

EXELON CORP  
Form U-1  
December 22, 2003  
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As filed with the Securities and Exchange Commission on December 22, 2003 File No. 70-\_\_\_\_\_

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

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**FORM U-1**

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**APPLICATION-DECLARATION**  
**UNDER**  
**THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935**

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**Exelon Corporation**  
**Commonwealth Edison Company**  
**10 South Dearborn Street, 37<sup>th</sup> Floor**  
**Chicago, Illinois 60603**

**PECO Energy Company**

**2301 Market Street**

**Philadelphia, Pennsylvania 19101**

**Adwin Equipment Company; ECP Telecommunications**

**Exelon Generation Company, LLC**

**300 Exelon Way**

**Kennett Square, Pennsylvania 19348**

**Exelon New Trust Company; Exelon Services, Inc.;**

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Holdings, LLC; EEI Telecommunications Holding, LLC; Exelon Thermal Development, Inc.; Exelon Energy Trading Company; Exelon Business Services Thermal Holding, Inc.; Exelon Thermal Company; Exelon Capital Partners, Inc.; Exelon Technologies, Inc.; Exelon Ventures Company, Communications Company, LLC; Exelon LLC; F&M Holdings Company, LLC; Unicom Communications Holdings, LLC; Exelon Energy Power Holdings, LLC; and Unicom Power Company; Exelon Energy Delivery Company, LLC; Marketing, Inc.

Exelon Enterprises Company, LLC; Exelon Enterprises Investments, Inc.; Exelon Enterprises Management, Inc.;

c/o Exelon Corporation

10 South Dearborn Street

37<sup>th</sup> Floor

Chicago, Illinois 60603

(Name of companies filing this statement and address of principal executive offices)

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## Exelon Corporation

(Name of top holding company parent of each applicant or declarant)

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Randall E. Mehrberg

Executive Vice President and General Counsel

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(Name and address of agent for service)

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The Commission is requested to send copies of all notices, orders and communications in connection with this

Application-Declaration to:

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### **Item 1. Description of Proposed Transaction**

#### A. Introduction

In this Application-Declaration (this Application), Exelon Corporation (Exelon), a registered holding company under the Public Utility Holding Company Act of 1935, as amended (the Act), the Utility Subsidiaries (as hereinafter defined) and the additional companies listed on the signature page of this Application (collectively, the Applicants) seek approval pursuant to Sections 6(a), 7, 9, 10 and 12 of the Act and Rules 42, 43, 44, 45, 46, 52, 53 and 54 thereunder to engage in the various transactions set forth herein.

#### B. Background

Exelon and its Subsidiaries<sup>1</sup> received approval from the Securities and Exchange Commission (the Commission) in Docket No. 70-9693 (as amended through Amendment No. 5, the Prior Financing U-1) to engage in certain financing transactions pursuant to orders dated November 2, 2000 (Holding Co. Act Release No. 27266, the November 2 Order) and December 8, 2000 (Holding Co. Act Release No. 27296, the December 8 Order) and together with the November 2 Order, the Prior Orders).

In the November 2 Order, the Commission reserved jurisdiction over several requests including the request that Exelon be permitted to have an aggregate investment in exempt wholesale generators (EWGs) and foreign utility companies (FUCOs) of \$5.5 billion. The November 2 Order approved an aggregate investment of up to \$2 billion in EWGs and FUCOs and reserved jurisdiction over the balance of the request. Exelon has previously requested that the Commission release jurisdiction over the request for an additional \$2 billion in aggregate investment in EWGs and FUCOs and by the December 8 Order the Commission approved such request so that the aggregate investment in EWGs and FUCOs now authorized is \$4 billion. In other respects the November 2 Order remains unchanged.

Furthermore, the November 2 Order approved financing authority in the amount of \$4 billion and reserved jurisdiction over the request for an additional \$4 billion outstanding at any time through March 31, 2004, representing financing authorizations relating to equity securities, preferred securities and debt.<sup>2</sup>

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<sup>1</sup> Each of the directly and indirectly owned subsidiaries of Exelon is referred to in this Application individually as a Subsidiary and collectively as Subsidiaries.

