Partner will record and preserve a description of the Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based, and the basis for the findings. All records relating to an investment program will be maintained until the termination of the investment program and at least two years thereafter, and will be subject to examination by the SEC and its staff.[4]

2. In connection with the Section 17 Transactions, the General Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of such person, promoter, or principal underwriter.

3. The General Partner will not invest the funds of any Partnership in any investment in which a ''Co-Investor'' (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning or rule 17d–1 in which the Partnership and a Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Co-Investor. The term ''Co-Investor'' with respect to any Partnership means any person who is: (a) an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party Fund); (b) H&Q; (c) an officer or director of H&Q; or (d) an entity (other than a Third Party Fund) in which the General Partner acts as general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit to prevent the disposition of an investment by a Co-Investor: (a) to its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Co-Investor or a trust or other investment vehicle established for any family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder; or (e) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner will maintain and preserve, for the life of each Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Participants in the Partnership, and each annual report of the Partnership required to be sent to the Participants, and agree that all such records will be subject to examination by the SEC and its staff.[5]

5. The General Partner of each Partnership will send to each Participant in the Partnership who had an interest in any capital account of the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of the Partnership will send a report to each person who was a Participant in the Partnership at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Participant of his or its federal and state income tax returns, and a report of the investment activities of the Partnership during that year.

6. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by an H&Q director, officer, or employee, the individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–23072 Filed 8–26–98; 8:45 am]

BILLING CODE 8010–01–M

[4] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[5] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26908]

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

August 21, 1998.

Notice is hereby given that the following filing(s) 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 amendments is/are available for public inspection through the Commission's Office 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 *September 15, 1998,* to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, 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 case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact 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 *September 15, 1998*, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Metropolitan Edison Company

[70–9329]

Metropolitan Edison Company (''Met-Ed''), 2800 Pottsville Pike, Reading, Pennsylvania 19605, a public utility subsidiary of General Public Utilities Corporation (''GPU''), a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 45 and 54 under the Act.

Met-Ed proposes to organize a special purpose subsidiary (Met-Ed Capital Trust) as a business trust under Delaware law, which will issue and sell from time to time in one or more series through December 31, 2000, up to $125 million aggregate liquidation value of preferred beneficial interests, in the form of trust securities (''Trust Securities'').[1] Each Trust Security will represent a cumulative preferred security (''Preferred Securities'') of a Delaware limited partnership (''Met-Ed Capital L.P.''), a special purpose indirect subsidiary of Met-Ed. Met-Ed also proposes to form a special purpose Delaware corporation (''Investment Sub''), to act as general partner of Met-Ed Capital L.P.

Met-Ed Capital Trust will acquire the Preferred Securities and issue the Trust Securities evidencing the Preferred Securities. Met-Ed Capital L.P. will issue one or more series of Preferred Securities and lend the proceeds thereof, plus a capital contribution (in an amount not to exceed $5 million) made by Met-Ed in Met-Ed Capital L.P., to Met-Ed, the loan will be evidenced by the ''Subordinated Debentures'' (defined below) issued by Met-Ed.

Met-Ed will acquire all of the common stock of Investment Sub for a nominal consideration and will capitalize Investment Sub with: (i) A capital contribution in the amount of up to $5 million, and (ii) a demand promissory note in the principal amount of up to $13 million, that will bear interest, compounded semi-annually at Citibank's N.A. base rate as announced from time to time.

Investment Sub will acquire all of the general partner interests in Met-Ed Capital L.P. for up to $5 million (''L.P. Equity Contribution''). Met-Ed Capital Trust will apply the proceeds from the sale of the Trust Securities to purchase the Preferred Securities. Met-Ed Capital L.P. will, in turn, use the proceeds received from the sale of the Preferred Securities, together with the L.P. Equity Contribution, to purchase Met-Ed's subordinated debentures (''Subordinated Debenture(s)'').

Met-Ed will also guarantee (''Guarantee'') the payment by Met-Ed Capital L.P. of: (1) Accrued but unpaid distributions on the Preferred Securities, if and to the extent Met-Ed Capital L.P. has declared these distributions out of funds legally available therefor; (2) the redemption price for any redemption of the Preferred Securities; (3) the aggregate liquidation preference on the Preferred Securities, including all accrued but unpaid distributions, whether or not declared; and (4) certain additional amounts.

