

contemplated by section 12(d)(1)(D), it technically does not qualify as a "reorganization," as that term is defined in section 2(a)(33) of the Act, thereby rendering section 12(d)(1)(D) unavailable.

3. Section 6(c) provides that the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is 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.

4. Applicants submit that the requested exemption from section 12(d)(1) meets the section 6(c) standards. Section 12(d)(1) was intended to mitigate or eliminate actual or potential abuses which might arise when one investment company acquires shares of another investment company. These abuses include the acquiring fund imposing undue influence over the management of the acquired funds through the threat of large-scale redemptions, the acquisition by the acquiring company of voting control of the acquired company, the layering of sales charges, advisory fees, and administrative costs, and the creation of a complex pyramidal structure which may be confusing to investors. The Reorganization implicates none of these concerns. The Transferring Fund's ownership of the Acquiring Fund's shares will exist for only an instant, as the Transferring Fund will only hold such shares in order to use those shares to redeem in kind the Investor shares of the Transferring Fund. The Transferring Fund will not have the opportunity to redeem, to vote, or to take other action with respect to the Acquiring Fund's shares, and will hold the shares for only a brief period during which neither their value nor the layering of fees could be an issue. Furthermore, the Reorganization is similar to the types of transactions that Congress specifically exempted from section 12(d)(1) through the enactment of subsection (D) thereof.

5. Section 17(a) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company, acting as principal, from selling to or purchasing from such registered company, any security or other property. Section 17(b) provides that the SEC may exempt a transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy

of the registered investment company concerned and with the general purposes of the Act.

6. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all the assets involving registered investment companies that may be affiliated persons solely by reason of having a common investment adviser, common directors/trustees and/or common officers provided that certain conditions are satisfied.

7. The proposed reorganization may not be exempt from the prohibitions of section 17(a) by reason of rule 17a-8. Under the proposed Reorganization, the Transferring Fund will transfer to the Acquiring Fund all of that portion of the assets of the Transferring Fund having a value equal to the aggregate net asset value of the Investor shares, but will not transfer that portion of the assets of the Transferring Fund representing the aggregate net asset value of the Class R shares. Therefore, the proposed Reorganization technically may not be a merger, consolidation, or purchase or sale of substantially all of the assets involving registered investment companies under rule 17a-8. In addition, Mellon, directly or through subsidiaries, holds with power to vote approximately 63% of the Class R shares of the Transferring Fund. As a result, the Transferring Fund would be deemed to be an affiliated person of Mellon and, arguably, of Dreyfus as its wholly-owned subsidiary. Therefore, the Transferring Fund may be deemed an affiliated person of an affiliated person of the Acquiring Fund for reasons not based solely on their common adviser.

8. Applicants believe that the terms of the reorganization satisfy the standards of section 17(b). Each Fund's board, including the non-interested trustees, has reviewed the terms of the Reorganization and have found that participation in the Reorganization as contemplated by the Plan is in the best interests of the respective Fund, and that the interests of existing shareholders of each Fund will not be diluted as a result of the Reorganization. Each Fund's board, including its non-interested trustees, also has concluded that any potential benefits to Dreyfus, Mellon, and their affiliates as a result of the Reorganization are on balance not inappropriate in light of the commitments of Dreyfus to bear the expenses of the Reorganization and to limit total fees of the Acquiring fund to .60 of 1% of average daily net assets for a period of one year following the Reorganization, the potential benefits of

the Reorganization to each Fund and its shareholders, and all applicable factors. The investment objectives of the Acquiring Fund, moreover, are consistent with those of the Transferring Fund. Accordingly, the Reorganization will be consistent with the policies of each Fund.

9. Section 17(d) prohibits any affiliated person of a registered investment company, acting as principal, from effecting any transaction in which such registered investment company is a joint participant with such person in contravention of SEC rules and regulations. Rule 17d-1 provides that no joint transaction may be consummated unless the SEC approves the transaction after considering whether the participation of the investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

10. The Supplemental Agreement between the Acquiring Fund and the Transferring Fund could be characterized as a joint enterprise or transaction within the meaning of section 17(d) and rule 17d-1 thereunder. The Supplemental Agreement provides that the holders of the respective Class R shares and the Investor shares of the Transferring Fund, and of shares of the Acquiring Fund, are treated equitable by allocating the unknown or contingent assets and liabilities of the Transferring Fund between the parties of the Reorganization. Applicants submit that the Supplemental Agreement thus meets the standards of rule 17d-1.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 96-7502 Filed 3-27-96; 8:45 am]

BILLING CODE, 8010-01-M

[Rel. No. IC-21840; File No. 812-9942]

#### **GNA Variable Investment Account, et al.**

March 22, 1996.

