

Edgar Filing: E ON AG - Form U-1

E ON AG  
Form U-1  
September 04, 2001

As filed with the Securities and Exchange Commission on September 4, 2001

File No. 70-

United States Securities and Exchange Commission  
Washington, D.C. 20549

-----  
Form U-1  
Application/Declaration  
Under the  
Public Utility Holding Company Act of 1935  
-----

E.ON AG  
E.ON-Platz 1  
40479 Dusseldorf  
Germany

Powergen plc  
Powergen US Holdings Limited  
Powergen US Investments  
Powergen Luxembourg sarl  
Powergen Luxembourg Holdings sarl  
Powergen Luxembourg Investments sarl  
Powergen USA  
Powergen US Investments Corp.  
53 New Broad Street  
London EC2M 1SL  
United Kingdom

(Names of companies filing this statement  
and addresses of principal executive offices)  
-----

E.ON AG  
(Name of top registered holding company)  
-----

Ulrich Hueppe  
General Counsel, Executive Vice President  
Dr. Guntram Wuerzberg  
Vice President General Legal Affairs  
E.ON AG  
E.ON-Platz 1  
40479 Dusseldorf  
Germany  
Telephone: 011-49-211-4579-388  
Facsimile: 011-49-211-4579-610

David Jackson  
Company Secretary and General Counsel  
Powergen plc  
53 New Broad Street  
London EC2M 1SL  
United Kingdom  
Telephone: 011-44-207-826-2742  
Facsimile: 011-44-207-826-2716

(Names and addresses of agents for service)

The Commission is also requested to send copies  
of any communication in connection with this matter to:

Tia S. Barancik  
LeBoeuf, Lamb, Greene & MacRae, L.L.P.  
125 West 55th Street  
New York, NY 10019-5389  
Telephone: (212) 424-8455  
Facsimile: (212) 424-8500

Peter D. Clarke  
Debra J. Schnebel  
Jones, Day, Reavis & Pogue  
77 West Wacker Drive, Ste. 3500  
Chicago, IL 60601-1692  
Telephone: (312) 782-3939  
Facsimile: (312) 782-8585

Markian M. W. Melnyk

## Edgar Filing: E ON AG - Form U-1

LeBoeuf, Lamb, Greene & MacRae, L.L.P.  
1875 Connecticut Ave., N.W.  
Washington, D.C. 20009-5728  
Telephone: (202) 986-8212  
Facsimile: (202) 986-8102

Joseph B. Frumkin  
Sullivan & Cromwell  
125 Broad Street  
New York, NY 10004  
Telephone: (212) 558-4000  
Facsimile: (212) 558-3588

### TABLE OF CONTENTS

Item 1. Description of the Proposed Transaction.....	1
A. Introduction.....	1
1. Background of the Transaction.....	1
2. E.ON Generally.....	2
a. Energy - E.ON Energie.....	3
b. Chemicals - Degussa AG.....	4
c. Real Estate - Viterra AG.....	4
d. Oil - VEBA Oel.....	5
e. Telecommunications - E.ON Telecom GmbH and VIAG Telecom Beteiligungs GmbH.....	5
f. Distribution and Logistics - Stinnes AG and Klockner & Co. AG.....	5
g. Aluminum - VAW aluminum AG.....	6
h. Silicon Wafers - MEMC Electronic Materials Inc.....	6
i. RAG.....	6
j. Divestiture Program Generally.....	6
3. Powergen Generally.....	7
a. Powergen UK.....	8
b. LG&E Energy.....	8
c. Powergen International.....	10
B. Description of the Acquisition.....	10
1. Introduction.....	10
2. The Offer.....	11
3. Loan Note Alternative.....	12
4. Conditions to the Offer.....	13

## Edgar Filing: E ON AG - Form U-1

C.	Financing the Acquisition and the Resulting Financial and Corporate Structure.....	14
D.	E.ON's Shareholders.....	16
E.	Management of the Combined System.....	16
F.	Regulatory Environment.....	17
1.	Generally.....	17
2.	The Acquisition Under U.K. Law.....	17
3.	Restructuring Activity in the U.S.....	18
G.	Service Company.....	19
Item 2.	Fees, Commissions and Expenses.....	19
Item 3.	Applicable Statutory Provisions.....	20
A.	Legal Analysis of the Acquisition.....	21
B.	Undue Concentration.....	22
C.	Reasonableness of Consideration.....	24
D.	Capital Structure and Corporate Structure Complication.....	27
E.	Compliance with State Law.....	33
F.	Integrated Public Utility System.....	34
G.	Retention of Nonutility Subsidiaries.....	40
1.	E.ON's Nonutility Subsidiaries.....	40
a.	Degussa.....	41
b.	Viterra.....	42
c.	RAG.....	44
2.	Powergen's Nonutility Businesses.....	48
H.	EWG/FUCO-Related Financings.....	49
1.	Retention of Existing Foreign Utility and Energy-related Businesses.....	49
2.	Reinvestment of Proceeds from the Divestiture of Nonutility Businesses.....	50
3.	Additional Investments in EWGs/FUCOs.....	50
a.	Compliance with Rule 53.....	51