Met-Ed Capital Trust's activities will be limited to the issuance and sale of Trust Securities and applying the proceeds to purchase Preferred Securities. Met-Ed Capital Trust's constituent instruments will not include any interest or distribution coverage or capitalization ratio restrictions on its ability to issue and sell Trust Securities as each issuance will be supported by a Subordinated Debenture and Guarantee. Therefore, Met-Ed states that these restrictions would not be relevant or necessary for Met-Ed Capital Trust to maintain an appropriate capital structure. Moreover, the issuance of Subordinated Debentures by Met-Ed will be subject to Met-Ed's Articles of Incorporation, which limits, without the consent of the holders of a majority of Met-Ed's outstanding Cumulative Preferred Stock, the amount of unsecured indebtedness which Met-Ed may have outstanding at any one time to 20% of the aggregate of the total outstanding principal amount of all bonds and other securities representing secured indebtedness issued or assumed by Met-Ed plus Met-Ed's capital stock, premiums, and surplus of Met-Ed as stated on its books of account. Met-Ed Capital Trust's constituent instruments will further state that Met-Ed Capital will be responsible for all liabilities and obligations of Met-Ed Capital Trust.

Each Subordinated Debenture will have an initial term of up to 49 years. Prior to maturity, Met-Ed will pay only interest on the Subordinated Debentures at a rate equal to the distribution rate on the Preferred Securities. The interest payments will constitute Met-Ed Capital Trust's only income and will be used by it to pay distributions on the Trust Securities, with any excess being distributed indirectly to Met-Ed as a distribution on Met-Ed's investment in Met-Ed Capital L.P., thereby reducing the interest cost on the Subordinated Debentures.

Distributions on the Trust Securities will be made not less than semi-annually, and will be cumulative and must be made to the extent that Met-Ed Capital Trust has legally available funds and cash sufficient for these purposes. However, Met-Ed will have the right to defer payment of interest on the Subordinated Debentures for up to five years in which event Met-Ed Capital Trust may similarly defer payment of distributions on the Trust Securities, but in no event may distributions be deferred beyond the maturity date of the Subordinated Debentures. The distribution rates, payment dates, redemption and other similar provisions of each series of Trust Securities will be identical to the interest rates, payment dates, redemption and other provisions of the Subordinated Debentures issued by Met-Ed.

Each Subordinated Debenture and related Guarantee will be subordinate to all other existing and future ''Senior Indebtedness,'' as defined below, of Met-Ed and will have no cross-default provisions with respect to other Met-Ed indebtedeness—i.e., a default under any other outstanding Met-Ed indebtedness will not result in a default under the Subordinated Debenture or the Guarantee. However, Met-Ed may not declare and pay dividends on, or redeem or retire, its outstanding Cumulative Preferred Stock or Common Stock unless all payments then due (whether or not previously deferred) under the Subordinated Debentures and the Guarantees have been made. ''Senior Indebtedness'' consists of (i) the principal of and premium (if any) in respect of (A) indebtedness of Met-Ed for money borrowed and (B) indebtedness evidenced by securities, debentures, bonds or other similar instruments (including purchase money obligations) for payment of which Met-Ed is responsible or liable; (ii) all capital lease obligations of Met-Ed; (iii) all obligations of Met-Ed issued or assumed as the deferred purchase price of property, all conditional sale obligations of Met-Ed and all obligations of Met-Ed under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business); (iv) certain obligations of Met-Ed for the reimbursement of any obligor on any letter of credit, banker's acceptance, security purchase facility or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of other persons for the payment of which Met-Ed is responsible or liable as obligor, guarantor or otherwise; and (vi) all obligations of the types referred to in clauses (i) through (v) of other persons secured by any lien on any property or asset of Met-Ed (whether or not the

[1] The Trust Securities' liquidation value per interest is to be determined.

obligation is assumed by Met-Ed), except for any indebtedness that is by its terms subordinated to or *pari passu* with the Subordinated Debentures.

It is expected that Met-Ed's interest payments on the Subordinated Debentures will be deductible for income tax purposes and that Met-Ed Capital Trust will be treated as a trust for federal income tax purposes. Consequently, distributions from Met-Ed Capital Trust to the holders of Trust Securities, and indirectly to Met-Ed, will be deemed to constitute distributions of the interest income received by Met-Ed Capital Trust on the Subordinated Debentures. Consequently, the holders of the Trust Securities and Met-Ed will not be entitled to any ''dividend received deduction'' under the Internal Revenue Code with respect to the distributions.

