

requirement to provide a notice in the form of an information statement of other material changes to a sub-advisory agreement.

5. Applicants assert that the requested amendment would save the Series the expense of preparing and mailing an information statement to shareholders, and would be consistent with the relief granted in the Prior Order. Applicants also state that any amendments to sub-advisory agreements which are material so as to warrant disclosure in the prospectus would be disclosed to shareholders by means of prospectus supplements commonly known as "stickers".

#### Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that such exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that amending the Prior Order as requested would be consistent with the standards of section 6(c) of the Act.

#### Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the conditions of the Prior Order, with condition 3 of the Prior Order modified to read as follows:

Within 90 days after the hiring of any new sub-adviser, the Trusts will furnish shareholders with all information about a new sub-adviser or sub-advisory agreement that would be included in a proxy statement. The information will include any change in the disclosure caused by the addition of a new sub-adviser. The Series will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934 (the "Exchange Act"). The information statement also will meet the requirements of Item 22 of Schedule 14A under the Exchange Act. The Zenith Fund will ensure that the information statement is furnished to the unitholders of any separate account for which the Zenith Fund serves as a funding vehicle.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27017]

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

May 7, 1999.

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 applications(s) and/or declaration(s) for complete statements of the proposed transactions(s) summarized below. The application(s) and/or declarations(s) and any amendments 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 applications(s) and/or declaration(s) should submit their views in writing by June 1, 1999, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant application(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 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 June 1, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### West Pen Power Company (70-9469)

West Pen Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, a wholly owned utility subsidiary of Allegheny Energy, Inc., ("Allegheny"), a registered holding company, 10435 Downsvills Pike, Hagerstown, MD 21740-1766, has filed an application-declaration with this Commission under sections 6(a), 7, 9(a), 10, 12(b), and 13(b) of the Act and rules 45, 54, 90 and 91 under the Act.

The Electricity Generation Customer Choice and Competition Act of 1996 ("Competition Act") provides for the restructuring of the electric utility industry in Pennsylvania. The Competition Act requires the unbundling of electric services into separate supply, transmission, and distribution services with open retail competition for supply. The

Competition Act requires utilities to submit restructuring plans to the Pennsylvania Public Utility Commission ("PUC"), including transition costs which result from competition. Transition costs include regulatory assets, long-term purchased power commitments, and other costs, including investment in generating plans, spend-fuel disposal, retirement costs and reorganization costs, for which an opportunity for recovery is allowed in an amount determined by the PUC to be just and reasonable. The Competition Act also authorizes the PUC to adopt Qualified Rate Orders ("QRO") to approve the issuance of debt securities ("Transition Bonds") by a utility as a mechanism to mitigate transition costs and reduce customer rates. Under the Competition Act, proceeds of Transition Bonds are required to be used principally to reduce qualified stranded costs and the related capitalization of the utility. To the extent a QRO and the rates and other charges authorized are declared to be irrevocable, the irrevocable QRO issued by the PUC will create Intangible Transition Property ("ITP") by contract which can be used to secure the transition bonds. The Transition Bonds are repayable from irrevocable Intangible Transition Charges ("ITC").<sup>1</sup>

West Pen filed its restructuring plan, which unbundled generation from transmission and distribution, with the PUC. On November 19, 1998 the PUC adopted a final QRO in response to West Penn's application and authorized the recovery of transition costs by West Penn of \$670 million (or \$630 million in the event of a merger with DQE, Inc.).<sup>2</sup>

In connection with the November 19, 1998 QRO, West Penn request authority to form a new, wholly owned subsidiary ("Newco").<sup>3</sup> Newco will be organized under the laws of a state other than

<sup>1</sup> ITCs are generally defined as amounts authorized to be imposed on all customer bills, under an irrevocable QRO, for the purpose of recovering the principal and interest on the Transition Bonds, costs to cover credit enhancements, cost of retiring existing debt and equity, costs of defeasance, servicing fees and other related fees, taxes, costs and expenses ("Qualified Transition Expenses" or "QTEs"). ITCs are collected through non-bypassable charges imposed by an electric utility that provides electric transmission and distribution services to a customer located in its certificated territory, regardless of whether that customer continues to purchase electricity from that electric utility.

<sup>2</sup> Allegheny has a pending application with the Commission regarding a proposed merger with DQE, Inc. in File No. 70-9147. However, the merger is now the subject of litigation.

<sup>3</sup> Newco initially will be capitalized, in an amount of at least 0.5% of the total principal amount of the Transition Bonds, through some form of capital contribution by West Penn.

