the Intermediate Companies

E.ON owns LG&E Energy through the Intermediate Companies, E.ON US Holding and E.ON US Investments, which are registered holding companies under the

Act. E.ON US Holding also owns Fidelia, a Financing Entity, and E.ON US Investments owns E.ON NA and its subsidiaries, which also function as Financing Entities.

To finance the LG&E Energy Group and/or the Intermediate Companies and their subsidiaries, Applicants request authorization for the Intermediate Companies and their subsidiaries to issue and sell securities to E.ON and associate companies, but not companies in the LG&E Energy Group.

In addition, authorization is requested for E.ON NA and Fidelia (and any of their subsidiaries) to issue securities to third parties, such as banks, to finance the capital needs of the E.ON Group, including the LG&E Energy Group. Applicants also request authorization for the Intermediate Companies and their subsidiaries to acquire securities of other Intermediate Companies and their subsidiaries and the LG&E Energy Group companies.

The Intermediate Companies and their subsidiaries also seek authorization to issue guarantees, and other forms of credit support, to or for the benefit of another Intermediate Company, its subsidiaries and the LG&E Energy Group companies. Applicants state that, in no case would an Intermediate Company borrow, or receive any extension of credit or indemnity from any LG&E Energy Group company or its subsidiaries, except that an Intermediate Company may borrow from its direct or indirect Financing Entity that is not part of the LG&E Energy Group.

In addition, authority is requested for the Intermediate Companies, E.ON NA and Fidelia, and their respective subsidiaries, to guarantee the indebtedness or contractual obligations of, and to otherwise provide credit support to, their respective associated subsidiary companies up to an aggregate amount of external guarantees not exceed USD

2 billion outstanding (exclusive of any guarantees and other forms of credit support that are exempt under rules 45(b) and 52(b)); provided, however, that the amount of guarantees for obligations of any Rule 58 Subsidiaries shall remain subject to the limitations of rule 58(a)(1). Applicants state that, for reasons of economic efficiency, the terms and conditions of any financings between an Intermediate Company (or E.ON NA and Fidelity) and its direct or indirect parent, or between an Intermediate Company and a FUCO subsidiary or their associate company subsidiaries, will be on market terms. Applicants state that market rate financing assures that intercompany loans will not be used to transfer profits from one related entity to another and will also allow the lending entity to recover its true costs of liquidity, risks associated with credit quality and interest rate and currency variability.

B.2.a. LG&E Energy Short-term Debt

LG&E Energy requests authorization to obtain funds through the issuance of external short-term debt securities in an aggregate amount of up to USD 400 million, to meet its funding requirements.

B.2.b. Utility Subsidiary Debt, Intercompany Loans and Guarantees

LG&E and KU request authorization to issue certain long-term and short-term debt securities having maturities of two years or less in an aggregate amount of up to USD 400 million at any one time outstanding for each of LG&E and KU (to the extent their financing is not exempt under rule 52(a), or otherwise), as each may deem appropriate in light of its needs and market conditions at the time of issuance, subject to the applicable Financing Parameters.

Applicants also request that LG&E and KU be authorized, up to amounts of USD 275 million and USD 215 million, respectively, to obtain secured intercompany loans from Fidelia, as currently authorized, through the Authorization Period.<sup>18</sup> In addition, authorization is requested for Fidelia to provide intercompany loans to LG&E and KU on a secured basis.

Utility Subsidiaries also seek authorization, up to an amount of USD 200 million in the case of LG&E and USD 200 million in the case of KU, to guarantee, or otherwise provide credit support for, the obligations of their subsidiaries and other companies in which they have invested (but not EWGs, ETCs or FUCOs), to the extent not exempt under rule 45. Applicants represent that any guarantee of an obligation of an EWG, FUCO or ETC will be undertaken only if the investment is authorized under sections 32, 33 or 34 of the Act, applicable rules, and/or Commission order.

Applicants request that the Utility Subsidiaries be permitted to charge each subsidiary a fee for each guarantee provided on the subsidiary's behalf that is not greater than the cost, if any, of the liquidity necessary to perform the guarantee. Applicants further state that guarantees issued by Utility Subsidiaries will not be secured by any utility assets.

#### B.2.c. Certain Other LG&E Energy Group Subsidiary Transactions

E.ON, E.ON NA and Fidelia (or a special purpose financing subsidiary) request authorization to finance all or a portion of the capital needs of the LG&E Energy Group

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<sup>18</sup> LG&E and KU request authorization under section 12(d) of the Act and rule 43 to secure these intercompany loans with a subordinated lien on certain personal property of the respective company, including "utility assets" within the meaning of the Act, as the Commission previously authorized, through May 31, 2005. See E.ON, et al., Holding Co. Act Release No. 27711 (Aug. 15, 2003); see also SEC File No. 70-9985.

companies directly, or indirectly through other E.ON Group companies, including the Intermediate Companies, at the lowest practical cost. Companies in the LG&E Energy Group propose to borrow funds from other E.ON Group companies that may have available surplus funds.