A series of the Trust Securities will be subject to mandatory redemption upon redemption of the corresponding series of the Preferred Securities. A series of Preferred Securities will be subject to mandatory redemption upon the maturity or prior redemption of the corresponding series of the Subordinated Debentures, but will not be subject to any mandatory sinking fund. A series of Preferred Securities may also be redeemable at the option of Met-Ed at a price equal to their liquidation value plus any accrued and unpaid distributions plus any premium negotiated in connection with the marketing of the Trust Securities, (i) at any time after a specified no-call period (if any) which could be up to the life of the issuance, or (ii) in the event that (I) Met-Ed Capital L.P. is required by applicable tax laws to withhold or deduct certain amounts in connection with distributions or other payments, or (II) Met-Ed Capital L.P. or Met-Ed Capital Trust is subject to federal income tax with respect to interest received on the Subordinated Debentures, or (III) it is determined that the interest payments by Met-Ed on the Subordinated Debentures are not deductible for federal income tax purposes or (IV) Met-Ed Capital L.P. is subject to more than a *de minimis* amount of other taxes, duties or other governmental charges, or (V) Met-Ed Capital L.P. becomes subject to regulation as an ''investment company'' under the Investment Company Act of 1940. Upon occurrence of any of the events set forth in clause (ii) above, Met-Ed Capital L.P. and Met-Ed Capital Trust could be dissolved and the Subordinated Debentures distributed directly to the holders of the Trust Securities and to Met-Ed on a pro rata basis, resulting in direct ownership of the subordinated Debentures by the holders of the Trust Securities. The Subordinated Debentures distributed to Met-Ed will be canceled.

In the event that Met-Ed Capital Trust is required by applicable tax laws to withhold or deduct certain amounts in connection with distributions or other payments, Met-Ed Capital Trust may also have the obligation, if the Trust Securities are not redeemed or Subordinated Debentures are not distributed to the holders, to ''gross up'' payments so that the Trust Securities holders will receive the same payment after withholding or deduction as they would have received if no withholding or deduction were required. In the latter event, Met-Ed's obligations under the Subordinated Debentures and the Guarantees would also cover any ''gross up'' obligations.

Upon receipt by Met-Ed Capital Trust of any distribution from Met-Ed Capital L.P. upon any voluntary or involuntary liquidation, dissolution or winding up of Met-Ed Capital L.P., the holders of the Trust Securities will be entitled to receive amounts in proportion to the respective number of Preferred Securities represented by the Trust Securities, out of the assets of Met-Ed Capital L.P. available for distribution after satisfaction of liabilities to creditors of Met-Ed Capital Trust.

In the event of any voluntary or involuntary dissolution or winding up of Met-Ed Capital L.P., the holders of Preferred Securities will be entitled to receive out of the assets of Met-Ed Capital L.P., after satisfaction of liabilities to creditors and before any distribution of assets is made to the Investment Sub, the sum of their stated liquidation preference and all accumulated and unpaid distributions to the date of payment of the Preferred Securities. All assets of Met-Ed Capital L.P. remaining after payment of the liquidation distribution to the holders of Preferred Securities will be distributed to the Investment Sub.

Upon any liquidation, dissolution or winding up of Met-Ed, the amount payable on each series of the Preferred Securities would be limited to a pro rata portion of any amount recovered by Met-Ed Capital L.P. in its capacity as a subordinated debt holder of Met-Ed. The Subordinated Debentures and the payment obligations under the Guarantee will be subordinate to all other existing and future Senior Indebtedness, except for any indebtedness that is by its terms subordinated to or *pari passu* with the Subordinated Debentures.

Met-Ed will use the net proceeds of the sale to Met-Ed Capital L.P. of Subordinated Debentures to redeem outstanding senior securities, to repay outstanding short-term debt, for construction purposes, and for other general corporate purposes, including to reimburse Met-Ed's treasury for funds previously expended for the above purposes.

Pennsylvania Electric Company

[70–9327]

Pennsylvania Electric Company (''Penelec''), 2800 Pottsville Pike, Reading Pennsylvania 19605, a public utility subsidiary of General Public Utilities Corporation (''GPU''), a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 45 and 54 under the Act.

Penelec proposes to organize a special purpose subsidiary (Penelec Capital Trust) as a business trust under Delaware law, which will issue and sell from time to time in one or more series through December 31, 2000, up to $125 million aggregate liquidation value of preferred beneficial interests, in the form of trust securities (''Trust Securities'').[2] Each Trust Security will represent a cumulative preferred security (''Preferred Securities'') of a Delaware limited partnership (''Penelec Capital L.P.''), a special purpose indirect subsidiary of Penelec. Penelec also proposes to form a special purpose Delaware corporation (''Investment Sub''), to act as general partner of Penelec Capital L.P.

Penelec Capital Trust will acquire the Preferred Securities and issue the Trust Securities evidencing the Preferred Securities. Penelec Capital L.P. will issue one or more series of Preferred Securities and lend the proceeds thereof, plus a capital contribution (in an amount not to exceed $5 million) made by Penelec and Penelec Capital L.P., to Penelec, the loan will be evidenced by the ''Subordinated Debentures'' (defined below) issued by Penelec.