Pennsylvania, as a new, wholly owned subsidiary of West Penn. Newco will issue and West Penn will acquire all of Newco's stock. West Penn will then transfer the ITP and associated ITC revenue stream created by the QRO to Newco in exchange for the Newco stock, which will be treated as a capital contribution or a true sale, but not as a secured financing for bankruptcy purposes.

West Penn also requests authority to form a wholly owned limited liability subsidiary of Newco ("Special Purpose LLC").<sup>4</sup> Special Purpose LLC will issue and Newco will acquire all of the limited liability interest in Special Purpose LLC. Newco will then transfer the ITP and associated ITC revenue stream to its newly created, bankruptcy remote, wholly owned Special Purpose LLC company.

West Penn, through the Special Purpose LLC, requests authority to issue up to \$670 million in Transition Bonds, secured by the ITP and the associated ITC revenue stream. The Special Purpose LLC may issue Transition Bonds in the form of debt securities in one or more series, and each series may be issued in one or more classes. The characteristics of the Transition Bonds will be substantially similar to bonds issued by other issuers in similar contexts. Each series will be entitled to recover, through the ITC approved by one or more QROs, QTEs (each as defined below), based on a specified principal amount of Transition Bonds for the series, including interest at the coupon rate or rates applicable to the series. There will be a date on which each of the Transition Bonds is expected to be repaid and a legal final maturity date by which the Transition Bonds must be repaid. Neither the expected final maturity nor the legal final maturity will be later than January 2, 2010. The expected final maturity date may vary from the legal final maturity date due to the fact that the ITC is calculated by taking into account variables such as the anticipated level of chargeoffs, delinquencies, and usage, which may differ from the amounts actually incurred or achieved.

Newco requests authority to loan West Penn up to \$670 million and West Penn request authority to issue a note of up to \$670 million to Newco. The loan will have interest rates and maturities that are designed to parallel Newco's effective cost of capital.

When Penn proposes to enter into a Servicing Agreement with the Special Purpose LLC, whereby West Penn will act as the servicer of the ITCs revenue stream as part of normal utility collections. In this capacity, West Penn, among other things would: (1) bill customers and make collections on behalf of the Special Purpose LLC; and (2) file with the PUC for adjustment to the ITC's to achieve a level which allows for full recovery of QTEs in accordance with the amortization schedule for each series of Transition Bonds. West Penn may subcontract with other companies to carry out some of its servicing responsibilities, so long as the ratings of the Transition Bonds are neither reduced nor withdrawn. West Penn would be entitled to compensation, in the form of a servicing fee, for its servicing activities and reimbursement for certain of its expenses in the manner described in the documentation applicable to each series. In order to satisfy the rating agency requirements for a bankruptcy remote entity, the servicing fee must be an arms-length fee, which would be reasonable and sufficient for a third party performing similar services. The servicing fee would be set at an annual level of not more than two percent of the outstanding amount of the Transition Bonds.

Any successor to West Penn under any merger, consolidation, bankruptcy, reorganization or other insolvency proceeding would be required to assume West Penn's obligations.

#### **Wheeling Power Company (70-9487)**

Wheeling Power Company ("Wheeling"), 51 16th Street, Wheeling, West Virginia 26003, an electric public utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

Wheeling proposes to issue and sell or place from time to time, through June 30, 2000, unsecured promissory notes ("Notes") in an aggregate outstanding principal amount of not more than \$10 million. The Notes will have terms of not less than nine months nor more than ten years from the date of borrowing. The Notes will be sold to, or placed through, one or more commercial banks, financial institutions or other institutional investors ("Lender"). The Notes will be issued under one or more term loan agreements with the Lenders.

The Notes will bear interest at a fixed rate, a fluctuating rate or some combination of the two. Fixed interest rates will not be greater than 300 basis points about the yield, at the time of

issuance of the Notes, to maturity of United States Treasury obligations with comparable maturities. Fluctuating interest rates will not be greater than 200 basis points above the periodically announced base or prime rate of a major bank.

Proceeds from the sale of the Notes will be used to repay Wheeling's long- and short-term debt. At December 31, 1998, Wheeling's outstanding short-term indebtedness was approximately \$5.2 million.

#### **Sempra Energy (70-9489)**

Sempra Energy ("Sempra"), 101 Ash Street, San Diego, California 92101, a California public utility holding company exempt from registration under section 3(a)(1) of the Act from all provisions of the Act except section 9(a)(2), has filed an application under sections 9(a)(2) and 10 of the Act, in connection with a proposed acquisition of K N Energy ("K N"), a "gas utility company" within the meaning of section 2(a)(4) of the Act, that is directly engaged in retail natural gas distribution operation in three states ("Transaction").

