FOR FURTHER INFORMATION CONTACT: James Kottan, Project Manager, Decommissioning and Laboratory Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5214, fax (610) 337–5269 and/or e-mail *jjk@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering amending Byproduct Materials License Number 37–17860–02 issued to the Pennsylvania Department of Environmental Protection, Bureau of Radiation Protection (PADEP, BRP) to authorize the decommissioning of the Quehanna Facility located at 115 Reactor Road, Karthaus, Clearfield County, Pennsylvania. In support of this action, the NRC staff has prepared an Environmental Assessment (EA) in accordance with the requirements of 10 CFR part 51.

In a letter dated February 26, 2003, PADEP, BRP submitted a request to renew Byproduct Materials License Number 37–17860–02, including submittal of a revised decommissioning plan (DP), to obtain authorization to decommission the Quehanna Facility. In subsequent letters dated June 4, 2003, and June 18, 2003, PADEP, BRP provided responses to an NRC request for additional information regarding the DP. The request, currently before the NRC, involves removing the hot cell complex and embedded drain lines at the facility and decontaminating the remaining portions of the facility to meet the unrestricted release criteria.

Based upon the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. Summary of EA

An EA has been performed to evaluate the environmental impacts of PADEP, BRP's request for NRC's approval for PADEP, and BRP to decommission the Quehanna Facility. In accordance with the conditions currently described in its license, the licensee has been performing remediation of residual radioactivity from internal building equipment and components. The radioactive contamination at PADEP, BRP's Karthaus, Pennsylvania site consists of building and equipment surfaces contaminated with strontium-90 (Sr-90) from licensed operations that occurred from the late 1950s until 1967.

The hot cell complex at this facility will be removed in order to expose the basement below for decontamination and embedded and buried drain lines will be removed. The remaining structures will be decontaminated as necessary to meet the unrestricted release criteria, and left in place. PADEP, BRP plans to use dismantlement and deconstruction techniques, such as cutting and drilling in taking the hot cells down. Coring and drilling equipment, back hoes, and mobile cranes will be used to remove/dismantle and to size reduce concrete or concrete masonry unit (CMU) structures. Steel reinforcement bars will be torch-cut, sheared, or saw-cut as required for dismantlement, leveling, or size reduction purposes. Radioactive waste generated as a result of decommissioning activities will be transported offsite by truck for disposal. PADEP, BRP estimates that approximately 300 cubic yards of radioactive waste will leave the site over the duration of the decommissioning project. The duration of the proposed action will be approximately 1.5 years.

The licensee's February 26, 2003, license renewal request was noticed in the **Federal Register** on August 4, 2003 (68 FR 45859). This **Federal Register** notice also provided an opportunity for a hearing on this licensing action.

III. Finding of No Significant Impact

Pursuant to 10 CFR part 51, NRC has prepared the EA, summarized above. On the basis of the EA, the NRC has concluded that this licensing action would not have any significant effect on the quality of the human environment, and, therefore, an environmental impact statement is not required. NRC believes that the approval of the license renewal will not cause any significant impacts on the human environment and is protective of human health. The NRC staff has concluded that exposures to workers will be low and well within the limits specified in 10 CFR part 20. Decommissioning activities as proposed by the renewal will result in a reduction of radioactive material at the PADEP, BRP site in Karthaus, which will reduce the long term potential for release of radiological contamination to the environment. No radiologically contaminated effluents are expected during hot cell dismantlement and deconstruction and decontamination activities. No radiation exposure to any member of the public is expected, and public exposure will therefore also be less than the applicable public exposure limits of 10 CFR part 20.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (Accession Number: ML030800038). These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania, 19406.

Dated at King of Prussia, Pennsylvania, this 17th day of September, 2003.

For the Nuclear Regulatory Commission.

Ronald R. Bellamy,

Chief, Decommissioning and Laboratory Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–24475 Filed 9–26–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27723]

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

September 23, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission under 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 October 17, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 17, 2003 the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy Inc., et al. (70–10100)

Allegheny Energy Inc. (''Allegheny''), a registered holding company, and Allegheny Energy Supply Company LLC

(''AE Supply''), a registered holding company and public utility subsidiary of Allegheny, 10435 Downsville Pike, Hagerstown, Maryland 21740, have filed a post effective amendment (''Application'') to a previous application-declaration under sections 6(a), 7 and 12(c) of the Act and rules 45, 46, and 54 under the Act.