<sup>2</sup> Exelon filed Amendment No. 5 on August 15, 2001 requesting that the Commission further release jurisdiction over the remaining requests and seeking other relief. Exelon hereby withdraws those requests.

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A summary of the existing limitations on financing for the Exelon system is as follows:

<u>Type</u>	<u>Amount</u>
Exelon common stock, preferred securities, long-term debt, short-term debt	\$ 4 billion
Exelon short-term debt sub-limit	\$ 3 billion
Utility Subsidiaries short-term debt	\$ 2.7 billion
Genco membership interests, preferred securities, long-term debt	\$ 5.5 billion
Exelon and Genco guaranties	\$ 4.5 billion
Aggregate Investment in EWGs and FUCOs	\$ 4 billion

The Prior Orders, in summary, approved the following:

i. (a) external issuances by Exelon of common stock, preferred stock and preferred stock equivalent securities (collectively preferred securities ), long-term debt, short-term debt, and other securities, (b) guarantees of obligations of affiliated or unaffiliated persons in favor of other unaffiliated persons, and (c) the entering into by Exelon of transactions to manage interest rate risk ( hedging transactions<sup>4</sup>);

ii. issuances of securities, guarantees and the entering into of hedging transactions by the Utility Subsidiaries to the extent not exempt pursuant to Rule 52;

iii. issuances by Non-Utility Subsidiaries<sup>5</sup> of securities and authority to enter into hedging transactions which are not exempt pursuant to Rule 52;

iv. the establishment of a utility money pool (the Utility Money Pool ) and a non-utility money pool (the Non-Utility Money Pool ) and the issuance of intra-system guarantees by Exelon and the Non-Utility Subsidiaries on behalf of the Subsidiaries;

v. the continuation of existing intra-system debt and guarantees;

vi. the ability of 50% or more owned Subsidiaries to alter their capital stock in order to engage in financing transactions with their parent company;<sup>6</sup>

<sup>3</sup> The limitation on short-term debt for Exelon Generation Company, LLC ( Genco ) was aggregated with the Utility Subsidiary limitation on short-term debt of \$2.7 billion. Further, the overall limitation on Genco financing is aggregated with the Exelon limitation of \$4 billion, and thereby effectively limiting Genco s financing authority to \$4 billion.

<sup>4</sup> Hedging transactions include only those transactions related to financing activities. Engaging in futures and other commodity related risk management by Exelon and its subsidiaries constitute part of their normal business activities and as such do not require Commission approval. See Southern Energy, Inc., Holding Co. Act Release No. 27020 (May 13, 1999); Entergy Corp., Holding Co. Act Release No. 26812 (Jan. 6, 1998); New Century Energies, Holding Co. Act Release No. 26748 (Aug. 1, 1997); National Fuel Gas Co., Holding Co. Act Release No. 2666 (Feb. 12, 1997).

<sup>5</sup>



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Non-Utility Subsidiaries are defined as all Subsidiaries of Exelon other than the Utility Subsidiaries and also includes all other direct and indirect subsidiaries that Exelon may hereinafter form or acquire in accordance with a Commission order or otherwise in accordance with the Act or a rule promulgated thereunder.

<sup>6</sup> The Commission approved this request with respect to wholly-owned Subsidiaries and reserved jurisdiction with respect to less than wholly-owned Subsidiaries.

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vii. the formation of financing entities and the issuance by such entities of securities otherwise authorized to be issued and sold pursuant to the Prior Orders or pursuant to applicable exemptions under the Act, including intra-system guarantees of such securities and the retention of existing financing entities;

viii. the payment by Non-Utility Subsidiaries of dividends out of capital and unearned surplus;

ix. the use of up to \$4 billion of the proceeds of financings for investments in EWGs and FUCOs;<sup>7</sup>

x. issuance of debt or equity securities by Exelon Energy Delivery Company, LLC ( Delivery ), Exelon Ventures Company, LLC ( Ventures ) and Genco for the purpose of acting as a conduit for additional financing to their respective Subsidiaries; and

xi. the payment by Exelon and ComEd of dividends out of capital up to an amount of \$500 million.