**AGENCY:** Securities and Exchange Commission (the "SEC" or the "Commission").

**ACTION:** Notice of Application for an order under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANTS:** GNA Variable Investment Account (the "Account"), and Great

Northern Insured Annuity Corporation ("GNA").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 26(b) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants seek an order permitting the substitution of certain securities held by the Account.

**FILING DATE:** The application was filed on January 16, 1996, and amended on March 12, 1996.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 16, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, J. Neil McMurdie, Esq., Associate Counsel and Assistant Vice-President, Great Northern Insured Annuity Corporation, Two Union Square, Ste. 5600, Seattle, Washington 98111-0490.

**FOR FURTHER INFORMATION CONTACT:** Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

#### Applicant's Representations

1. GNA is a stock life insurance company organized under Washington law 1980. GNA is a wholly-owned subsidiary of General Electric Capital Assurance Company, a wholly-owned subsidiary of GNA Corporation, which is a wholly-owned subsidiary of General Electric Capital Corporation.

2. GNA established the Account under Washington law in 1981 to fund variable annuity contracts. The Account is registered with the Commission under the 1940 Act as a unit investment trust. The assets of the Account are divided into twelve subaccounts (each a

"Subaccount"), each of which invests in shares of one of twelve designated portfolios of three registered open-end investment companies. Under certain prescribed circumstances, and with notice to Participants (defined below) and subject to regulatory approval, GNA may transfer assets held in one Subaccount to another Subaccount.

3. There are two outstanding series of registered variable annuity contracts ("Contracts") participating in the Account. Each Contract is a group allocated contract designed for use in connection with qualified and non-qualified retirement plans. Each person or entity participating under a contract ("Participant") is issued a certificate which states a Participant's rights under the Contract.

4. The Power Portfolio Variable Annuity Contract (the "Power Contract") is designed for a group consisting of clients of a broker-dealer or financial institution, or any other organized group acceptable to GNA. Participants under this contract may allocate certificate values among eight variable investment options: the GNA Growth Portfolio, the GNA Value Portfolio, the GNA Government Portfolio, and the GNA Adjustable Rate Portfolio of GNA Variable Series Trust; and the GE Fixed Income Portfolio, the GE International Equity Portfolio, the GE U.S. Equity Portfolio and the GE Money Market Portfolio of Variable Investment Trust.

5. The Paragon Power Portfolio Variable Annuity Contract ("Paragon Contract") is designed for a group consisting of customers of banks or bank affiliates that are subsidiaries of Premier Bancorp, Inc. ("Premier"). The only outstanding Paragon Contract was issued to GNA Securities, Inc. Participants under the Paragon Contract are entitled to allocate certificate values among nine variable investment options: the GNA Growth Portfolio, the GNA Government Portfolio and the GNA Adjustable Rate Portfolio of GNA Variable Series Trust; the GE International Equity Portfolio and the GE Money Market Portfolio of Variable Investment Trust; and the Paragon Power Intermediate-Term Bond Portfolio, the Paragon Power Value Growth Portfolio, the Paragon Power Value Equity Income Portfolio, and the Paragon Power Gulf South Growth Portfolio (collectively, the "Portfolios") of Paragon Portfolio (the "Trust"), a registered management investment company.

6. Premier Investment advisers, L.L.C., an indirect subsidiary of Premier, served as investment adviser of the Portfolios. On January 1, 1996, Premier

merged with and into a subsidiary of Banc One Corporation ("Banc One"), an Ohio bank holding company. The merger resulted in the automatic termination of the investment advisory arrangements between Premier Investment Advisers L.L.C. and the Trust. In anticipation of this effect of the merger, the trustees of the Trust approved a new investment advisory agreement with Banc One Investment Advisers Corporation ("BOIA"), an indirect wholly-owned subsidiary of Banc One, on October 31, 1995. The shareholders of each portfolio of the Trust approved the new investment advisory agreement on December 20, 1995, and the agreement took effect on January 2, 1996.