Allegheny and AE Supply (collectively, ''Applicants'') request that the Commission release jurisdiction it reserved in a previous order dated February 21, 2003 (Holding Co. Act Release No. 27652) (''Capitalization Order'') over the authority of AE Supply to issue guarantees. In addition, Applicants request authority for AE Supply's subsidiaries, Allegheny Trading Finance Company (''ATF'') and Allegheny Energy Supply Development Services LLC (''AESDS''), to dividend to AE Supply out of capital up to the full amount of the proceeds of certain asset sales. Applicants state that all of the authority requested in this Application is necessary to implement elements of Applicants' plan for returning to financial health and compliance with Commission standards for registered holding company capital structures.

The Capitalization Order granted for a period through December 31, 2003 (''Modified Authorization Period'') modifications to certain authorizations the Commission granted to the Applicants by order dated December 31, 2001 (Holding Co. Act Release No. 27486 (''Original Financing Order''), as supplemented by orders dated April 17, 2002 (Holding Co. Act Release No. 27521) (''April Order'') and October 17, 2002 (Holding Co. Act Release No. 27579) (''Supplemental Order'' and together with the Original Financing Order and the April Order, ''Financing Order'').

In the Original Financing Order, the Commission authorized, among other things:

(i) Allegheny and/or its subsidiaries, including AE Supply, to enter into guarantees (''Allegheny Guarantees'') with respect to the obligations of its subsidiaries in an aggregate principal amount not to exceed $3 billion (''Aggregate Guarantee Limitation''), based on the amount at risk outstanding at any one time, exclusive of (a) any guarantees or credit support arrangements authorized by the Commission in separate proceedings and (b) any guarantees exempt under rule 45(b); and

(ii) Applicants' subsidiaries, other than their operating companies,[1] (''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 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.

In the Capitalization Order, the Commission modified the financing parameters that are conditions to the financing transactions authorized in the Financing Order, as follows (''Revised Financing Conditions''):

(i) The common equity of Allegheny, on a consolidated basis, will not fall below 28 percent of its total capitalization; and the common equity of AE Supply, on a consolidated basis, will not fall below 20 percent of its total capitalization (''Common Equity Conditions'');

(ii) The effective cost of capital on any security issued by Allegheny or AE Supply will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that in no event will (a) the interest rate on any debt securities issued under a bank credit facility exceed the greater of (i) 900 basis points over the comparable term London Interbank Offered Rate [2] or (ii) the sum of 9 percent plus the prime rate as announced by a nationally recognized money center bank, and (b) the interest rate on any debt securities issued to any other financial investor exceed the sum of 12 percent plus the prime rate as announced by a nationally recognized money center bank; and

(iii) The underwriting fees, commissions and other similar remuneration paid in connection with the non-competitive issuance of any security issued by Allegheny or AE Supply will not exceed the greater of (a) 5 percent of the principal or total amount of the securities being issued or (b) issuances expenses that are paid at the time in respect of the issuance of securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality;

(iv) The respective financing transactions will not be subject to the requirement to maintain either unsecured long-term debt or any commercial paper that may be issued at investment grade level; and

(v) The Applicants may issue short-term and/or long-term debt under circumstances when the debt, upon issuance, is either unrated or is rated below investment grade.

In addition, the Capitalization Order reserved jurisdiction over (a) the financing authorizations at a time that the common equity ratio levels of Allegheny and AE Supply were below 28 percent and 20 percent, respectively, and (b) the issuance of debt securities at an interest rate in excess of the modified interest rates. By order dated July 23, 2003 (Holding Co. Act Release No. 27701) (''July 23 Order''), the Commission released jurisdiction over the issuance by Allegheny of up to $325 million of convertible trust preferred securities through a newly organized Capital Corp (as defined in the Original Financing Order), with the proceeds to be provided to Allegheny in exchange for its subordinated debentures, with warrants.

As of December 31, 2002, Allegheny's common equity on a consolidated basis was below the 28 percent common equity ratio required by the Capitalization Order. In addition, AE Supply's common equity ratio may be below 20 percent. Applicants, therefore, seek in this Application a release of jurisdiction over guarantee authority that AE Supply requires in order to complete specific transactions described below. Completion of these transactions constitutes a part of the plan developed by the Applicants for resolution of their current financial difficulties, as described in their application submitted to the Commission on July 17, 2003, as amended on July 23, 2003, seeking authorization to issue the securities in the July 23 Order (''Trust Preferred Securities Application''). The dividend authority for ATF and AESDS requested in this Application also is necessary to implement this plan fully.

