

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27471]

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

November 30, 2001.

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

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 26, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 26, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc., et al. (70-9897)

Allegheny Energy, Inc. ("Allegheny"), a registered holding company; Allegheny Ventures, Inc. ("Ventures"), a direct wholly owned nonutility subsidiary company of Allegheny, both located at 10435 Downsview Pike, Hagerstown, Maryland 21740; Allegheny Energy Supply Company, L.L.C. ("AE Supply"), 4350 Northern Pike, Monroeville, Pennsylvania 15146-2841, a direct wholly owned generating subsidiary company of Allegheny; and Allegheny Energy Global Markets, L.L.C. ("AE Global"), 10435 Downsview Pike, Hagerstown, Maryland 21740, a direct wholly owned subsidiary of AE Supply that will cease to exist upon completion of the requested transactions, ("Applicants"), have filed an application-declaration ("Application") under sections 3(a)(2), 6(a), 7, 9(a), 10, 12(b), 12(c), 12(d), 32 and 33 of the Act,

and rules 43, 44, 45, 46, 53, 54, 90 and 91 under the Act.

I. Background**A. Summary**

Applicants request financing authority and request authority to increase its investment in exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs"). In addition, Applicants seek authority to restructure AE Supply, which includes among other things: reincorporating AE Supply in Maryland; merging AE Global,¹ an energy trading subsidiary formed under rule 58, into the restructured AE Supply ("New AE Supply"); and transferring some of Allegheny's membership interests in generation to New AE Supply. New AE Supply also seeks a section 3(a)(2) exemption from registration.

B. The Allegheny System

Allegheny is a diversified energy company. The Allegheny companies consist of three regulated electric public utility companies, West Penn Power Company ("West Penn"), Monongahela Power Company ("Monongahela Power") and The Potomac Edison Company ("Potomac Edison"), and a regulated public utility natural gas company, Mountaineer Gas Company, which is a wholly owned subsidiary of Monongahela Power (collectively, "Operating Companies and d/b/a, 'Allegheny Power'"). The subsidiaries of Allegheny, other than the Operating Companies and AE Supply are referred to as ("Other Subsidiaries").

AE Supply is an electric generating company for the Allegheny system. AE Supply is a public utility company within the meaning of the Act. AE Supply is not a utility for purposes of state regulation nor is it subject to regulation as an electric public utility in any of the states in which it operates. It also manages and operates electric generation owned by the regulated utilities d/b/a Allegheny Power. AE Supply owns, operates, and markets competitive retail and wholesale electric generation.

Allegheny Ventures, a nonutility subsidiary of Allegheny, actively invests in and develops energy-related projects through its wholly owned subsidiary Allegheny Energy Solutions. Allegheny Ventures also invests in and develops telecommunications projects through Allegheny Communications Connect, Inc., an exempt telecommunications

company ("ETC") under section 34 of the Act.

C. Existing Financing Authority

Under a series of orders ("Money Pool and Financing Orders"),² the Allegheny system companies were authorized to engage in certain financing transactions and to establish and participate in a money pool, among other things. Also, by order dated April 20, 2001, HCAR No. 27383, the Commission authorized Allegheny and/or AE Supply to issue to unaffiliated third parties guarantees, short-term debt, and long-term debt through July 31, 2005, up to an aggregate amount of \$430 million.

II. Requested Financing Authority**A. Summary**

Applicants state that increased financing authority is needed to build new electric generation facilities and to purchase existing generation facilities. Allegheny states that its plans to acquire and/or build additional generating facilities, if consummated, would bring Allegheny's aggregate investment in EWGs and FUCOs in excess of 50% of its consolidated retained earnings.

Through July 31, 2005 ("Authorization Period"), Applicants seek authority for: Allegheny to issue up to \$1 billion in equity securities; Allegheny and AE Supply to issue short-term debt and long-term debt in an aggregate amount up to \$4 billion; and Allegheny and/or its subsidiaries to issue up to \$3 billion in guarantees. The total debt and equity authorization requested is \$4 billion with the option to utilize up to \$1 billion for equity issuance. Also, Applicants request authorization to form capital investment subsidiaries ("Capital Corps"), and for Applicants to engage in intrasystem financings with each other, with the Other Subsidiaries, and between the Other Subsidiaries in an aggregate amount not to exceed \$4 billion outstanding during the Authorization Period ("Intrasystem Financing Limit"). The aggregate amount of financing obtained by Allegheny during the Authorization Period from issuance and sale of preferred securities, when combined with the amount of common stock, short-term debt, long-term debt, and guarantees, issued and then outstanding, shall not exceed \$7 billion ("Aggregate Financing Limit").