## Edgar Filing: E ON AG - Form U-1

b. Compliance With Rule 54.....	62
I. Investments in TBD Subsidiaries.....	63
J. E.ON's Investments in Portfolio Securities.....	64
K. Intrasystem Provision of Services.....	66
1. LG&E Services and the LG&E Energy Group.....	66
2. Services provided by Powergen Group and E.ON Group.....	67
3. Exemptions for Transactions with Non-utility Companies.....	68
4. Interaction with Other Regulatory Agencies.....	69
5. Restriction on Amendments.....	71
L. E.ON's Water Operations.....	71
M. Reporting Requirements.....	74
Item 4. Regul Approvals.....	75
A. Antitrust.....	76
B. Federal Power Act.....	76
C. Exon-Florio.....	76
D. State Regulatory Approval.....	77
Item 5. Procedure.....	77
Item 6. Exhibits and Financial Statements.....	77
Item 7. Information as to Environmental Effects.....	80

### Certain Defined Terms

1. "Applicants" means E.ON, Powergen and the Powergen Intermediate Holding Companies.
2. "E.ON Energie" means E.ON Energie AG.
3. "E.ON Group" means E.ON and all of its direct and indirect subsidiary companies.
4. "E.ON" means E.ON AG.
5. "GAAP" means generally accepted accounting principles.
6. "KU" means Kentucky Utilities Company.
7. "LG&E Energy Group" means LG&E Energy and all of its direct and indirect subsidiary companies.
8. "LG&E Energy" means LG&E Energy Corp.

## Edgar Filing: E ON AG - Form U-1

9. "LG&E" means Louisville Gas and Electric Company.
10. "Powergen Group" means Powergen and all of its direct and indirect subsidiary companies.
11. "Powergen UK Group" means Powergen, Powergen Group Holdings and all of the direct and indirect subsidiary companies of Powergen Group Holdings.
12. "Powergen Intermediate Holding Companies" means Powergen US Holdings Limited, Powergen US Investments Limited, Powergen Luxembourg sarl, Powergen Luxembourg Holdings sarl, Powergen Luxembourg Investments sarl, Powergen USA and Powergen US Investments Corp.
13. "Powergen" means Powergen plc.
14. "Utility Subsidiaries" means LG&E and KU.

### Item 1. Description of the Proposed Transaction

#### A. Introduction

This Application/Declaration (the "Application") requests the authorization of the Securities and Exchange Commission (the "Commission" or "SEC") for the proposed acquisition of Powergen plc ("Powergen") by E.ON AG ("E.ON") (the "Acquisition"), and for certain related transactions. Commission authorization of the Acquisition is required under Sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 (the "1935 Act" or "Act") because E.ON's acquisition of Powergen will result in E.ON's indirect acquisition of Powergen's U.S. holding company, LG&E Energy Corp. ("LG&E Energy"), and its public utility company subsidiaries Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU").

Following consummation of the Acquisition, E.ON will register with the Commission as a holding company under Section 5 of the Act.

#### 1. Background of the Transaction

E.ON seeks to become a leading global integrated energy and utility company. The acquisition of Powergen is a natural step in furtherance of E.ON's effort to build a global presence and will provide E.ON with a leading pan-European position in energy utilities. Powergen also provides E.ON with a significant presence in the U.K., the third largest European electricity market and brings with it substantial energy trading experience.

At the same time, E.ON's indirect acquisition of LG&E Energy provides a platform for E.ON to build a profitable position in the U.S. LG&E Energy has been ranked number one in cross industry customer surveys and benefits from a high quality asset base and regional price and cost advantages. E.ON expects to utilize the high quality management of Powergen and LG&E Energy to expand its presence in the U.S. In addition, E.ON's financial strength and utility expertise can help to build LG&E Energy into a stronger company. For example, the greater employment opportunities associated with a multinational corporation such as E.ON should help attract (and keep) the most skilled and motivated employees to LG&E Energy and its subsidiaries.

E.ON believes LG&E Energy is the ideal nucleus about which to expand its U.S. energy and utility operations. The U.S. energy market is eight times the size of the German energy market and the highly fragmented nature of the U.S. energy and utility industry presents significant opportunities to grow, both organically and by acquisition. E.ON is the right company to grow LG&E Energy. E.ON brings unrivaled experience and resources to the task, as the world's largest investor-owned utility. E.ON's market capitalization of approximately

## Edgar Filing: E ON AG - Form U-1

Euro 39.5 billion (approximately \$35.7 billion/1/) as of April 6, 2001 (the last business day before the public announcement of the preconditional offer), and its financial strength equals or exceeds that of any company in the U.S. energy/utility industry.