I. Background Information

The Applicants state that they continue to make significant progress toward the resolution of their financial difficulties. On July 25, 2003, Allegheny completed its private placement of $300 million of convertible trust preferred securities, as authorized by the July 23 Order. On July 28, 2003, AE Supply announced that its subsidiary ATF had entered into an agreement to sell its

[1] West Penn Power Company (''West Penn''), Monongahela Power Company (''Monongahela''), Potomac Edison Company (''Potomac Edison'') and Mountaineer Gas Company, a subsidiary of Monongahela, are referred to in this Application as the ''Operating Companies'').

[2] It should be noted, however, that the interest rate applicable after the occurrence of a default may be increased by an additional increment, typically 200 basis points.

energy supply contract with the California Department of Water Resources (''CDWR Contract'') and associated hedge transactions (collectively, ''West Book'') to J. Aron & Company (''Aron''), a division of The Goldman Sachs Group, for $405 million, subject to adjustments for market price changes and hedge transactions not transferred. On September 15, 2003, AE Supply and ATF announced that they completed the sale of the West Book to Aron for $354 million. Much of the adjustment from the estimated sale price, previously announced on July 28, 2003, is attributable to contracts with one counterparty, valued at $38.6 million, which were removed from the sale by mutual agreement of the parties. Changes in the mark-to-market value of the remaining contracts at closing and reduction in the number of remaining trades assumed by Aron, account for the rest of the adjustment. The proceeds from the sale will be applied, in large part, to finance the termination of tolling agreements with Williams Companies, Inc. and Las Vegas Cogeneration II and certain related hedging arrangements. In addition, Allegheny will have deposited, after certain escrow funds are released and under authorization by certain of its creditors, the remainder of the proceeds (estimated to be approximately $75 million) in a cash collateral account for the benefit of certain of its lenders.[3] These funds will be available to reduce the amount of AE Supply's debt that must be refinanced should Allegheny receive Commission authorization and then decide to refinance its bank borrowings.

Sale of the West Book and the sale of the securities authorized by the July 23 Order are the major components of Allegheny's plan to return to financial health. In addition, AE Supply and its subsidiaries—Allegheny Energy Supply Conemaugh LLC, Allegheny Energy Supply Hunlock Creek LLC, Allegheny Trading Finance Company, and Allegheny Energy Supply Development Services LLC—have entered into asset sales agreements described below, which also are an important part of this plan. Applicants state that the authority they seek in this Application is important to obtaining full value from these transactions. The resulting proceeds will make available significant additional cash, which can be used to reduce debt and improve the common equity of the Applicants. In short, authority sought in this Amendment will assist directly in permitting the Applicants to achieve the capitalization standards required by the Commission.

[3] As a condition to closing, Aron escrowed $71 million of the proceeds pending an order from the Commission authorizing AE Supply to undertake the guarantees connected with the sale of the West Book.

II. Summary of Financing Request

Applicants are seeking a release of jurisdiction by the Commission over authority of AE Supply to engage in certain guarantee and other transactions. In the Capitalization Order, the Commission reserved jurisdiction over the financing authorizations granted in the Financing Order if the Applicants' capitalization did not meet the Common Equity Conditions. Applicants request that the Commission release jurisdiction over $600 million of the Aggregate Guarantee Limitation, which AE Supply will utilize to undertake the guarantee obligations summarized below. To date, Allegheny and its subsidiaries have used $42.6 million of $3 billion Aggregate Guarantee Limitation.

A. Hunlock Guarantees

By agreement, AE Supply agreed to seek authority from the Commission to guarantee certain obligations of Allegheny Energy Supply Hunlock Creek, LLC (''Hunlock''), an exempt wholesale generator (''EWG'') and wholly-owned subsidiary of Allegheny. Hunlock owns a 50 percent general partner interest in Hunlock Creek Energy Ventures (the ''Hunlock Partnership''), which also is an EWG. UGI Hunlock Development Company (''UGI Hunlock'') owns the remaining partnership interests in the Hunlock Partnership. The Hunlock Partnership owns a 44 MW combustion turbine generator and a 48 MW coal-fired generation facility known as the Hunlock Creek Electric Generating Station located in Hunlock Creek, Pennsylvania (''Hunlock Power Station'').