Penelec will acquire all of the common stock of Investment Sub for a nominal consideration and will capitalize Investment Sub with (i) a capital contribution in the amount of up to $5 million, and (ii) a demand promissory note in the principal amount of up to $13 million, that will bear interest, compounded semi-annually at Citibank's N.A. base rate as announced from time to time.

Investment Sub will acquire all of the general partner interests in Penelec

[2] The Trust Securities' liquidation value per interest is to be determined.

Capital L.P. for up to $5 million (''L.P. Equity Contribution''). Penelec Capital Trust will apply the proceeds from the sale of the Trust Securities to purchase the Preferred Securities. Penelec Capital L.P. will, in turn, use the proceeds received from the sale of the Preferred Securities, together with the L.P. Equity Contribution, to purchase Penelec's subordinated debentures (''Subordinated Debenture(s)'').

Penelec will also guarantee (''Guarantee'') the payment by Penelec Capital L.P.: (1) accrued but unpaid distributions on the Preferred Securities, if and to the extent Penelec Capital L.P. has declared the distributions out of funds legally available therefor; (2) the redemption price for any redemption of the Preferred Securities; (3) the aggregate liquidation preference on the Preferred Securities, including all accrued but unpaid distributions, whether or not declared; and (4) certain additional amounts.

Penelec Capital Trust's activities will be limited to the issuance and sale of Trust Securities and applying the proceeds to purchase Preferred Securities. Penelec Capital Trust's constituent instruments will not include any interest or distribution coverage or capitalization ratio restrictions on its ability to issue and sell Trust Securities as each issuance will be supported by a Subordinated Debenture and Guarantee. Therefore, Penelec states that these restrictions would not be relevant or necessary for Penelec Capital Trust to maintain an appropriate capital structure. Moreover, the issuance of Subordinated Debentures by Penelec will be subject to Penelec's Articles of Incorporation, which limits, without the consent of the holders of a majority of Penelec's outstanding Cumulative Preferred Stock, the amount of unsecured indebtedness which Penelec may have outstanding at any one time to 20% of the aggregate of the total outstanding principal amount of all bonds and other securities representing secured indebtedness issued or assumed by Penelec plus Penelec's capital stock, premiums, and surplus of Penelec as stated on its books of account. Penelec Capital Trust's constituent instruments will further state that Penelec Capital will be responsible for all liabilities and obligations of Penelec Capital Trust.

Each Subordinated Debenture will have an initial term of up to 49 years. Prior to maturity, Penelec will pay only interest on the Subordinated Debentures at a rate equal to the distribution rate on the Preferred Securities. The interest payments will constitute Penelec Capital Trust's only income and will be used by it to pay distributions on the Trust Securities, with any excess being distributed indirectly to Penelec as a distribution on Penelec's investment in Penelec Capital L.P., thereby reducing the interest cost on the Subordinated Debentures.

Distributions on the Trust Securities will be made not less than semi-annually, and will be cumulative and must be made to the extent that Penelec Capital Trust has legally available funds and cash sufficient for these purposes. However, Penelec will have the right to defer payment of interest on the Subordinated Debentures for up to five years in which event Penelec Capital Trust may similarly defer payment of distributions on the Trust Securities, but in no event may distributions be deferred beyond the maturity date of the Subordinated Debentures. The distribution rates, payment dates, redemption and other similar provisions of each series of Trust Securities will be identical to the interest rates, payment dates, redemption and other provisions of the Subordinated Debentures issued by Penelec.

Each Subordinated Debenture and related Guarantee will be subordinate to all other existing and future ''Senior Indebtedness,'' as defined below, of Penelec and will have not cross-default provisions with respect to other Penelec indebtedness—i.e., a default under any other outstanding Penelec indebtedness will not result in a default under the Subordinated Debenture or the Guarantee. However, Penelec may not declare and pay dividends on, or redeem or retire, its outstanding Cumulative Preferred Stock or Common Stock unless all payments then due (whether or not previously deferred) under the Subordinated Debentures and the Guarantees have been made. ''Senior Indebtedness'' consists of (i) the principal of and premium (if any) in respect of (A) indebtedness of Penelec for money borrowed and (B) indebtedness evidenced by securities, debentures, bonds or other similar instruments (including purchase money obligations) for payment of which Penelec is responsible or liable; (ii) all capital lease obligations of Penelec; (iii) all obligations of Penelec issued or assumed as the deferred purchase price of property, all conditional sales obligations of Penelec and all obligations of Penelec under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business); (iv) certain obligations of Penelec for the reimbursement of any obligor on any letter of credit, banker's acceptance, security purchase facility or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of other persons for the payment of which Penelec is responsible or liable as obligor, guarantor or otherwise; and (vi) all obligations of the types referred to in clauses (i) through (v) of other persons secured by any lien on any property or asset of Penelec (whether or not the obligation is assumed by Penelec), except for any indebtedness that is by its terms subordinated to or *pari passu* with the Subordinated Debentures.