The approvals summarized in items (i) through (x) above are referred to as the Financing Activities. Authorization for Financing Activities under the Prior Orders expires March 31, 2004. Item (xi) is not subject to this expiration date.

**C. Description of the Parties to the Transaction**

Exelon has three principal operating public utility company subsidiaries (the Utility Subsidiaries<sup>8</sup>):

PECO Energy Company ( PECO ), a public utility company engaged (i) in the purchase, transmission, distribution and sale of electricity and (ii) in the purchase, distribution and sale of natural gas in Pennsylvania;

Commonwealth Edison Company ( ComEd ), a public utility company engaged in the purchase, transmission, distribution and sale of electricity in Illinois; and

Genco, a public utility company and a registered holding company<sup>9</sup> engaged in the purchase, generation and sale of electricity in Pennsylvania, Illinois and elsewhere.

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<sup>7</sup> As indicated above, the Prior Orders approved the use of up to \$4 billion of financings for investments in EWGs and FUCOs and reserved jurisdiction over the remainder of the \$5.5 billion sought by Exelon.

<sup>8</sup> For purposes of this filing, Utility Subsidiaries also includes Commonwealth Edison Company of Indiana, PECO Energy Power Company, Susquehanna Power Company and Susquehanna Electric Company.

<sup>9</sup> Genco filed a Form U5A Notification of Registration on January 23, 2001.

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In addition, Exelon has the following other principal Subsidiaries:

Delivery, the intermediate registered holding company for ComEd and PECO;<sup>10</sup>

Exelon Business Services Company ( Exelon Business Services ), the service company for the Exelon System;

Ventures, a registered holding company and a first tier Subsidiary of Exelon which has as wholly-owned subsidiaries, Genco and Exelon Enterprises Company, LLC ( Enterprises<sup>11</sup>)and

Enterprises, the principal Subsidiary through which Exelon conducts its non-utility businesses.

Effective as of January 1, 2001, Exelon effectuated the corporate restructuring (the Restructuring ) contemplated in the Commission's order approving the merger (the Merger ) that created Exelon (Holding Co. Act Release No. 27256, October 19, 2000) (the Merger Order). In summary, the Restructuring consisted of the transfer of electric generating assets of ComEd and PECO to Genco and the transfer of non-utility subsidiaries of PECO and Unicom Enterprises, Inc. to be indirect subsidiaries of Ventures.

D. Overview of the Requests

The Applicants hereby request authorization to engage in the financing transactions set forth herein during the period from the effective date of the order in this proceeding through April 15, 2007 (the Authorization Period ).

The authority sought herein will replace and substitute for all the authority granted by the Prior Orders with respect to Financing Activities.

The approval by the Commission of this Application will give the Applicants the flexibility that will allow them to respond quickly and efficiently to their financing needs and to changes in market conditions, allowing them to efficiently and effectively carry on business activities designed to provide benefits to customers and shareholders. Approval of this Application is consistent with the Prior Orders and existing Commission precedent.<sup>13</sup>

The authorizations for financing transactions and other approvals requested herein relate to:

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<sup>10</sup> Delivery filed a Form U5A Notification of Registration on June 4, 2001.

<sup>11</sup> Ventures filed a Form U5A Notification of Registration on January 23, 2001. See Docket No. 70-10107 regarding a proposed reorganization involving Ventures.

<sup>12</sup> Certain elements of the Restructuring were completed later in 2001.

<sup>13</sup> See e.g., FirstEnergy Corp., Holding Co. Act Release No. 27694 (June 30, 2003); SCANA Corporation Holding Co. Act Release No. 27649 (February 12, 2003); E.ON AG, Holding Co. Act Release No. 27539 (June 14, 2002); First Energy Corporation, Holding Co. Act Release No. 27459 (Oct. 29 2001); Exelon Corporation, Holding Co. Act Release No. 27266 (Nov. 2, 2000); New Century Energies, Holding Co. Act Release No. 27212 (Aug. 16, 2000); Dominion Resources, Inc., Holding Co. Act Release No. 27112 (Dec. 15, 1999), Conectiv, Inc., Holding Co. Act Release No. 26833 (Feb. 26, 1998), and Ameren Corporation, Holding Co. Act Release No. 26809 (Dec. 30, 1997).