Sempra indirectly owns all of the issued and outstanding common stock of Southern California Gas Company ("SoCalGas"), a gas utility company, and San Diego Gas and Electric Company ("SDG&E"), a combination gas and electric utility company.

SoCalGas distributes gas at retail to approximately 4.8 million customers within a service territory of 23,000 square miles in central and southern California. The SoCalGas system includes approximately 2,900 miles of transmission and storage pipeline, 44,000 miles of distribution pipeline, 43,000 miles of service pipeline, and 10 compressor stations, as well as five underground storage reservoirs with a combined working capacity of about 116 billion cubic feet ("Bcf").

SDG&E is engaged in the generation, transmission, distribution, and sale of electricity and the distribution and sale of natural gas. SDG&E services approximately 1.2 million electricity customers within a franchised service territory that includes San Diego County and southern Orange County, California. SDG&E currently operates fossil fuel-fired generating units with an aggregate capacity of 1,924 MW. This generation consists of two steam stations, Encina (965 MW) and South Bay (706 MW), and 17 non-power plant combustion turbines (253 MW).<sup>5</sup> SDG&E also owns

<sup>4</sup> Special Purpose LLC will be capitalized, in an amount of at least 0.5% of the total principal amount of the Transition Bonds, through some form of a capital contribution by Newco.

<sup>5</sup> In November 1997, SDG&E committed itself to divesting all of its fossil fuel-fired generating capacity by the end of 1999. SDG&E was

a 20% share (430MW) of the San Onofre Nuclear Generating Station ("SONGS"). SDG&E has announced its intention to divest itself of SONGS, but has not yet concluded any agreement to do so.

In addition to providing electric service, SDG&E provides natural gas service to more than 700,000 customers in San Diego County. SDG&E's natural gas facilities include 164 miles of transmission pipeline, 6,843 miles of distribution pipeline, and two compressor stations. All of the gas delivered to SDG&E by its suppliers is transported through the SoCalGas pipeline system.

SoCalGas and SDG&E derive substantially all of their gas requirements from sources outside of California. In 1998, SoCalGas and SDG&E purchased approximately 49% of their combined system gas requirements from production in the San Juan Basin, which is located primarily in New Mexico and Colorado, approximately 20% in the Permian Basin, which is located in west Texas, approximately 18% in the Western Canada Sedimentary Basin, which is located primarily in western Alberta and most of the balance from marketers at the California border. A substantial volume of gas produced in the Rocky Mountain region basins<sup>6</sup> is also delivered into the SoCalGas transmission system for redelivery to SoCalGas's transportation-only customers.

SoCalGas and SDG&E are subject to regulation by the California Public Utilities Commission ("California PUC").

Sempra also owns approximately 90% of Frontier Energy, LLC ("Frontier Energy"), a North Carolina limited liability company that is completing construction of a new gas utility distribution system in a four-county area of western North Carolina.<sup>7</sup>

Sempra's principal nonutility subsidiaries include: Sempra Trading, which is a marketer of natural gas, electricity, and other energy products; Enova Energy, Inc. which is a marketer of electricity; Sempra Energy Resources,

which is an unregulated subsidiary engaged in the business of acquiring and developing power plants and natural gas storage, production, and transportation assets in support of other Sempra subsidiaries; Sempra Energy Solutions, which is a retail marketing subsidiary providing energy services and products at retail to competitive energy markets in California and throughout the United States; Sempra Energy International, which is engaged in the construction, ownership and operation of natural gas distribution and power generation projects outside the United States; Sempra Energy Financial, which participates in tax-advantaged investments such as affordable housing and alternative fuels; and Sempra Energy Utility Ventures, which engages in the acquisition, development and operation of regulated energy utilities in the eastern United States and Canada.

For the year ended December 31, 1998, Sempra reported consolidated operating revenues of \$5.525 billion, of which \$2.772 billion represented gas utility revenues (including revenues from transporting customer-owned gas) and \$1.865 billion represented electric revenues. At December 31, 1998, Sempra had total assets of \$10.465 billion, of which \$5.441 billion represented net utility (electric and gas) plant. During 1998, the total gas delivered on the Sempra system was 962 Bcf, of which 521 Bcf (or about 54%) represented deliveries of customer-owned gas for which the company provides only transportation service. Electric sales in 1998 totaled 17,955 kwhrs.