¹ AE Supply formed AE Global to acquire Global Energy markets from Merrill Lynch in S.E.C. File No. 70-9833.

² HCAR No. 25462 (January 29, 1992); HCAR No. 25481 (February 28, 1992); HCAR No. 25581 (July 14, 1992); HCAR No. 25919 (November 5, 1993); HCAR No. 26418 (November 28, 1995); HCAR No. 26506 (April 18, 1996); HCAR No. 26804 (December 23, 1997); HCAR No. 27030 (May 19, 1999); HCAR No. 27084 (October 8, 1999); and HCAR No. 27199 (July 14, 2001).

The proceeds will be used for general corporate purposes, including: (1) Payments, redemptions, acquisitions and refinancing of outstanding securities issued by Applicants; (2) acquisitions of and investments in EWGs and FUCOs, provided that Allegheny's aggregate investment in these projects does not exceed the requested limit;³ (3) loans to, and investments in, other system companies; and (4) other lawful corporate purposes permitted under the Act. Proceeds may also be used to invest in, or acquire interests under rule 58 to the extent permitted by rule 58 ("Rule 58 Companies").

B. Financing Parameters

Financings by the Applicants will be subject to the following conditions ("Financing Conditions"): (1) During the Authorization Period, the common stock equity of Allegheny, on a consolidated basis, and of each of the Operating Companies, individually, will not fall below 30% of its total capitalization; (2) Allegheny will maintain its senior unsecured long-term debt rating at investment grade level, as established by a nationally recognized statistical rating organization; (3) the effective cost of money on long-term debt borrowings will not exceed the greater of (a) 400 basis points over comparable term U.S. Treasury securities and (b) the gross spread over U.S. Treasuries that is consistent with similar securities of comparable credit quality and maturities issued by other companies; (4) the effective cost of money on short-term debt borrowings will not exceed the greater of (a) 300 basis points over the comparable term London Interbank Offered Rate ("LIBOR") and (b) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies; (5) the dividend rate on any series of preferred securities will not exceed the greater of (a) 500 basis points over the yield to maturity of a comparable term U.S. Treasury security and (b) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies; (6) the underwriting fees, commissions, and other similar remuneration paid in connection with the non-competitive issue, sale or

distribution of a security will not exceed 5% of the principal or total amount of the security being issued; (7) the maturity of long-term debt will be not less than one year and not exceed thirty years; and (8) short-term debt will have a maturity of not less than one day and not more than 364 days.

C. Short-Term and Long-Term Debt

Allegheny and AE Supply request authorization, through the Authorization Period, to issue and sell an aggregate of up to \$4 billion of short-term debt and/or long-term debt at any time outstanding to non-associate banks and/or other parties. Debt of AE Supply may be nonrecourse to Allegheny. Also, through the Authorization Period, Allegheny seeks authorization to transfer some or all of the debt proceeds into AE Supply in the form of contributions or interest-bearing loan(s).

D. Common and Preferred Stock

Allegheny proposes to issue, through the Authorization Period, up to \$1 billion at any time outstanding of equity securities. Allegheny may issue common stock or options, warrants or other stock purchase rights exercisable for common stock in public or privately negotiated transactions for cash or as consideration for the equity securities or assets of other companies, provided that the acquisition of any such equity securities or assets has been authorized in this proceeding or in a separate proceeding or is exempt under the Act or the rules under the Act. Allegheny common stock issued in connection with acquisitions of companies shall be valued, for purposes of determining compliance with the Aggregate Financing Limit, at its market value as of the date of issuance (or if appropriate at the date of a binding contract providing for the issuance).

Allegheny seeks to have the flexibility to issue its authorized preferred stock or other types of preferred securities (including, without limitation, trust preferred securities or monthly income preferred securities) directly or indirectly through one or more special-purpose financing subsidiaries organized by Allegheny. Preferred stock or other types of preferred securities may be issued in one or more series with such rights, preferences, and priorities as may be designated in the instrument creating each series, as determined by Allegheny's board of directors. Dividends or distributions on preferred securities will be made periodically and to the extent funds are legally available for this purpose, but may be made subject to terms which allow the issuer to defer dividend

payments for specified periods. Preferred securities may be convertible or exchangeable into shares of Allegheny common stock or unsecured indebtedness.