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- i. external issuances by Exelon of common stock, preferred stock, Preferred Securities (as defined below), Equity Linked Securities (as defined below), membership interests, long-term debt and short-term debt to increase Exelon's capitalization by up to \$8.0 billion over existing capitalization at the time of the order in this matter;
  
- ii. external issuances by Exelon of common stock, preferred stock, Preferred Securities, Equity Linked Securities, long-term debt and short-term debt to refund or replace existing securities without increasing capitalization;
  
- iii. external issuances of up to 21 million shares of Exelon common stock under Exelon's dividend reinvestment plan, certain incentive compensation plans and certain other employee benefit plans;
  
- iv. the entering into by Exelon of hedging transactions;
  
- v. external issuances by Genco of membership interests, preferred equity interests, Preferred Securities, Equity Linked Securities, long-term debt and short term debt to increase its capitalization, subject to the \$8 billion limitation applicable to Exelon, or to refund or replace existing securities without increasing capitalization or to assume certain pollution control obligations currently outstanding for ComEd or PECO;
  
- vi. the formation of financing entities and the issuance by such entities of securities otherwise authorized to be issued and sold pursuant to this Application or pursuant to applicable exemptions under the Act, including intra-system guarantees of such securities and the retention of existing financing entities;
  
- vii. the issuance of intra-system advances and guarantees, to the extent not exempt pursuant to Rules 45(b) and 52, by Exelon to or on behalf of its Subsidiaries and others, by the Non-Utility Subsidiaries to or on behalf of other Non-Utility Subsidiaries and others and by the Utility Subsidiaries to or on behalf of such Utility Subsidiary's direct or indirect subsidiaries and others;
  
- viii. issuances of short-term debt securities (including commercial paper) in an amount not to exceed \$2.7 billion issued and outstanding at any time and the entering into of hedging transactions by the Utility Subsidiaries and external issuances by the Utility Subsidiaries of long-term debt or short-term debt to refund or replace existing securities without increasing capitalization, to the extent not exempt pursuant to Rule 52;
  
- ix. continuation of authorization for the Utility Money Pool and the Non-Utility Money Pool (subject to modifications described herein);
  
- x. conduit financings through Ventures, Genco and Delivery;
  
- xi. the payment of dividends out of capital or unearned surplus by the Non-Utility Subsidiaries;

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xii. revision to the existing authority regarding payment of dividends out of capital up to \$500 million by Exelon and ComEd to accommodate a change in accounting method for goodwill recognized in the Merger;

xiii. the use of up to \$7.0 billion of financings for investments in EWGs and FUCOs;

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xiv. the payment of dividends out of capital by Commonwealth Edison Company of Indiana, Inc. ( ComEd of Indiana ); and

xv. authorization for Genco to become obligated for certain pollution control obligations of PECO and ComEd.

E. Financing Authorization

I. Parameters for Financing Authorization

Authorization is requested herein to engage in certain financing transactions during the Authorization Period for which the specific terms and conditions are not at this time known, and which may not be covered by Rule 52, without further prior approval by the Commission. The following general terms will be applicable where appropriate to the financing transactions requested to be authorized hereby:

(a) Effective Cost of Money on Financings. The effective cost of money on long-term debt of any series will not exceed at the time of issuance the greater of (i) 700 basis points over the yield to maturity of a U.S. Treasury Security having a remaining term approximately equal to the term of such series of long-term debt or (ii) a gross spread over a U.S. Treasury Security that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The dividend or distribution rate on any series of preferred stock and other forms of Preferred Securities or Equity Linked Securities will not exceed at the time of issuance the greater of (i) 800 basis points over the yield to maturity of a U.S. Treasury Security having a remaining term equal to the term of such series or (ii) a rate that is consistent with similar securities of comparable credit quality and maturities (or perpetual preferred stock) issued by other companies. The effective cost of money on short-term debt will not exceed the greater of (i) 500 basis points over the comparable term London Interbank Offered Rate ( LIBOR ) or (ii) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies.<sup>14</sup>

(b) Maturity. The maturity of indebtedness will not exceed 50 years. Preferred stock, Preferred Securities and Equity Linked Securities (other than perpetual preferred stock) will be redeemed no later than 50 years after the issuance thereof, unless converted into common stock.