It is expected that Penelec's interest payments on the Subordinated Debentures will be deductible for income tax purposes and that Penelec Capital Trust will be treated as a trust for federal income tax purposes. Consequently, distributions from Penelec Capital Trust to the holders of Trust Securities, and indirectly to Penelec, will be deemed to constitute distributions of the interest income received by Penelec Capital Trust on the Subordinated Debentures. Consequently, the holders of Trust Securities and Penelec will not be entitled to any ''dividend received deduction'' under the Internal Revenue Code with respect to the distributions.

A series of the Trust Securities will be subject to mandatory redemption upon redemption of the corresponding series of the Preferred Securities. A series of Preferred Securities will be subject to mandatory redemption upon the maturity or prior redemption of the corresponding series of the Subordinated Debentures, but will not be subject to any mandatory sinking fund. A series of Preferred Securities may also be redeemable at the option of Penelec at a price equal to their liquidation value plus any accrued and unpaid distributions plus any premium negotiated in connection with the marketing of the Trust Securities, (i) at any time after a specified no-call period (if any) which could be up to the life of the issuance, or (ii) in the event that (I) Penelec Capital L.P. is required by applicable tax laws to withhold or deduct certain amounts in connection with distributions or other payments, or (II) Penelec Capital L.P. or Penelec Capital Trust is subject to federal income tax with respect to interest received on the Subordinated Debentures, or (III) it is determined that the interest payments by Penelec on the Subordinated Debentures are not deductible for federal income tax purposes or (IV) Penelec Capital L.P. is subject to more than a *de minimis* amount of other taxes, duties or other governmental charges, or (V) Penelec Capital L.P. becomes subject to regulation as an ''investment company''

under the Investment Company Act of 1940. Upon occurrence of any of the events set forth in clause (ii) above, Penelec Capital L.P. and Penelec Capital Trust could be dissolved and the Subordinated Debentures distributed directly to the holders of the Trust Securities and to Penelec on a pro rata basis, resulting in direct ownership of the Subordinated Debentures by the holders of the Trust Securities. The Subordinated Debentures distributed to Penelec will be canceled.

In the event that Penelec Capital Trust is required by applicable tax laws to withhold or deduct certain amounts in connection with distributions or other payments, Penelec Capital Trust may also have the obligation, if the Trust Securities are not redeemed or Subordinated Debentures are not distributed to the holders, to ''gross up'' the payments so that the Trust Securities holders will receive the same payment after withholding or deduction as they would have received if no withholding or deduction were required. In the latter event, Penelec's obligations under the Subordinated Debentures and the Guarantees would also cover any ''gross up'' obligations.

Upon receipt by Penelec Capital Trust of any distribution from Penelec Capital L.P. upon any voluntary or involuntary liquidation, dissolution or winding up of Penelec Capital L.P., the holders of the Trust Securities will be entitled to receive amounts in proportion to the respective number of Preferred Securities represented by the Trust Securities, out of the assets of Penelec Capital L.P. available for distribution after satisfaction of liabilities to creditors of Penelec Capital Trust.

In the event of any voluntary or involuntary dissolution or winding up of Penelec Capital L.P., the holders of Preferred Securities will be entitled to receive out of the assets of Penelec Capital L.P., after satisfaction of liabilities to creditors and before any distribution of assets is made to the Investment Sub, the sum of their stated liquidation preference and all accumulated and unpaid distributions of the date of payment of the Preferred Securities. All assets of Penelec Capital L.P. remaining after payment of the liquidation distribution to the holders of Preferred Securities will be distributed to the Investment Sub.

Upon any liquidation, dissolution or winding up of Penelec, the amount payable on each series of the Preferred Securities would be limited to a pro rata portion of any amount recovered by Penelec Capital L.P. in its capacity as a subordinated debt holder of Penelec. The Subordinated Debentures and the payment obligations under the Guarantee will be subordinate to all other existing and future Senior Indebtedness, except for any indebtedness that is by its terms subordinated to or *Pari passu* with the Subordinated Debentures.