Applicants state that, except for the secured intercompany loans, described above, the borrowings will be unsecured and, in all cases, the borrowings will only occur if the interest rate on the loan would result in an equal or lower cost of borrowing than the LG&E Energy Group company could obtain in a loan from E.ON or in the capital markets on its own.<sup>19</sup> Applicants state that borrowings by LG&E Energy Group companies would comply, at a minimum, with the Financing Parameters.

Applicants request authorization for intercompany loans among LG&E Energy and its nonutility subsidiaries in an amount of up to USD 1.5 billion at any one time outstanding during the Authorization Period. Applicants state that this intrasystem financing amount would exclude financing exempt under rules 45(b) and 52. They further state that LG&E Energy will not borrow funds from its subsidiary companies and that the terms and conditions of intercompany loans available to any borrowing company will be materially no less favorable than the terms and conditions of loans available to the borrowing company from third-party lenders. In addition, all intercompany loans will be payable on demand or have a maturity of less than 50 years from the date of issuance.

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<sup>19</sup> Applicants state that, consequently, all borrowings by an LG&E Energy Group company from an associate company would be at the lowest of: (i) E.ON's effective cost of capital; (ii) the lending associate's effective cost of capital (if lower than E.ON's effective cost of capital); and (iii) the borrowing LG&E Energy Group's effective cost of capital determined by reference to the effective cost of a direct borrowing by such company from a nonassociate for a comparable term loan that could be entered into at such time (Best Rate Method).



Applicants also request authorization for LG&E Energy and the LG&E Energy Group nonutility subsidiaries to enter into guarantees, extend credit, obtain letters of credit, enter into guaranty-type expense agreements and otherwise to provide credit support for the obligations, from time to time, of the LG&E Energy Group companies during the Authorization Period, specifically:

- (a) for LG&E Energy, in an aggregate amount of up to USD 1.5 billion outstanding at any one time (exclusive of guarantees that may be exempt under rule 45(b)); and
- (b) for the LG&E Energy Group nonutility subsidiaries, in an additional aggregate amount of up to USD 1.5 billion outstanding at any one time (exclusive of guarantees that may be exempt under rule 45(b)).

Applicants state that these requests are separate from E.ON's External Limit and E.ON's Guarantee Limit.

C. Continuation of Money Pools

Applicants request authorization to continue to operate three money pools.<sup>20</sup> The three money pools are the Utility Money Pool,<sup>21</sup> the U.S. Nonutility Money Pool<sup>22</sup> and

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<sup>20</sup> See 2002 Order (as modified for the E.ON Nonutility Money Pool in E.ON, et al., Holding Co. Act Release No. 27788 (Dec. 29, 2003)).

<sup>21</sup> The Utility Money Pool includes only Utility Subsidiaries, as borrowers from and lenders to the pool. E.ON, E.ON NA, Fidelia and LG&E Energy may lend to, but not borrow from, the Utility Money Pool. LG&E Energy Services Inc. ("LG&E Services") will continue to act as the administrator of the Utility Money Pool.

<sup>22</sup> The U.S. Nonutility Money Pool includes the nonutility subsidiaries as borrowers from and lenders to the pool. E.ON, E.ON NA, Fidelia and LG&E Energy may lend to, but not borrow from, the U.S. Nonutility Money Pool. LG&E Services will continue to act as the administrator of the U.S. Nonutility Money Pool.

the E.ON Nonutility Money Pool.<sup>23</sup>

Applicants state that Utility Subsidiaries' borrowings from the Utility Money Pool would be counted against their overall short-term borrowing limits stated above. The U.S. Nonutility Money Pool will be operated on substantially the same terms and conditions as the Utility Money Pool. The E.ON Nonutility Money Pool is administered by E.ON Finance GmbH (formerly Hibernia Industriewerte GmbH).<sup>24</sup>

D. Acquisition, Redemption or Retirement of Securities

Applicants request authorization for each company in the E.ON Group, other than EWGs, FUCOs and ETCs, to acquire, redeem or retire its securities or those of its direct and indirect subsidiaries, which securities may be either outstanding presently or issued and sold in the future from time to time during the Authorization Period. Applicants state that these transactions will be undertaken at either the competitive market prices for the securities or at the stated price for those securities, as applicable, and that Utility Subsidiaries will acquire, retire or redeem securities only in accordance with rule 42.