Stock financings may be affected in accordance with underwriting agreements of a type generally standard in the industry. Public distributions may be made through 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. All stock sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

E. Guarantees

Allegheny proposes to enter into Guarantees from time to time with respect to the obligations of the Operating Companies, AE Supply and the Other Subsidiaries of Allegheny ("Allegheny Guarantees") during the Authorization Period in an aggregate principal amount, together with the Subsidiary Guarantees (as defined below), not to exceed \$3 billion ("Aggregate Guarantee Limitation"), based on the amount at risk, outstanding at any one time, exclusive of (1) any guarantees or credit support arrangements authorized by the Commission in separate proceedings and (2) any guarantees exempt under rule 45(b). Allegheny seeks to provide credit support in connection with AE Supply's purchase and operation of generation assets and in connection with the trading by AE Global in the ordinary course of AE Global's energy marketing and trading activities and for other purposes.

In addition, the Applicants request authorization for AE Supply and the Other Subsidiaries to enter into Guarantees from time to time, with respect to the obligations of any of the Other Subsidiaries, as may be appropriate, to enable AE Supply and/or the Other Subsidiaries to carry on their respective businesses ("Subsidiary Guarantees") in an aggregate principal amount, together with the Allegheny Guarantees, not to exceed the Aggregate Guarantee Limitation, based on the amount at risk, outstanding at any one time. The Aggregate Guarantee Limitation excludes: (1) Any such guarantees or credit support arrangements authorized by the Commission in separate proceedings and (2) any such guarantees exempt under rule 45(b).

³ Allegheny seeks authority to apply the proceeds of equity issuances, short-term debt, long-term debt and guarantees to increase its "aggregate investment" in EWGs and FUCOs up to \$2.0 billion, or 207% of its consolidated retained earnings. Applicants state that Allegheny's aggregate investment in EWGs and FUCOs as of March 31, 2001 was approximately \$462 million, or 49% of its consolidated retained earnings.

Allegheny, AE Supply, or the Other Subsidiaries which issues a guarantee may charge a fee for each guarantee it provides, which fee will not exceed the cost of obtaining the liquidity necessary to perform the guarantee.

F. Capital Corporations

Applicants seek authorization to form one or more Capital Corps as direct or indirect subsidiaries. Capital Corps will be limited liability companies, corporations, trusts, partnerships or other entities formed to engage in tax efficient and financially efficient transactions with Applicants or any of their respective subsidiaries for the acquisition of EWGs and FUCOs, Rule 58 Companies, and other general corporate purposes permitted under the Act.

Applicants seek authorization through the Authorization Period to: (1) Make capital contributions to the Capital Corps in exchange for equity ownership; (2) have Capital Corps make interest-bearing loan(s) of up to \$4 billion to AE Supply evidenced by note(s); and (3) permit Capital Corps, as the loan(s) are repaid, to make additional borrowings available to AE Supply and its subsidiaries from the interest and principal payments it receives. Any intrasystem loans will count against the Intrasystem Financing Limit. These borrowings will be used for authorized acquisitions, EWGs and FUCOs, Rule 58 Companies, or other corporate purposes. The Applicants state that the loans will not affect Applicants' debt-equity ratio and will provide for a tax efficient capital structure.

Applicants also request authorization for Capital Corps to serve as financing entities and to issue debt and equity securities, including trust preferred securities, to third parties in the event the issuances are not exempt under rule 52. Specifically, Applicants request authorization to: (1) Issue debentures or other evidences of indebtedness to financing entities in return for the proceeds of the financing; (2) acquire voting interests or equity securities issued by the financing entities to establish ownership of the financing entities; and (3) guarantee financing entities' obligations.

Applicants and the Other Subsidiaries may enter into expense agreements with their respective financing entity, and they would agree to pay all expenses of the financing entity.

Any amounts issued by the financing entities to third parties under these authorizations will count against the Aggregate Financing Limit. However, the underlying intrasystem mirror debt and guarantee will not count against any

applicable Intrasystem Financing Limit or the separate guarantee limits applicable to Allegheny or the subsidiary.

