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CONSOL ENERGY INC  
Form SC 13D/A  
June 02, 2003

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
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SCHEDULE 13D

Under the Securities Exchange Act of 1934  
(Amendment No. 2)\*

CONSOL Energy Inc.  
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(Name of Issuer)

Common Stock, par value \$.01 per share  
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(Title of Class of Securities)

20854P 10 9  
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(CUSIP Number)

Dr. Georg Mueller  
RWE Aktiengesellschaft  
Opernplatz 1  
D-45128 Essen, Germany  
011 49-201-12-00  
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(Name, Address and Telephone Number of Person  
Authorized to Receive Notices and Communications)

With a copy to:  
Peter S. Wilson, Esq.  
Cravath, Swaine & Moore  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019  
(212) 474-1000

May 28, 2003  
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(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of ss.ss. 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. |\_ |

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 240.13d-7 for other parties to whom copies are to be sent.

\*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be

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deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

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CUSIP No. 20854P 10 9

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1 NAME OF REPORTING PERSONS  
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)

RWE Aktiengesellschaft

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2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\* (a)   
(b)

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3 SEC USE ONLY

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4 SOURCE OF FUNDS\*

AF

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5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

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6 CITIZENSHIP OR PLACE OF ORGANIZATION

FEDERAL REPUBLIC OF GERMANY

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|              |   |                        |
|--------------|---|------------------------|
|              | 7 | SOLE VOTING POWER      |
| NUMBER OF    |   | 57,997,357             |
| SHARES       |   |                        |
| BENEFICIALLY | 8 | SHARED VOTING POWER    |
| OWNED BY     |   | 0                      |
| EACH         | 9 | SOLE DISPOSITIVE POWER |

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REPORTING 57,997,357

PERSON

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10 SHARED DISPOSITIVE POWER

WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

57,997,357

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12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES\*

[\_]

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13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

73.6%

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14 TYPE OF REPORTING PERSON\*

CO

3

This Amendment No. 2 amends and supplements the Statement on Schedule 13D initially filed on June 7, 1999 with the Securities and Exchange Commission (the "SEC") by RWE Aktiengesellschaft, a corporation organized under the laws of the Federal Republic of Germany ("RWE"), as previously amended by Amendment No. 1 filed with the SEC by RWE on September 5, 2001 (such Schedule 13D as previously amended, the "Schedule 13D"), which Schedule 13D relates to the Common Stock, par value \$.01 per share, of CONSOL Energy Inc. Unless otherwise defined herein, capitalized terms used herein have the respective meanings ascribed thereto in the Schedule 13D.

Item 4. Purpose of Transaction

Item 4 of the Schedule 13D is hereby amended and supplemented by inserting the following paragraph as the next to last paragraph of such item:

In connection with its review of its existing investments, RWE is considering the disposition of some of or all the Shares of Common Stock of the Issuer owned by its Subsidiaries, which disposition may take any of a number of forms, including, without limitation, underwritten offerings of such Shares, open market or private sales of such Shares, an extraordinary corporate transaction involving the Issuer, including, without limitation, a merger or reorganization, or a combination of any of the foregoing. RWE has advised the Issuer of the foregoing and has advised the Issuer of its intention to coordinate with the Issuer in the implementation of any such disposition. The timing, form and size of any such disposition would depend on market conditions, business conditions and other factors, and there can be no assurance that

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any such disposition will occur. RWE reserves the right not to dispose of any Shares of Common Stock of the Issuer.

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Signature

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date: June 2, 2003

RWE AKTIENGESELLSCHAFT,

By /s/ Georg Lambertz

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Name: Georg Lambertz  
Title: Senior Vice President Finance

By /s/ Andreas Zetzche

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Name: Andreas Zetzche  
Title: Senior Vice President  
Mergers and Acquisitions

Borrower Loan, we expect there will be a standard commitment letter from Lender for the Affiliate Borrower Loan once Lender has approved the Affiliate Borrower and the related transaction and we expect the related Affiliate Borrower will enter into a credit agreement substantially similar to the Acquisition Credit Agreement. Lender intends to assign the Acquisition Credit Agreement, any future credit agreement, and the Affiliate Borrower Loan Documents to Freddie Mac.

The Acquisition Facility has a maturity date of March 1, 2022 (as it may be extended, the "Maturity Date"). Each Affiliate Borrower Loan will mature on the Maturity Date. The Company has two one-year extension options, each subject to Lender approval at Lender's sole discretion, by delivering notice to Lender at least 60 days, but not more than 90 days, prior to the scheduled maturity date and paying an extension fee of \$50,000 for each extension.

The Company has the option to request Lender to expand the Acquisition Facility to a maximum amount of \$300 million at any time prior to March 1, 2021, subject to Lender's approval in its sole discretion. Any request by the Company to expand the Acquisition Facility must be in a minimum amount of \$25 million and the Company may not request more than two expansions within any 12-month period. If the Company requests an expansion that is not approved by Lender, the Company will no longer have the right to expand the Acquisition Facility. In connection with any expansion, the Company will be required to pay: (I) an expansion fee of 0.0005 times the amount of the expansion to Freddie Mac; and (II) an expansion fee of 0.0010 times the amount of the expansion to the Lender.