Penelec will use the net proceeds of the sale to Penelec Capital L.P. of Subordinated Debentures to redeem outstanding senior securities, to repay outstanding short-term debt, for construction purposes, and for other general corporate purposes, including to reimburse Penelec's treasury for funds previously expended for the above purposes.

Cinergy Corp., et al.

[70–9319]

Cinergy Corp., a registered holding company (''Cinergy''),[3] and its nonutility subsidiaries, Cinergy Investments, Inc. (''Cinergy Investments'') and Cinergy Global Resources, Inc. (''Cinergy Global Resources'' and, together with Cinergy and Cinergy Investments, ''Applicants''), each of 139 East Fourth Street, Cincinnati Ohio 45202, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(f), 13, 32, 33 and 34 of the Act and rules 43, 45, 46, 53, 54, 83, 87, 90 and 91 under the Act.

By Commission order dated September 21, 1995 (HCAR No. 26376), as supplemented by Commission order dated March 8, 1996 (HCAR No. 26486) (together, ''Project Parent Orders''), Cinergy and Cinergy Investments were granted authority, from time to time through December 31, 1999, (i) to acquire directly or indirectly in one or more transactions, the securities of one or more special-purpose subsidiaries organized to engage directly or indirectly, and exclusively, in the business of acquiring, owning and holding the securities of, and/or providing services to, one or more foreign utility companies (''FUCOs'')[4] and exempt wholesale generators (''EWGs'' [5] and, together with FUCOs, ''Exempt Projects''), and (ii) to invest in and issue guarantees in respect of these special-purpose subsidiaries, provided that Cinergy's total investment in these subsidiaries, together with any investments in Exempt Projects, did not exceed a specified ceiling, recently increased to 100% of Cinergy's consolidated retained earnings by Commission order dated March 23, 1998 (HCAR No. 26848) (''100% Order'').

Applicants now propose to establish one or more special-purpose subsidiaries to hold Cinergy's direct or indirect interests in any or all of Cinergy's existing and future nonutility businesses (excluding the three existing nonutility interests held by Cinergy's utility subsidiaries [6]) and to engage in various financing and related transactions from time to time through December 31, 2003 (''Authorization Period'').

Intermediate Parents

To the extent not otherwise exempt under the Act, Applicants request authority during the Authorization Period to organize and hold securities of one or more special-purpose subsidiaries (each an ''Intermediate Parent'') to be formed for the exclusive purpose of acquiring, owning and holding, directly or indirectly (including through one or more additional Intermediate Parents), securities of or interests in, and/or providing services to, any or all of Cinergy's existing and future nonutility associate companies (other than KO, Tri-State and South Construction) listed below:

1. existing and future Exempt Projects;

2. special-purpose subsidiaries organized to engage directly or indirectly, and exclusively, in the business of acquiring, owning and holding the securities of, and/or providing services to, one or more Exempt Projects under the Project Parent Orders, prior to the date of the requested order (''EWG/FUCO Project Parents'');

3. existing and future exempt telecommunications companies (''ETCs'') [7]

4. existing and future ''energy-related companies'' as defined in rule 58 (''Rule 58 Companies''); and/or

5. other nonutility companies in which Cinergy (i) holds an interest under certain prior Commission orders [8]

[3] Through its six domestic retail public utility companies, PSI Energy, Inc., The Cincinnati Gas & Electric Company, The Union Light, Heat and Power Company, Lawrenceburg Gas Company, The West Harrison Gas and Electric Company and Miami Power Corporation, Cinergy provides retail electric service in north central, central and southern Indiana and retail electric and gas service in the southwestern portion of Ohio and adjacent areas of Indiana and Kentucky.

[4] FUCOs are defined in section 33 of the Act.

[5] EWGs are defined in section 32 of the Act.

[6] KO Transmission Company (''KO'') and Tri-State Improvement Company (''Tri-State'') are nonutility subsidiaries of The Cincinnati Gas & Electric Company, and South Construction Company, Inc. (''South Construction'') is a nonutility subsidiary of PSI Energy, Inc.

[7] ETCs are defined in section 34 of the Act.

[8] Cinergy presently holds interest in three of these companies: (i) Cinergy Investments (*see* HCAR No. 26146, October 21, 1994); (ii) Cinergy Solutions,

or (ii) acquires in the future (or is authorized to retain) an interest under one or more (a) Commission orders issued in subsequent proceedings or (b) exemptions from the requirement of prior Commission approval subsequently adopted under the Act (collectively, ''Authorized Companies'' and, together with the companies included in the preceding categories ''1'' through ''4'', ''Nonutility Companies'').