G. Intrasystem Financings

Applicants request authorization to engage in intrasystem financings with each other, with the Other Subsidiaries, and between the Other Subsidiaries in an aggregate amount not to exceed \$4 billion outstanding during the Authorization Period. Financings will be in the form of cash capital contributions, open account advances and/or loans. The interest rate on intrasystem loans payable by a borrowing company will parallel the cost of capital of the lending company. This request excludes: (1) Financings that are exempt under rules 45(b) and 52, as applicable; and (2) amounts outstanding from time to time under the Money Pool and Financing Orders. Loans made by the Capital Corps to AE Supply and its subsidiaries will count against this Intrasystem Financing Limit to the extent described.

H. Interest Rate and Currency Risk Management

Applicants request authority 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 interest rate and currency swaps, caps, floors, collars and forward agreements or any other similar agreements ("Instruments") in connection with the issuance and sale of the short-term debt and long-term debt described. Applicants will employ Instruments as a means of prudently managing the interest rate and currency risks associated with any of their outstanding debt issued under this Application or an applicable exemption by, in effect, synthetically (1) Converting variable rate debt to fixed rate debt, (2) converting fixed rate debt to variable rate debt, (3) limiting the impact of changes in interest rates resulting from variable rate debt; and (4) hedging currency exposures of foreign currency denominated debt. In addition, Applicants may utilize Instruments for planned issuances of debt securities in order to lock-in current interest rates and or to manage interest rate and currency risks in future periods. The notional amount of any Instruments will not exceed that of the underlying debt instrument. Applicants will not engage in "speculative" transactions, and agree to only enter into Instruments with counterparties which have, or whose obligations are guaranteed by a party with, senior debt ratings, as published

by Standard & Poor's, that are greater than or equal to "BBB+," or an equivalent rating from Moody's Investors Service, Inc. or Fitch IBCA, Inc. Applicants represent that the Instruments to be entered into will qualify for hedge accounting treatment under GAAP. Allegheny will comply with the financial disclosure requirements of the Financial Accounting Standards Board.

I. Payment of Dividends

Applicants request authorization for AE Supply and the Other Subsidiaries to pay dividends, from time to time through the Authorization Period, out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law. Applicants anticipate that there will be situations in which one or more of their respective direct or indirect subsidiaries will have unrestricted cash available for distribution in excess of any such company's current and retained earnings. In such situations, the declaration and payment of a dividend would have to be charged, in whole or in part, to capital or unearned surplus.

III. Request To Reorganize AE Supply

Applicants seek authority to restructure AE Supply ("Restructuring"). First, AE Supply will be reincorporated in Maryland by forming a new corporation in Maryland ("New AE Supply") and then merging AE Supply with and into New AE Supply. New AE Supply is the surviving entity.

In addition, the proposed Restructuring, will include: (a) The transfer from Allegheny to New AE Supply of, and the reorganization of, Allegheny Energy Supply Hunlock Creek, LLC ("Hunlock Creek")⁴ and Green Valley Hydro, LLC ("Green Valley");⁵ (b) the reorganization of Allegheny Energy Supply Conemaugh, LLC ("Conemaugh")⁶ and Allegheny

⁴ The transfer of Hunlock Creek will be made as a capital contribution in the amount of the book value of approximately \$21 million. New AE Supply will form a new single-member Delaware limited liability company to be referred to as Hunlock Creek II. New AE Supply proposes to merge Hunlock Creek with and into Hunlock Creek II, with Hunlock Creek II as the surviving entity.

⁵ The transfer of Green Valley will be made as a capital contribution in the amount of the book value of approximately \$2 million. New AE Supply will form a new single-member Virginia limited liability company to be referred to as Green Valley II. New AE Supply proposes to merge Green Valley with and into Green Valley II, with Green Valley II as the surviving entity.

⁶ New AE Supply will form a single-member Delaware limited liability company, to be referred to as Conemaugh II. New AE Supply proposes to

Generating Company ("AGC");⁷ and (c) the merger of AE Global with and into New AE Supply.

New AE Supply seeks a section 3(a)(2) exemption from registration under the Act. As a Maryland corporation, New AE Supply will be predominantly a public utility company whose operations do not extend beyond the state of organization and states contiguous thereto. New AE Supply will operate in Maryland, its state of incorporation, and in Virginia, West Virginia, and Pennsylvania, which are all contiguous to Maryland.