E. Financing Entities

Applicants also request authorization for the E.ON Group companies, except the EWGs, FUCOs and ETCs, to organize new or use existing corporations, trusts, partnerships or other entities ("Financing Entities"), to finance the business of the respective parent company or its subsidiaries. Applicants state that a Financing Entity

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<sup>23</sup> The E.ON Nonutility Money Pool may include all E.ON Group companies as borrowers from and lenders to the pool, except E.ON, the Intermediate Companies, and the LG&E Energy Group. E.ON and the Intermediate Companies may lend to, but not borrow from, the E.ON Nonutility Money Pool.

<sup>24</sup> E.ON, et al., Holding Co. Act Release No. 27788 (Dec. 29, 2003); see also note 20 above.

would be used to finance the authorized or permitted businesses of its direct or indirect parent company (“Founding Parent”), including the businesses of the LG&E Energy Group, but in no event would a Financing Entity engage in prohibited upstream loans involving companies in the LG&E Energy Group.<sup>25</sup>

In addition, Applicants request authorization to issue securities to a Financing Entity to evidence the transfer of financing proceeds by a Financing Entity to a company receiving financing. Applicants also request authorization to enter into support or expense agreements on market price terms with Financing Entities to pay the expenses of any of these entities.

F. Changes in Capital Stock of Subsidiaries

Applicants request authority to change the terms of any subsidiary’s authorized capital stock capitalization or other equity interests by an amount deemed appropriate by E.ON or any intermediate parent company; provided that the consents of all other shareholders, if required by applicable corporate law or the subsidiary’s governing documents, have been obtained for the proposed change.

G. Payment of Dividends Out of Capital or Unearned Surplus

Applicants request authorization that each of the TBD Subsidiaries, the Retained Nonutility Subsidiaries, the Intermediate Companies, and the LG&E Energy Group companies (excluding Utility Subsidiaries), be permitted to continue to pay dividends with respect to its capital stock, from time to time, out of capital and unearned surplus (to the extent permitted under the corporate law and state or national law applicable in the

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<sup>25</sup> Applicants state that Financing Entities would be intended to issue any securities that the Founding Parent would be authorized to issue, as authorized by the Commission by order, rule or under the Act.

jurisdiction where each company is organized and the terms of any credit agreements and indentures that restrict the amount and timing of distributions to shareholders), through the Authorization Period. Applicants state that, in addition, none of the companies will 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 some or all of its assets; (ii) has engaged in a restructuring or reorganization; and/or (iii) is returning capital to an associate company.

H. Nonutility Reorganizations

Applicants also request continued authority to restructure, consolidate or otherwise reorganize E.ON's nonutility holdings, including those in the LG&E Energy Group, from time to time, as may be necessary or appropriate in furtherance of the E.ON Group's authorized nonutility activities, and to maintain and support investment in the E.ON TBD Subsidiaries pending divestiture.

E.ON requests authorization to acquire, directly or indirectly, the securities of one or more intermediate subsidiaries ("Development Subsidiaries") organized exclusively for the purpose of acquiring, financing, divesting and/or holding the securities of one or more existing or future nonutility subsidiaries. Applicants request authorization for the Development 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 the rules, including rules 90 and 91, to the extent transactions are not exempt, or authorized or permitted by Commission rule or order.

I. EWG and FUCO Subsidiaries and Reinvestment of Proceeds from the Divestiture of Nonutility Businesses

E.ON requests the Commission authorize continued investment in an aggregate amount of up to USD 65 billion in EWGs and FUCOs, the Aggregate EWG/FUCO

Financing Limitation.<sup>26</sup> Applicants state that they also seek authority to issue and sell up to USD 35 billion of securities to finance EWG and FUCO investments pending the receipt of divestiture proceeds (“Bridge Loans”), for the flexibility of E.ON, so that attractive investment opportunities may be pursued, because the timing of the receipt of divestiture proceeds will not always coincide with the opportunity to invest in additional EWG or FUCO assets.<sup>27</sup> Applicants state that any issuance of Bridge Loans would count against the E.ON External Limit or the E.ON Short-term Limit, depending on the maturity of the Bridge Loans.

J. Energy-Related Subsidiaries

E.ON also seeks authorization to acquire and to invest up to USD 10 billion, the

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<sup>26</sup> See the 2002 Order, note 1 above. Applicants propose that the investments consist of: (i) an initial combined E.ON, Powergen and LG&E Energy aggregate investment in EWGs and FUCOs of USD 4.886 billion, as of December 31, 2001; (ii) the proposed reinvestment of the sale proceeds of the TBD Subsidiary divestitures in an amount up to USD 35 billion; and (iii) an additional amount of EWG/FUCO proposed investment of up to USD 25 billion.

<sup>27</sup> Applicants state that, upon the receipt of the divestiture proceeds, the Bridge Loans or debt securities with an equivalent principal amount would be retired, redeemed or otherwise paid down.

Energy-Related Subsidiary Investment Limit, of the divestiture proceeds during the Authorization Period in certain permitted nonutility businesses located primarily outside of the U.S.

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

Margaret H. McFarland  
Deputy Secretary