In entering into the Hunlock partnership agreement (''Hunlock Partnership Agreement''), Hunlock and UGI Hunlock granted to each other certain put and call options, which, among other things, gave UGI Hunlock the right, for five years from the date of the agreement (December 8, 2000) to cause AE Supply to purchase the combustion turbine and/or the Hunlock Power Station from the Hunlock Partnership for a purchase price of $15 million plus the value of all the Hunlock Power Station's inventory, and a price for the combustion turbine equal to its then current book value. The current combined price for the combustion turbine and the Hunlock Power Station is estimated at approximately $42 million, which exceeds the current estimate of the fair market value of this property. The Hunlock Partnership Agreement also gave Hunlock the right to require the Hunlock Partnership to sell the Hunlock Power Station (but not the combustion turbine) to AE Supply at any time following the failure of UGI Hunlock to participate in certain expansion projects. Because Hunlock, not AE Supply, was the signatory to the Hunlock Partnership Agreement, a *bona fide* dispute arose concerning which company—Hunlock or AE Supply—had the rights and obligations under the Hunlock Partnership Agreement.

AE Supply and Hunlock sought to extend the terms of the put and call options under the Hunlock Partnership Agreement, which currently are exercisable, and to clarify that Hunlock, not AE Supply, would be the obligor on the put option (''Hunlock Obligation''). They also agreed that AE Supply would guarantee the Hunlock Obligation upon receipt from the Commission of authority under the Act to do so. The put and call options were, therefore, amended to provide that they could be exercised only for ninety days following January 1, 2006, with Hunlock confirmed to be the obligor under the put option. AE Supply paid $3 million to UGI Development (UGI Hunlock's parent) in exchange for UGI Development and UGI Hunlock releasing AE Supply from any current obligation it had under the put option of the Hunlock Partnership Agreement. In addition, UGI Hunlock and Hunlock agreed to extend the terms of the put and call options under the Hunlock Partnership Agreement and clarify that Hunlock would be the obligor under the Hunlock Partnership Agreement.

Applicants therefore request authority for AE Supply to guarantee Hunlock's obligations under the Hunlock Obligation. Entering into this guarantee will allow AE Supply to maximize the proceeds from the sale, which is described below, of interests in the Conemaugh Generating Station near Johnstown, Pennsylvania (''Conemaugh Interest'').[4] Depending upon market prices for generating plants in 2006, AE Supply could be called upon to perform Hunlock's obligations to purchase the

[4] The $5 million of the sale price for the Conemaugh Interest placed into escrow will be released at the earlier of (a) the time that AE Supply enters into an agreement to guarantee Allegheny Energy Supply Conemaugh LLC's indemnification obligations and an agreement to guarantee the Hunlock Obligation, or (b) April 15, 2006. Therefore, the guarantee of Hunlock's obligations under the Hunlock Obligation is a precondition to an expeditious release from escrow of the $5 million of the proceeds of the sale of the Conemaugh Interest.

combustion turbine and the Hunlock Power Station at a price that would be greater than their then current market value.

B. Conemaugh Guarantees

On February 25, 2003, AE Supply and its wholly-owned subsidiary, Allegheny Energy Supply Conemaugh, LLC (''Conemaugh''), an EWG under the Act, entered into an agreement (''Conemaugh Agreement'') to sell the Conemaugh Interest, which is an 83-megawatt (''MW'') share of the 1,711–MW coal-fired Conemaugh Generating Station, to UGI Development Company (''UGI Development''), an indirect, wholly owned subsidiary of UGI Corp. (''UGI''). The agreed upon sale price was approximately $51.25 million, subject to a $3 million credit in favor of UGI Development. That sale supplied (and the return on the aggregate $6 million placed into two escrows will supply) cash needed to reduce debt and is part of Allegheny's overall plan to return to financial health.

Under the Conemaugh Agreement, AE Supply and Conemaugh agreed, jointly and severally, to indemnify UGI Development, its affiliates, and their respective directors, officers, employees, agents and representatives (collectively, ''UGI Parties'') against certain losses arising in the event of a breach of the Conemaugh Agreement. Any requirement that AE Supply in fact indemnify a UGI Party under its joint and several obligations for a breach by Conemaugh would represent a guarantee of the obligations of its subsidiary, which would be contrary to the Capitalization Order as long as the capitalization standards set forth in that order are not met. In addition, although the sale of the Conemaugh Interest resulted in Conemaugh exiting the generation business, to the extent it retains EWG status, indemnification of its obligations by AE Supply also could have been viewed as an additional investment in an EWG. The additional investments would be contrary to the Capitalization Order as long as the Common Equity Conditions are not met.