Services by Intermediate Parents

Any services provided by Intermediate Parents to other Intermediate Parents or to Nonutility Companies would include project development and administrative services and other support services. Without further Commission approval, Intermediate Parents would not provide services to any associate companies other than Intermediate Parents and Nonutility Companies. To the extent not exempt under rule 90(d)(1) or otherwise under the Act, Applicants request an exemption under section 13(b) from the ''at cost'' requirements of rules 90 and 91 with respect to the provision of services among the Intermediate Parents and Nonutility Companies. Cinergy Services, Inc., Cinergy's service company subsidiary, would continue to provide services to Intermediate Parents and Nonutility Companies under the existing Cinergy system nonutility service agreement.[9]

Organization and Capitalization of Intermediate Parents

Intermediate Parents may be wholly or partly owned direct or indirect subsidiaries of Cinergy, Cinergy Investments or Cinergy Global Resources. Initial capitalization by Applicants of Intermediate Parents would involve: (1) purchases of shares of capital stock, partnership interests, limited liability company member interests, trust certificates or other forms of equity interests; (2) capital contributions or open account advances without interest; and/or (3) debt financing.

Cinergy would obtain funds for initial and subsequent investments in Intermediate Parents from available internal sources or from external sources involving sales or short-term notes and commercial paper or additional shares of Cinergy common stock under Commission order dated January 20, 1998 (HCAR No. 26819) (''January 1998 Order'').[10] Cinergy Investments and Cinergy Global Resources would obtain funds for initial and subsequent investments in Intermediate Parents from available cash, capital contributions or loans from Cinergy, or external borrowings or sales of capital stock.

To the extent that Applicants provide funds to Intermediate Parents which in turn are applied to: (1) investments in Exempt Projects or Rule 58 Companies, the amount of the investments would be included in Cinergy's ''aggregate investment'' in these entities, as calculated in accordance with rule 53 or rule 58 under the Act, as applicable; or (2) investments in Authorized Companies, the investments would conform to applicable rules under the Act (including rules 52 and 45(b)(4)) and applicable terms and conditions of any relevant Commission orders.

To the extent not exempt under rule 43(b) or otherwise under the Act, Applicants request authority on behalf of themselves and Intermediate Parents and Nonutility Companies to sell to and purchase from each other (but to or from no other associate companies) securities or other interests in the businesses of Intermediate Parents and Nonutility Companies.

Guarantees

Cinergy also proposes to issue guarantees in respect of Intermediate Parents and Nonutility Companies and certain other subsidiaries of Cinergy. Specifically, to the extent not otherwise exempt under the Act, Cinergy requests authority from time to time through the Authorization Period to guarantee the debt or other securities or obligations of (i) any and all existing and future Intermediate Parents (including Cinergy Investments and Cinergy Global Resources) and Nonutility Companies (excluding Cinergy's investment in Nth Power Fund), (ii) Cinergy Services, and (iii) KO, Tri-State and South Construction. The terms and conditions of any guarantees would be established at arm's length based upon market conditions.

Any guarantees issued and outstanding by Cinergy during the Authorization Period would be subject to the $2 Billion Debt Cap; in addition (1) any guarantees of Exempt Projects would conform to the aggregate investment limitation prescribed in the 100% Order, (2) any guarantees of Rule 58 Companies would conform to the aggregate investment limitation of rule 58, and (3) any Cinergy guarantees in respect of Cinergy Solutions, Inc. would remain subject to the separate $250 million ceiling prescribed in the Cinergy Solutions Order.

The requested order is intended to supersede certain Commission orders now in effect, in whole or in part.[11]

Payment of Dividends Out of Capital and Unearned Surplus

Finally, to the extent not otherwise exempt under the Act, Applicants request authorization for all of Cinergy's existing and future nonutility subsidiaries—Cinergy Investments, Cinergy Global Resources, all existing and future Intermediate Parents and Nonutility Companies (other than Nth Power Fund), and KO, Tri-State and South Construction—to declare and pay dividends out of capital or unearned surplus to their respective parent companies from time to time through the Authorization Period, where permitted under applicable corporate law and agreements with lenders or other third parties.

Inc. (''Cinergy Solutions''), formed pursuant to Commission order dated February 7, 1997 (HCAR No. 26662) (''Cinergy Solutions Order'') to market an array of energy-related products and services and to develop, acquire, own and operate certain energy-related projects; and (iii) Nth Power Technologies Fund I, L.P. (''Nth Power Fund''), in which Cinergy holds a minority limited partnership interest under Commission order dated August 28, 1996 (HCAR No. 26562) (''Nth Power Fund Order''). Nth Power Fund is not an affiliate or subsidiary company of Cinergy; *see* Nth Power Fund Order.