At the Affiliate Borrower's option for each Affiliate Borrower Loan, loans will bear interest at a rate per annum equal to either: (x) the Lender's "prime rate" (the "Prime Rate"); or (y) the one-month LIBOR rate plus an applicable margin ("LIBOR Rate"). The margin for each LIBOR Rate Affiliate Borrower Loan is 5 basis points plus a "net spread" based on the property type owned by the Affiliate Borrower and the Lender's calculated property debt service coverage ratio as shown in the following tables:

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## Multifamily Property:

| Property Debt Service Coverage Ratio ("DSCR")              | Net Spread | Margin |
|--|------------|--------|
| Greater than or equal to 1.55:1.00 but less than 1.75:1.00 | 190        | 195    |
| Greater than or equal to 1.75:1.00 but less than 1.95:1.00 | 180        | 185    |
| Greater than or equal to 1.95:1.00                         | 170        | 175    |

## Student Housing Property:

| Property DSCR  | Net Spread | Margin |
|--|------------|--------|
| Greater than or equal to 1.60:1.00 but less than 1.80:1.00 | 215        | 220    |
| Greater than or equal to 1.80:1.00 but less than 2.00:1.00 | 205        | 210    |
| Greater than or equal to 2.00:1.00                         | 195        | 200    |

In connection with establishing the Acquisition Facility and entering into the Acquisition Credit Agreement, the Company paid the following fees: (1) a commitment fee of \$100,000 payable to Freddie Mac; and (2) a commitment fee to Lender of \$200,000. Upon the addition of an Affiliate Borrower and the creation of a new Affiliate Borrower Loan, there will be the following fees due: (i) an addition fee equal to .0010 times the amount of the Affiliated Borrower Loan payable to Freddie Mac; and (ii) an addition fee equal to .0030 times the amount of the Affiliated Borrower Loan payable to Lender. On February 28, 2017, Borrower became the first Affiliated Borrower under the Acquisition Credit Agreement and received an advance of \$37,485,000 (the "Acquisition Borrowing") and paid an addition fee of \$37,485 to Freddie Mac and an addition fee of \$112,455 to Lender. In connection with the Acquisition Borrowing, the Company's manager, Preferred Apartment Advisors, LLC, is entitled to a loan coordination fee of approximately \$599,760, or 1.6% of the Acquisition Borrowing.

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If an Affiliate Borrower Loan remains outstanding for more than two years, the Affiliated Borrower will owe Lender an annual seasoning fee (a "Seasoning Fee") that is equal to the applicable seasoning spread (the "Seasoning Spread") multiplied by the outstanding amount of the Affiliate Borrower Loan for the applicable seasoning period ("Seasoning Period"). On each payment date for the Affiliate Borrower Loan during the applicable Seasoning Period, 1/12th of the applicable Seasoning Fee shall be paid by the Affiliate Borrower in arrears on each payment date beginning with the payment date immediately after the applicable anniversary date. Below is a table of the Seasoning Spreads and Seasoning Periods:

| Seasoning Spread<br>(Basis Points) | Seasoning Period  |
|------------------------------------|---|
| 0.0050                             | The second anniversary of the date the applicable Affiliate Borrower Loan was initially advanced until, but not including, the fourth anniversary date. |
| 0.0075                             | The third anniversary of the date the applicable Affiliate Borrower Loan was initially advanced until, but not including, the fifth anniversary date.   |
| 0.0100                             | The fourth anniversary of the date the applicable Affiliate Borrower Loan was initially advanced until, but not including, the sixth anniversary date.  |
| 0.0125                             | The fifth anniversary of the date the applicable Affiliate Borrower Loan was initially advanced until, but not including, the seventh anniversary date. |

The Acquisition Credit Agreement has limits on the amount any Affiliate Borrower may borrow under the Acquisition Facility (the "Sublimits"). The Sublimits include: (l) each Affiliate Borrower Loan must have a loan to value ratio that does not exceed 70% ("Property LTV"); (m) the debt service coverage ratio for each Affiliate Borrower Loan shall not be less than 1.55:1.00 for a multifamily property or 1.60:1.00 for a student housing property ("DSCR"); (n) the aggregate number of all outstanding borrowing advances at any time under the Acquisition Facility shall not exceed ten; and (o) no more than \$100 million of the Acquisition Facility may be used for student housing properties.

Lender will perform annual market valuations for each property underlying an Affiliate Borrower Loan (the "Annual Market Value"). If an Annual Market Value is above the most recent market value of the underlying property then, subject to the maximum amount of the Acquisition Facility, the Affiliate Borrower may borrow additional amounts so long as there is no Sublimit violation. If a new Annual Market Value is less than the most recent Annual Market Value and it causes a Sublimit violation, then the Affiliate Borrower must: (1) pledge an additional operating property as collateral to cure the Sublimit violations; (2) prepay the portion of the Affiliate Borrower Loan in such amount as is necessary to cure the Sublimits violation; or (3) if the Sublimit violation is only related to Property LTV, the Affiliate Borrower has the one-time right to supply a letter of credit in an amount of not less than the difference between (a) the value all properties in the

Acquisition Facility utilizing the Property LTV's determined at the new Annual Market Value and (b) the value of all properties in the Acquisition Facility utilizing a Property LTV Ratio of 70% ("LOC Amount"). However, in no event may the aggregate of all LOC Amounts under the Acquisition Facility exceed the lesser of 10% of the maximum amount of the Acquisition Facility or \$20 million.

The description above of the terms of the Acquisition Facility is qualified in its entirety by the Acquisition Credit Agreement attached as Exhibit 10.1 to this Current Report on Form 8-K.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information in this report set forth under Item 1.01 regarding the Acquisition Facility is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

10.1 Credit Agreement dated as of February 28, 2017 among Preferred Apartment Communities, Inc., PCC Tempe, LLC and KeyBank National Association

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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

PREFERRED APARTMENT  
COMMUNITIES, INC.  
(Registrant)

Date: March 6, 2017 By: /s/ Jeffrey R. Sprain  
Jeffrey R. Sprain  
Senior Vice President, General Counsel and Secretary