-----  
1 Throughout this Application, unless otherwise indicated, amounts originally in Euros were converted at \$0.88: Euro 1 and amounts in British Pounds were converted at \$1.43 : Pound 1.

In addition to providing greater global scale, the acquisition of Powergen will accelerate E.ON's strategic move towards a pure-play, globally integrated energy and utility business. E.ON intends to divest its non-energy and non-utility related assets over three to five years and to reinvest the proceeds of these sales to grow core energy and utility activities. E.ON's Management Board and Powergen's management share a common managerial philosophy, comparable organizational cultures and strategic objectives. These key areas of commonality should result in the rapid realization of the benefits of the business combination. The Acquisition will also provide Powergen's shareholders with a substantial premium to the market price of the Powergen stock and is expected to provide E.ON's shareholders with immediate earnings enhancement (pre-goodwill amortization).

E.ON's commitment to participate in the U.S. energy market is strong. E.ON was one of the first utility companies on the European continent to list its shares on the New York Stock Exchange and to publish financial statements according to U.S. GAAP. E.ON's willingness to register as a holding company under the 1935 Act and to submit to the ongoing regulation associated with that status further evidences E.ON's commitment to develop its presence in the U.S.

### 2. E.ON Generally

E.ON is an Aktiengesellschaft, the equivalent of a U.S. stock corporation, formed under the laws of the Federal Republic of Germany. E.ON's shares are traded on all German stock exchanges, the Swiss Stock Exchange and as American Depository Receipts ("ADRs") on the New York Stock Exchange, Inc. ("NYSE"). As of year end 2000, E.ON is Germany's third largest industrial group, employs more than 180,000 people and has a market capitalization of approximately Euro 39.5 billion (approximately \$35.7) billion as of April 6, 2001, the last business day prior to the announcement of the Acquisition. More detailed information concerning E.ON and its subsidiaries is contained in E.ON's Annual Report on Form 20-F for the year ended December 31, 2000. See Exhibit F-1.

E.ON was formed in June 2000 as a result of the merger of German conglomerates VEBA AG and VIAG AG, which trace their roots to the 1920s. E.ON provides strategic management for group members and coordinates group activities. E.ON also provides centralized controller, treasury, risk management and service functions to group members, as well as communications, capital markets and investor relations functions. E.ON currently is organized into eight separate business divisions: energy, chemicals, real estate, oil, telecommunications, distribution/logistics, aluminum and silicon wafers. Each business division is responsible for managing its own day-to-day business. E.ON's energy business division comprises 54% of E.ON's total investments. A list of E.ON subsidiaries, based on the information provided as part of E.ON's annual accounts, is attached as Exhibit G-1 hereto. The business divisions are further described below.

## Edgar Filing: E ON AG - Form U-1

Upon completion of the Acquisition, E.ON will be the world's second largest utility company and the largest investor-owned utility, based on electricity sales of 323 trillion watt hours and approximately 30 million electric and natural gas customers.<sup>2</sup>

-----  
<sup>2</sup> The amounts indicated include results from companies in which E.ON holds less than a 50% interest.

2

### a. Energy - E.ON Energie

In July 2000, following completion of the merger between VEBA AG and VIAG AG, E.ON merged the two major energy divisions of former VEBA AG and VIAG AG (PreussenElektra AG and Bayernwerk AG, respectively) to form E.ON Energie. E.ON Energie, a wholly owned subsidiary of E.ON, supplies roughly one-third of Germany's electricity. E.ON Energie's core business consists of the ownership and operation of power generation facilities, the transmission and distribution of electric power, gas and heat and energy-related businesses, including the supply of water and water-related services.

E.ON Energie owns interests in and operates electric power generation facilities with a total installed capacity of more than 37,000 MW, its attributable share of which is approximately 29,000 MW (not including mothballed, shut down or inactive power plants). The power generation business division is subdivided into three wholly owned German limited liability companies according to fuels used: E.ON Kraftwerke GmbH owns and operates the power stations using fossil energy sources, E.ON Kernkraft GmbH owns and operates the nuclear power stations and E.ON Wasserkraft GmbH owns and operates the hydroelectric power plants. On July 12, 2001, E.ON Energie and the Austrian utility company Verbund signed a Memorandum of Understanding concerning the establishment of a combined company for hydroelectric power production. To form European Hydro Power ("EHP"), E.ON Energie will contribute its subsidiary, E.ON Wasserkraft GmbH, and Verbund will contribute its stake in Austrian Hydro Power. E.ON Energie will have a 40% share in EHP and Verbund will own the remaining 60%. The new company will own some 200 hydroelectric power plants with a capacity of 9,600 MW, employing approximately 2,500 people. EHP is expected to commence operations by January 1, 2002.