[9] *See* Commission order dated October 21, 1994 (HCAR No. 26146) (''Merger Order'') (approving original nonutility service agreement); Cinergy Solutions Order, *supra* note 6 (approving amendment to nonutility service agreement).

[10] The January 1998 Order authorizes Cinergy to issue and sell from time to time through December 31, 2002, subject to certain terms and conditions, (1) an aggregate principal amount of debt securities not to exceed $2 billion (''$2 Billion Debt Cap''), including short-term notes and commercial paper, together with (a) guarantees issued by Cinergy under the Commission's order dated May 30, 1997, HCAR No. 26723, and (b) debentures issued by Cinergy under authorization presently being sought in S.E.C. File No. 70–8993, notice for which was issued on May 2, 1997 (HCAR No. 26714); and (2) up to 30 million additional shares of Cinergy common stock, plus certain other shares of Cinergy common stock (totaling approximately 867,000) authorized, but not issued.

[11] Specifically, Applicants proposes that, upon issuance of the requested order, the Project Parent Orders and Commission order dated May 22, 1997 (HCAR No. 26719) (authorizing Cinergy Investments and certain other Cinergy nonutility subsidiaries to pay dividends out of capital or unearned surplus to their respective parent companies through December 31, 2002), be rescinded in their entirety. Applicants also request that the Cinergy Solutions Order and Commission order dated May 30, 1997 (HCAR No. 26723) (authorizing Cinergy and/or Cinergy Investments to issue guarantees on behalf of Cinergy Services, certain Cinergy nonutility subsidiaries, and future rule 58 companies in which Cinergy or its subsidiaries acquires an interest), be rescinded in part and superseded by the requested order to the extent that those prior authorizations relate to guarantees issued by Cinergy.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40348; File No. SR–PCX–98–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the OptiMark System—Specialist Bids and Offers

August 20, 1998

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is proposing to adopt new Rule 15.3(b), which would require Specialists to ensure that their best bids and offers will be represented in the OptiMark System. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

¶*6731 Access*

Rule 15.2. The PCX Application shall be available for all interested members that decide to become Users. *The Exchange will assure that each PCX Specialist is provided with appropriate access to the PCX Application for the purpose of submitting Profiles from the Specialist's Post.* A non-member User may obtain access to the PCX Application only if such access is authorized in advance by one or more Designated Brokers in accordance with the terms of the applicable Give-Up Agreement and the Transmission Consent Agreement. Both agreements shall be in force before a non-member User may be given the authorization to obtain access to the PCX Application. At a minimum, the Give-Up Agreement and the Transmission Consent Agreement shall include any applicable credit limits imposed by the Designated Broker on the non-member User; the Designated Broker's undertaking that it is responsible for that non-member User's Orders and resulting transactions; and such other terms and conditions that may be agreed to from time to time. The Exchange shall be provided with a written statement from the Designated Broker acknowledging its responsibility for such Orders and resulting transactions.

¶*6732 Entry of Profiles and Generation of Orders*

Rule 15.3. Entry of Profiles and General of Orders

(a)—No change.

(b) Specialist Obligations—Specialists must ensure that at all relevant times during regular trading hours, their best bids and offers (whether reflecting limit orders or the Specialist's own interest) will be included in the OptiMark System as Profiles.

(c)–(d) [(b)–(c)]—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The Exchange is proposing to adopt new Rule 15.3(b) to require PCX Specialists to use the PCX Application of the OptiMark System (''PCX Application'') with respect to the bids and offers that they publish. The purpose of the rule is to facilitate best execution of customer orders by requiring PCX Specialists' best bids and offers to be included in the OptiMark System as Profiles. Once included, such trading interest is expected to interact with other trading interest, resulting in improved execution opportunities on the PCX. The Exchange believes that the rule change will facilitate interaction between the PCX Application and existing trading interest on the PCX floors, thereby promoting more efficient and effective market operations.

Specifically, proposed Rule 15.3(b) provides that PCX Specialists must ensure that at all relevant times during regular trading hours, their best bids and offers (whether reflecting limit orders or the Specialist's own interest) will be included in the OptiMark System.

The Exchange is also proposing to modify PCX Rule 15.2 by adding the following provision: ''The Exchange will assure that each Specialist is provided with appropriate access to the PCX Application for the purpose of submitting Profiles from the Specialist's Post.''

Basis

The Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act in that the PCX Application is a facility that is designed to promote just and equitable principles of trade and to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. In addition, the Exchange believes that the proposed rule change is consistent with provisions of Section 11A(a)(1)(B) of the Act, which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which PCX consents, the Commission will:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.