(c) Issuance Expenses. The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities pursuant to this Application will not exceed 7% of the principal or total amount of the securities being issued.<sup>15</sup>

(d) Use of Proceeds. The proceeds from the sale of securities in external financing transactions will be used for general corporate purposes including (i) the financing, in part, of the capital expenditures of the Exelon system, (ii) the financing of working capital requirements of the Exelon system, (iii) the acquisition, retirement or redemption pursuant to Rule 42 of

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<sup>14</sup> See CenterPoint Energy, Inc., Holding Co. Act Release No. 27692 (June 30, 2003), FirstEnergy Corp., Holding Co. Act Release No. 27694 (June 30, 2003), Entergy Corporation, Holding Co. Act Release No. 27626 (Dec. 20, 2002). Calculation of the cost of money does not consider issuance expenses including underwriting commissions. See CenterPoint Energy, Inc., Holding Co. Act Release No. 27692 (June 30, 2003).

<sup>15</sup> See SCANA Corporation, Holding Co. Act Release No. 27649 (February 12, 2003).





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securities previously issued by Exelon or its Subsidiaries or as otherwise authorized by Commission, and (iv) direct or indirect investment in companies authorized under the Act or by Commission Rule (including EWGs or FUCOs) or in a separate proceeding and (v) other lawful purposes.

The Applicants represent that no such financing proceeds will be used to acquire a new subsidiary unless such financing is consummated in accordance with an order of the Commission or an available exemption under the Act. The aggregate amount of proceeds of financings and guaranties used to fund investments in EWGs and FUCOs will not, when added to Exelon's aggregate investment in these entities at any point in time, as defined in Rule 53, exceed \$7.0 billion.

(e) Common Equity Ratio. At all times during the Authorization Period, Exelon, ComEd and Peco will each maintain common equity (as reflected in the most recent Form 10-K or Form 10-Q filed with the Commission adjusted to reflect changes in capitalization since the balance sheet date therein) of at least 30% of its consolidated capitalization (common equity, minority interests, preferred stock, short-term debt and long-term debt, excluding securitization debt, referred to herein as Consolidated Capitalization); provided that Exelon will in any event be authorized to issue common stock (including pursuant to a dividend reinvestment or employee benefit plans) to the extent authorized herein.<sup>16</sup>

Although PECO has common equity of greater than 30% of Consolidated Capitalization as used herein, PECO notes that the Commission in the Prior Orders found that PECO would work to continue to improve its equity ratio as securitization bonds are paid down. PECO continues to expect that its common equity ratio will improve as the securitization bonds are paid down and as Exelon settles the Receivable Contribution (defined below) and that PECO will reach a level of common equity of at least 30% of capitalization by December 31, 2010 (at which time all securitization bonds are expected to be retired and therefore will not be a consideration in the calculation).<sup>17</sup>

Exelon proposes that Consolidated Capitalization exclude the impact of securitization bonds outstanding for the benefit of ComEd and PECO in determining compliance with the Commission's 30% test applicable to Exelon, ComEd and Peco. All such securitization bonds are rated AAA and have dedicated revenue streams approved by the applicable state commission ensuring that they will be timely paid. Consequently, as shown by their rating, they have a very low risk of default and excluding those securities from the calculation does not adversely impact the purpose of the capitalization test for the Commission's purposes. The structure of these financings, the orders of the respective State commissions and the statutory provisions of each State ensure that there will be sufficient cash flow from a dedicated portion of payments made by utility customers to at all times provide for principal and interest on the securitization bonds. The rates paid by customers are subject to adjustment in accordance with procedures of the respective states to ensure that amounts collected are sufficient to meet debt service and other requirements under the securitization financings.<sup>18</sup>

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<sup>16</sup> Accordingly, the consequence of failing to maintain common equity of at least 30% of Consolidated Capitalization when required is that Exelon (or if such failure were only by ComEd, such company) would not be authorized to issue securities in a transaction subject to Commission approval except for securities which would result in an increase in such common equity percentage. See FirstEnergy Corp., Holding Co. Act Release No. 27694 (June 30, 2003).