The power transmission grid of E.ON Energie is located in the German states of Schleswig-Holstein, Lower Saxony, North Rhine-Westphalia, Hesse, Bavaria and Mecklenburg- Western Pomerania and reaches from Scandinavia to the Alps. The grid is interconnected with the western European power grid with links to the Netherlands, Austria, Switzerland and eastern Europe. With a system length of over 37,000 km (23,000 miles) and a coverage area of nearly 170,000 square km (66,000 square miles), the grid covers more than one-third of the surface area of Germany. The high-voltage network allows long-distance power transport at low transmission losses. The system is operated from two main circuit control headquarters. In addition, there are more than ten smaller control units at decentralized locations within the grid area. The system is mainly, but not completely (depending on regional locations), operated by E.ON Netz GmbH, a wholly owned subsidiary of E.ON Energie.

E.ON Energie conducts its retail energy business through a number of mostly majority-owned subsidiaries and its utility distribution and supply business through a number of majority-owned subsidiaries in Germany which are identified

## Edgar Filing: E ON AG - Form U-1

in Exhibit G-1. Generally, E.ON Energie supplied about one-third of the electricity consumed in Germany in 2000. Its customers are interregional, regional and municipal utilities and traders, large industrial and special-rate customers and, mainly through regional distributors, standard-rate customers. In 2000, E.ON Energie sold 125.9 billion kWh of electricity in western Germany and 24.1 billion kWh in eastern Germany and exported 19.9 billion kWh.

3

E.ON Energie conducts its marketing and energy trading business through E.ON Trading GmbH, which is a wholly owned subsidiary of E.ON Energie. E.ON Energie believes that its trading floor provides E.ON Energie with valuable market insight and has strengthened its competitive position in the European electricity market. E.ON Energie intends to expand both third party trading on the trading floor and its own trading of financial contracts of electricity products. During 2000, E.ON Energie was one of the first participants in the newly-established Leipzig Power Exchange as well as the European Energy Exchange in Frankfurt. In 1999, E.ON Energie became a participant in the Scandinavian electricity exchange, Nordpool, as well as the Amsterdam Power Exchange in the Netherlands. E.ON Energie's overall electricity trading volume amounted to 46.1 billion kWh in 2000. In the summer of 2000, in order to improve its gas trading capabilities and expand its gas trading business, E.ON Energie formed a 75% - 25% joint venture with the management of D-Gas B.V., an experienced British team of gas traders.

E.ON Trading has incorporated a complete risk management system in compliance with requirements for trading businesses of the German Federal Supervisory Office for Banking. As a consequence, there is an operational separation between the functions of trading, transacting/handling and controlling, so-called front-, middle- and back-office functions. Especially important, the function of risk-management is not handled by E.ON Trading itself, but by the separate department of Risk Management within E.ON Energie. The two major risks in the trading business, i.e. adverse effects of market price changes on open trading positions and counter-party credit risk, are covered by: (i) a limit system that is actualized daily by risk management and controlling and (ii) credit limits on the basis of rating analysis for each contractual partner.

E.ON intends to qualify E.ON Energie as a foreign utility company ("FUCO") under Section 33 of the Act at the time of the Acquisition.

### b. Chemicals - Degussa AG

Degussa AG ("Degussa") was formed on February 9, 2001, as a result of the merger of Degussa-Huls and SKW Trostberg, two major specialty chemical companies. E.ON owns 64.55% of the equity of Degussa. The new company has divided its specialty chemicals businesses into six business divisions: health and nutrition, construction chemicals, fine and industrial chemicals, performance chemicals, coatings and advanced fillers, and specialty polymers. As discussed in greater detail below, E.ON proposes to divest its interest in the chemicals business within 5 years of the date of the completion of the Acquisition and the registration of E.ON as a holding company under the Act.

### c. Real Estate - Viterra AG

Viterra AG ("Viterra") is E.ON's real estate group and is engaged in four strategic business units: residential investment, residential development, residential services and commercial real estate. Viterra has a property



## Edgar Filing: E ON AG - Form U-1

portfolio of approximately 120,000 housing units and 125 commercial units. As discussed in greater detail below, E.ON proposes to divest its interest in the real estate business subsidiaries within 5 years of the date of the completion of the Acquisition and the registration of E.ON as a holding company under the Act.

4

### d. Oil - VEBA Oel

VEBA Oel manages interests in oil, gas and petrochemicals business including the exploration for, and production of, hydrocarbons, refining of crude oil, production of petrochemicals and the marketing of petroleum products and petrochemicals. On July 16, 2001, E.ON and BP plc, announced that they had reached an agreement to reorganize their oil and gas business. As part of this reorganization and the related transactions, BP will become VEBA Oel