K N and its subsidiaries engage in natural gas gathering, processing, storage, transportation, distribution, and marketing of natural gas, natural gas liquids and electric power in 16 central and western states, with the majority of its operations in Texas, Oklahoma, Kansas, Nebraska, Colorado, Wyoming and Illinois.<sup>8</sup>

K N is directly engaged in the distribution of natural gas at retail to more than 210,000 customers in mostly rural areas of Nebraska, Colorado, and Wyoming through a system of 7,200 miles of distribution pipelines. It distributes gas in these three states directly through a corporate division that is referred to as the "Retail Gas Division." In Colorado, the Retail Gas

Division provides retail service to approximately 47,400 residential, commercial, industrial, irrigation and grain drying customers in more than 30 towns in the western slope of Colorado, 4 towns north of Denver in the Front Range area, and 11 towns in the northeast corner of the state.

In Wyoming, the Retail Gas Division provides gas service to approximately 64,700 residential, commercial and irrigation customers in 40 towns in the eastern and central parts of the state. In Nebraska, the Retail Gas Division serves approximately 99,700 residential, commercial, industrial and agricultural customers in 180 towns throughout much of the state.

The Retail Gas Division purchases all of its gas supplies from gas marketers, including K N Services, Inc. ("K N Services"), K N's principal gas marketer. Most of this gas is produced in the Rocky Mountain region basins (currently about 61%) and the Anadarko/Arkoma Basin (currently about 29%). The company also purchases gas that is produced in the San Juan Basin, the Western Canada Sedimentary Basin, and in producing areas in Montana, Kansas and western Nebraska.

For the year ended December 31, 1998, the Retail Gas Division reported total operating revenues of \$222.8 million, net operating revenues of \$104.7 million, and net income of \$11.9 million, respectively. At December 31, 1998, the Retail Gas Division had total assets of \$290.2 million, including \$165.5 million in net utility plant and equipment, \$37.5 million in advances to associate companies, and \$51.1 million in current assets. During 1998, the Retail Gas Division delivered only 50 Bcf of gas.

K N conducts its other business activities through its nonutility subsidiaries. K N is principally engaged in interstate and intrastate pipeline transportation, gathering and production, and marketing, among other nonutility businesses.

For the year ended December 31, 1998, K N reported consolidated operating revenues of \$4.388 billion, of which \$222.8 million (or about 5.1%) were derived from the distribution of gas at retail. At December 31, 1998, K N had total assets of \$9.612 billion, including \$7.023 billion of net property, plant and equipment, of which \$165.5 million (or about 2.4% of the total) consists of net plant associated with K N's retail gas distribution business.

In accordance with an Agreement and Plan of Merger dated February 20, 1999 ("Merger Agreement"), among Sempra, K N and Cardinal Acquisition Corp.

subsequently required to divest its Encina and South Bay plants by the terms of a Stipulation and Order entered into with the Department of Justice in March 1998. On December 11, 1998, SDG&E concluded separate agreements for the sale of the South Bay station, the Encina station and the 17 combustion turbines.

<sup>6</sup> The Rocky Mountain region describes a producing area that is generally understood to include, in whole or in part, the Unita/Piceance Basin in eastern Utah and western Colorado, the Denver/Julesburg Basin in Colorado, and the Powder River, Green River, and Wind River Basins in Wyoming.

<sup>7</sup> See Sempra Energy, Holding Co. Act Release No. 26971 (February 1, 1999).

<sup>8</sup> K N and its subsidiaries operate more than 26,000 miles of interstate, intrastate and offshore transmission pipelines, approximately 11,000 miles of gathering and processing pipelines, approximately 7,000 miles of local gas distribution pipelines, 16 storage facilities, and 19 natural gas processing plants with a total processing capacity of approximately 1.7 Bcf per day.

("Cardinal"), a wholly owned, special purpose California corporation organized by Sempra for the purpose of carrying out the Transaction, K N will be merged with and into Cardinal.<sup>9</sup> Upon completion of the merger, Cardinal will be renamed "K N Energy, Inc." All of the property, rights, privileges, immunities, powers and franchises of K N before the merger will vest in Cardinal and all of the debts, liabilities and duties of K N before the merger will become the debts, liabilities and duties of Cardinal.