New AE Supply will be a holding company solely through its ownership of the following public utility companies: (a) Conemaugh; (b) Green Valley; and (c) AGC. Each of these entities was formed under the laws of Delaware and is exclusively engaged in selling power at wholesale.⁸

As part of the restructuring, Allegheny Energy Service Corporation ("AESC") proposes to expand the scope of services to be provided to New AE Supply to include energy trading activities. AESC will engage in the trading activities solely as agent on behalf of New AE Supply. All trades will be booked at New AE Supply, and will not affect the financial condition or operations of AESC or the Operating Companies. AESC and New AE Supply, as successor to AE Supply, request authority to revise the service agreement to provide for AESC to effect trading transactions for and on behalf of New AE Supply involving electricity and other types of energy commodities, and hedging and/or financial transactions, including derivatives, future contracts, options and swaps, including, without limitation, electric power, oil, natural and manufactured gas, emission allowances, coal, refined petroleum products and natural gas liquids and to provide incidental related services, such as fuel management, storage and procurement services. All services will be provided by AESC at cost computed in accordance with rules 90 and 91 under the Act.

merge Conemaugh with and into Conemaugh II, with Conemaugh II as the surviving entity.

⁷ New AE Supply will form a single-member Virginia limited liability company, to be referred to as AGC, LLC. New AE Supply proposes to merge AGC with and into AGC, LLC, with AGC, LLC as the surviving entity. The purpose of the reorganization of AGC is to effect a "liquidation" of AGC for tax purposes, which may enhance the tax treatment to Allegheny in the future, while maintaining AGC, LLC as a separate legal entity.

⁸ At an appropriate time, AE Supply will seek to certify each entity as an EWG under section 32 of the Act. In the interim, they will remain public utility companies under the Act.

Alabama Power Company (70-9955)

Alabama Power Company ("Alabama Power"), 600 North 18th Street, Birmingham, Alabama 35291, a wholly owned public utility subsidiary of The Southern Company, a registered holding company, has filed a declaration under section 12(d) of the Act, and rules 44 and 54 under the Act.

Alabama Power proposes to sell, from time to time prior to December 31, 2006, distribution line poles located in Alabama to non-affiliated telephone and other non-electric utility companies ("Purchasers"). Alabama Power would convey the poles to the Purchasers by a bill of sale for a negotiated cash sale price that would exceed Alabama Power's average book value for the number of distribution poles of each class being sold, and the aggregate price of the sales would not exceed \$30 million. The conveyance would include a release of the poles from Alabama's first mortgage indenture lien. The \$30 million authority requested is in addition to any exceptions otherwise provided by rules under the Act relating to sales of utility securities or assets.

Alabama Power and each Purchaser have or will have entered into a joint use agreement under which each party may attach facilities to poles belonging to the other party, with each party obligated to the other for rental of space on poles owned by the other party. The proposed sale of poles is for the purpose of equalizing the rental payments under those joint use agreements, and it is anticipated that there will be no substantial change in the use of the poles.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25305; File No. 812-12544]

Touchstone Variable Series Trust, et al.

December 3, 2001.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of an application for an order of exemption pursuant to Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") granting relief from Sections 9(a), 13(a), 15(a) and 15(b)

of the 1940 Act and Rules 6e-2 and 6e-3(T) thereunder.

Applicants: Touchstone Variable Series Trust and Touchstone Advisors, Inc. (collectively, "Applicants").

Summary of Application: Applicants seek an order of exemption from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder to the extent necessary to permit shares of any current or future series of Touchstone Variable Series Trust ("TVST") and shares of any other investment company that is offered as a funding medium for insurance products and for which Touchstone Advisors, Inc. ("Touchstone Advisors" or the "Manager") or any affiliates thereof may now or in the future serve as manager, investment adviser, sub-adviser, administrator, principal underwriter or sponsor (TVST and such future investment companies are collectively referred to herein as the "Trusts" and individually as a "Trust"; the current and future series of the Trusts are collectively referred to herein as the "Funds" and individually as a "Fund") to be sold and held by: (1) Variable annuity and variable life insurance separate accounts ("Participating Separate Accounts") of both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies"); (2) qualified pension and retirement plans ("Participating Plans") outside the separate account context; and (3) the Manager and any other affiliated and unaffiliated registered investment advisor (each, a "Subadvisor") retained by the Manager to manage the portfolio securities of a Touchstone Fund, and any affiliate of the Manager and affiliates of the Subadvisors (collectively, the "Participating Investors").

Filing Date: The original application was filed on June 5, 2001. An amended and restated application was filed on November 28, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 28, 2001, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a