For these reasons, the parties amended the Conemaugh Agreement to delete all obligations of AE Supply to indemnify the UGI Parties for losses arising out of breaches of the Conemaugh Agreement by Conemaugh. The sale price for the amended transaction was $51.25 million, without a $3-million credit for UGI Development. The parties agreed that $5 million of the sale price for the Conemaugh Interest would be placed into escrow until the earlier of (i) the time when AE Supply entered into an agreement to guarantee Conemaugh's indemnification obligations (''Conemaugh Obligations'') and an agreement to guarantee the Hunlock Obligation or (ii) April 15, 2006 (''Escrow Termination Date''). Prior to the Escrow Termination Date, UGI will be entitled to distributions in accordance with the Conemaugh Obligations or the Hunlock Obligation. Furthermore, the parties entered into an agreement (''Filing Agreement'') to require AE Supply to file with the Commission for authority to guarantee the Conemaugh Obligations and the Hunlock Obligation within 60 days of the closing (June 26, 2003) of the sale of the Conemaugh Interest. AE Supply deposited $1 million into escrow to guarantee its obligation to file with the Commission as set forth in the Filing Agreement. The parties also agreed that AE Supply would enter into an agreement to guarantee the Conemaugh Obligations and the Hunlock Obligation upon receipt from the Commission of authority under the Act to do so.

Applicants, therefore, are requesting that the Commission authorize AE Supply to guarantee those obligations. Applicants state that this authority is appropriate because the burden of undertaking this guarantee obligation easily is offset by the benefits the Allegheny system currently derives through the sale of the Conemaugh Interest and will derive from the receipt of the portion of the sale price currently held in escrow.

Applicants state that the indemnification obligations that AE Supply would guarantee are customary obligations of sellers of assets of this type. They fall into four broad classes, viz., obligations to indemnify for losses arising out of: (i) Breaches by Conemaugh of its obligations under any of its covenants or agreements contained in the Conemaugh Agreement or the agreement relating to the Hunlock facility; (ii) breaches by Conemaugh of its representations and warranties made in the Conemaugh Agreement, (iii) certain liabilities or obligations of Conemaugh or associated with its ownership of the Conemaugh Interest, and (iv) the failure of Conemaugh to comply with the provisions of any applicable bulk sales or transfer laws. This list of obligations and liabilities that AE Supply would guarantee is typical of the guarantee or indemnification obligations that parent companies normally provide in a commercial context, according to the Applicants.

In addition, Conemaugh only has an obligation to indemnify UGI Parties to the extent the UGI Parties' losses subject to indemnification exceed $500,000; however, this limitation on indemnification does not apply to losses related to breaches of Conemaugh's representations and warranties regarding title to the Conemaugh Interest or to breaches of its covenants or agreements. Applicants, therefore, submit that the undertaking by AE Supply of the proposed guarantee obligations is partially mitigated and that the remaining risk is outweighed by the benefits that will accrue to the Allegheny system through the return of the escrowed funds and the use of the escrowed funds to reduce debt.

C. West Book Guarantees and Dividend Authority

As noted above, AE Supply and its subsidiary ATF completed the sale of the West Book to Aron.

i. Guarantee Authority

AE Supply has agreed as part of the West Book sale to seek authority from the Commission to guarantee ATF's payment obligations under the sales agreement. ATF was established for the sole purpose of owning the CDWR Contract and performing obligations under that contract. Accordingly, upon the distribution of the proceeds of the sale of the contract from ATF to AE Supply, ATF would be left without resources to meet indemnification obligations, if any arise. ATF's potential payment obligations under the sales agreement consist of indemnification paid to Aron and its affiliates for losses they incur arising out of breaches of representations, warranties, covenants, agreements and other obligations contained in or connected with the sales agreement.