On the effective date of the merger, each share of K N's common stock ("K N Shares") will be converted, at the election of the holder thereof, into the right to receive 1.115 shares of Sempra's common stock ("Sempra Shares"), or \$25.00 in cash, or a combination of Sempra Shares and cash, for each K N Share. This ratio represents a blended premium of 24 percent to the market price of K N Shares, based on the average closing price of the stock of each company during the week immediately preceding conclusion of the Merger Agreement. Shareholders of K N have the option to choose cash, Sempra Shares, or a combination of the two, subject to proration, such that at least 70% of the K N Shares outstanding will be converted into Sempra Shares and not more than 30% of the K N Shares will be converted into cash. As a result of the Transaction, K N will become a wholly owned subsidiary of Sempra, and the former K N shareholders will own approximately 19% of Sempra's outstanding common stock after the merger, based on the number of shares of Sempra's common stock and K N's common stock outstanding on March 16, 1999. Under the terms of the Merger Agreement, three members of K N's board of directors will become members of Sempra's board, which will have 17 members.

Applicant contends that, after giving effect to the Transaction, Sempra will remain predominantly an intrastate (i.e., California) holding company that will not derive any material part of its

income from any non-California public-utility operations. Applicant states that the utility operations of Sempra in California are substantially larger than those of K N's Retail Gas Division and Frontier Energy combined. Accordingly, Sempra requests an order under section 3(a)(1) of the Act declaring Sempra, after consummation of the Transaction, to be exempt from all sections of the Act except section 9(a)(2).

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 Nos. 34-41385; File No. 265-21]

### Establishment of Advisory Committee on Technology

AGENCY: Securities and Exchange Commission.

ACTION: Notice.

**SUMMARY:** The Chairman of the Commission, with the concurrence of the other members of the Commission, has established the Securities and Exchange Commission Advisory Committee on Technology ("Committee") that will advise the Commission regarding how technological advances have impacted the markets, how market professionals and investors use technology to interact in our markets, and how the Commission's regulatory, examination, enforcement, and internal programs and operations can more effectively use technology and respond to changes in technology.

**ADDRESSES:** Written comments should be submitted in triplicate and should refer to File No. 265-21. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

**FOR FURTHER INFORMATION CONTACT:** Jonathan G. Katz, Secretary, at 202-942-7070; Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609.

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., the Securities and Exchange Commission has directed publication of this notice that Chairman Arthur Levitt, with the concurrence of the other members of the Commission,

has established the "Securities and Exchange Commission Advisory Committee on Technology." Chairman Levitt certifies that he has determined that the creation of the Committee is necessary and in the public interest.

The Committee's charter directs the Committee to: (i) Assist the Commission in evaluating the impact of technology on our markets, market participants and investors, (ii) examine how investors and market professionals interact in our markets, (iii) identify ways in which the Commission's regulatory, examination, enforcement, and internal programs and operations can more effectively use technology and respond to changes in technology, and (iv) provide technical advice on technology issues affecting the Commission and its programs and on ways technology can be used to improve efficiency in the Commission's programs and operations, from the perspective of investors, issuers, the various market participants, technology experts, and other interested persons and regulatory authorities.

To achieve the Committee's goals, members will be appointed who can represent effectively the varied interests affected by the range of issues to be considered. The Committee's membership may include, among others, persons who can represent investors, issuers, market participants, regulators and the public at large. The Commission expects that the Committee's members will represent a variety of viewpoints and have varying experience, and that the Committee will be fairly balanced in terms of points of view, backgrounds and tasks.

The Committee will conduct its operations in accordance with the provisions of the Federal Advisory Committee Act. The duties of the Committee will be solely advisory. Determinations of action to be taken and policy to be expressed with respect to matters upon which the Advisory Committee provides advice or recommendations shall be made solely by the Commission.

The Committee will meet at such intervals as are necessary to carry out its functions. It is expected that meetings of the full Committee generally will occur no more frequently than 4 times per year; meetings of subgroups of the full Advisory Committee will likely occur more frequently. The Securities and Exchange Commission will provide necessary support services to the Committee.

The Committee will terminate at the end of 2 years from the date of its establishment unless, prior to such time, its charter is renewed in accordance with the Federal Advisory Committee

<sup>9</sup> The approval and adoption of the Merger Agreement requires the affirmative vote of the holders of a majority of the shares of K N common stock and the affirmative vote of the holders of a majority of the shares of Sempra common stock. Consummation of the Transaction is also subject to various regulatory approvals in addition to the approval of this Commission, including the Colorado Public Utilities Commission, the Wyoming Public Service Commission and the Federal Energy Regulatory Commission. The Transaction is also subject to the filing of Pre-Merger Notification Report Forms under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the expiration or early termination of the required waiting period.