<sup>17</sup> Reliant Energy, Inc., Holding Co. Act Release No. 27548 (July 5, 2002).

<sup>18</sup> See Utility Stranded Costs: Rating the Securitization of Transition Tariffs, Special Report, FitchIBCA (September 24, 1998) (available at [www.FitchIBCA.com](http://www.FitchIBCA.com)). Furthermore, the Commission has recognized that it is appropriate to consider the effects of securitization debt to determine compliance with its traditional test of a minimum equity component of capitalization of 30%. See West Penn Power Co., Holding Co. Act Release No. 35 27091 (Oct. 19, 1999) (exemption from 30% equity standard granted where utility's equity ratio was 15% because of transition bonds and other factors; excluding transition bonds, utility would satisfy 30% test). See also, the Prior Orders. This approach is consistent with the rating agencies analysis of the impact of securitization on a utility's capital structure. In its September 23, 1999 rating review of PECO, Moody's noted: "The major advantages of securitization from a credit perspective are the lower financing costs of higher rated securities and the greater certainty of recovery of stranded costs. As we analyze PECO post-securitization, Moody's will treat the securitized debt as fully non-recourse to the company. Moody's has grown comfortable with this analytical approach despite the

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fact that the Securities and Exchange Commission's guidelines require the debt to appear on the company's balance sheet. Under this approach, we will adjust cash flow downward to account for the setting aside of cash flows derived from collection of reimbursable transition charges to serve the fixed charges associated with the securitization bonds. This approach, we believe, better reflects the cash flow streams available for protection of PECO's traditional fixed income investors.

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Applicants request that the Commission reserve jurisdiction over the issuance of securities in those circumstances where Exelon, ComEd or PECO does not comply with the common equity criteria of 30% of Consolidated Capitalization pending completion of the record upon filing of a post-effective amendment.

(f) Investment Grade Ratings. Exelon, ComEd and PECO further represent that apart from (a) securities issued for the purpose of funding money pool operations and (b) issuances or draw-downs under existing<sup>19</sup> credit facilities with banks or institutional lenders, no guarantees or other securities, other than common stock, may be issued in reliance upon the authorization granted by the Commission pursuant to this Application, unless (i) the security to be issued, if rated, is rated investment grade and (ii) all outstanding senior unsecured securities of the issuer that are rated are rated investment grade.

For purposes of this provision, a security will be deemed to be rated investment grade if it is rated investment grade by at least one nationally recognized statistical rating organization. The ratings test will not apply to any issuances of membership interests or to issuances of indebtedness by Genco.

Applicants request that the Commission reserve jurisdiction over the issuance of any such securities that are rated below investment grade or issuance of securities when other outstanding senior unsecured securities of the issuer are not investment grade.

(g) Authorization Period. No security will be issued pursuant to the authority sought herein after the last day of the Authorization Period (which is April 15, 2007).

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<sup>19</sup> If a credit facility was entered into at a time when the issuer of securities satisfied the ratings tests of this paragraph, the issuer may continue to borrow under that credit facility even after the ratings tests are no longer satisfied.

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## 2. Financial Condition

Exelon is a financially sound company with investment grade ratings from major rating agencies.<sup>20</sup> The Exelon system's ratings as of September, 2003 from Standard & Poor's, Moody's and Fitch are as follows:

<u>Company and type of rating</u>	<u>S&amp;P</u>	<u>Moody's</u>	<u>Fitch</u>
<b>Exelon</b>			
Corporate	A-	N/A	N/A
Unsecured	BBB+	Baa2	BBB+
Commercial Paper	A-2	P-2	F2
<b>ComEd</b>			
Secured	A-	A3	A-
Unsecured	BBB+	Baa1	BBB+
Preferred Stock and Trust Securities	BBB	baa3	BBB
Commercial Paper	A-2	P-2	F2
Transitional Trust Notes	AAA	Aaa	AAA
<b>PECO</b>			
Secured	A	A2	A
Unsecured	BBB+	A3	A-
Preferred Stock	BBB	baa2 &nbs	