Other obligations of ATF that AE Supply would guarantee include a duty to operate its business prior to closing in accordance with past practice; to provide Aron with access to books and records relating to the contracts and to cooperate in the exchange of information, to use its best efforts to obtain necessary regulatory approvals, to notify Aron of significant changes in facts and circumstances, to pay all taxes attributable to the transfer of the contracts, and to file tax returns relating to the contracts for all periods prior to the closing date. ATF also has agreed to indemnify Aron against losses incurred as a result of certain specified pending class-action litigations relating to wholesale sales of electricity in California, which would be guaranteed by AE Supply under the authority sought. ATF's indemnification obligations are subject to a $2 million deductible. Applicants do not believe

any indemnification obligation is likely to arise. Under the sales agreement, until AE Supply receives authority to guarantee ATF's obligations, 20 percent of the proceeds of the West Book sale will be held in escrow to support ATF's indemnity obligation and will be unavailable to reduce debt at AE Supply.

ii. Dividend Authority

Finally, Applicants seek authority for ATF to dividend out of capital to AE Supply up to the full amount of the cash proceeds of the sale of the CDWR Contract. The CDWR Contract is ATF's only significant asset; and following completion of its sale, ATF will not engage in other business activities. The dividends themselves are necessary to allow AE Supply to reduce debt and fully implement its plans for returning to financial health and compliance with the Commission's capitalization requirements.

Finally, AESDS, which engages in generation facility development, has entered into an agreement to sell a combustion turbine currently held in inventory for a purchase price of $8 million, subject to certain adjustments. This turbine does not constitute ''utility assets,'' as defined in Section 2(a)(18) of the Act. Applicants request authority for AESDS to dividend up to the full amount of the proceeds of this sale to AE Supply, which will use these proceeds for general corporate purposes and to enhance its liquidity. Applicants expect that AESDS will conduct no further business following completion of the sale and the dividending of the proceeds of the asset sale to AE Supply.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24500 Filed 9–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26181; 812–12952]

Franklin Floating Rate Trust, et al.; Notice of Application

September 23, 2003.

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

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management companies to issue multiple classes of shares and to impose asset-based distribution fees and early withdrawal charges. The order would supercede a prior order (''Prior Order'').[1]

APPLICANTS: Franklin Floating Rate Trust (''FR Fund''), Franklin Mutual Recovery Fund (''FMR Fund,'' together with FR Fund, the ''Funds''), Franklin Advisers, Inc. (''Franklin Advisers''), Franklin Mutual Advisers, LLC (''Mutual Advisers,'' together with Franklin Advisers, the ''Advisers''), Franklin/Templeton Distributors, Inc. (the ''Distributor''), Franklin Templeton Services, LLC (the ''Administrator'').

FILING DATES: The application was filed on March 26, 2003, and amended on September 9, 2003.

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 October 17, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, One Franklin Parkway, San Mateo, CA 94403–1906.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0527 or Todd Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

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

Applicants' Representations

1. The Funds are closed-end management investment companies registered under the Act and organized as Delaware statutory trusts. Franklin Advisers, a California corporation, and Mutual Advisers, a Delaware limited liability company, are registered as investment advisers under the Investment Advisers Act of 1940 and serve as investment manager to the FR Fund and FMR Fund, respectively. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (''1934 Act''), serves as principal underwriter to the Funds. The Administrator is the administrator of the Funds and is responsible for managing the Funds' business affairs. The Advisers, the Distributor and the Administrator are wholly-owned subsidiaries of Franklin Resources, Inc.

2. Applicants request that the order also apply to any other registered closed-end management investment company that may be organized in the future for which either of the Advisers, the Distributor or the Administrator or any entity controlling, controlled by, or under common control with the Adviser, the Distributor or the Administrator acts as investment adviser, principal underwriter or administrator and which operates as an interval fund pursuant to rule 23c–3 under the Act (included in the term ''Funds'').[2]

3. The investment objective of the FR Fund is to provide as high a level of current income and preservation of capital as is consistent with investment primarily in senior secured corporate loans and senior secured debt securities with floating or variable rates. The investment objective of the FMR Fund is capital appreciation. The FMR Fund invests in equity and debt instruments in the categories of bankruptcy and distressed companies, risk arbitrage, and undervalued stocks.

4. The Funds continuously offer their shares to the public at net asset value. The Funds' shares are not offered or traded in the secondary market and are not listed on any exchange or quoted on any quotation medium. The Funds intend to operate as ''interval funds'' pursuant to rule 23c–3 under the Act and to make periodic repurchase offers to their respective shareholders.

[1] Franklin Floating Rate Trust *et al.*, Investment Company Act Release Nos. 23033 (Feb. 20, 1998) (notice) and 23068 (Mar. 17, 1998) (order). The Prior Order permits certain registered closed-end investment companies to impose an early withdrawal charge.

[2] Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.