7. BOIA has notified the Trust that it does not intend to provide investment advisory services to the Portfolios over the long term. OIA notified GNA that the trustees of the Trust determined at their October 31, 1995 meeting that, following the merger of premier and Banc One, the Trust would not longer offer shares of the Portfolios as funding options for the Paragon Contract. BOIA advised GNA to take any actions necessary to substitute alternative investment options for the Portfolios.

8. In light of the contemplated termination of the Portfolios, GNA has restricted additional investment in the Portfolios and provided alternative investment options to present Paragon Contract Participants. On December 11, 1995, GNA notified those present Paragon Contract Participants that, on or after that date: (i) The Portfolios would cease to be investment options under the Contracts; (ii) no purchase payments from present or future Paragon Contract Participants could be allocated to the Portfolios; and (iii) present Paragon Contract Participants could not transfer their account value to the Subaccounts corresponding to the Portfolios. The notification stated that GNA was seeking an order from the Commission to permit GNA to substitute shares of the GE Money Market Portfolio of the Variable Investment Trust for shares of the Portfolios. Pending receipt of the order, transfers would be permitted from the Subaccounts corresponding to the Portfolios at any time, without the assessment of a \$25 charge that might otherwise apply. GNA advised Paragon Contract Participants that certificate values invested in the Portfolios before December 11, 1995, could remain so invested until the order requested herein has been granted.

9. On December 11, 1995, GNA commenced an offer to Paragon Contract Participants to exchange certificates under the Power Contract for certificates

under the Paragon Contract.<sup>1</sup> This exchange would make available to Paragon Contract Participants three additional investment options: the GNA Value Portfolio of GNA Variable Series Trust; and the GE Fixed Income Portfolio and the GE U.S. Equity Portfolio of the Variable Investment Trust. A description of the new investment options was provided to Paragon Contract Participants by the prospectuses for the applicable portfolios.

10. Following such an exchange, a former Paragon Contract Participant may reallocate his or her certificate value among the Subaccounts available to Power Contract Participants. Any such reallocation will not be subject to any applicable transfer charge, and any such reallocation and any transfers made under the Paragon Contract in the certificate year prior to the exchange will not be counted as a transfer under the Power Contract so as to limit the number of free transfers per certificate year. Moreover, the exchange will be made without the assessment of any withdrawal charge or market value adjustment provided for the Power Contract, and no charge will be made for effecting the exchange.

11. Upon receipt of SEC approval of the proposed substitution, GNA proposes to transfer any certificate values remaining in the Subaccounts investing in the Portfolios to the Subaccount investing in the GE Money Market Portfolio of the Variable Investment Trust. After that transfer by GNA, the Paragon Contract Participants may transfer amounts allocated to the Subaccount holding shares of the GE Money Market Portfolio to other Subaccounts to the extent permitted under the terms of the Paragon Contract. Neither the transfer (by GNA) of certificate value to the Subaccount investing in the GE Money Market Portfolio, nor the first transfer of certificate value made by an affected Participant thereafter will be subject to any applicable transfer charge or be counted as a transfer so as to limit the number of free transfers per certificate year.

12. The investment objective of the GE Money Market Portfolio is to seek a high level of current income consistent with the preservation of capital and maintenance of liquidity, by investing in a defined group of short-term, U.S. dollar denominated money market instruments. GNA contends that, as the most conservative investment option

available, the GE Money Market Portfolio is an appropriate substitute for Participants' interests in the Portfolios until such time as those Participants make an affirmative investment decision through the exercise of the transfer or exchange rights available to them.

13. The expense levels of an investment in the GE Money Market Portfolio are favorable to Participants. The GE Money Market Portfolio pays an investment advisory fee at an annual rate of 0.25% and an administration fee at an annual rate of 0.05%. Because of an expense reimbursement arrangement, current total annual expenses of the GE Money Market Portfolio amount to 0.50% of the portfolio's average net assets. In contrast, the management fees of the Paragon Power Intermediate-Term Bond Portfolio and the three other Portfolios are 0.50% and 0.65%, respectively, and total annual expenses were estimated to be 0.75% and 1.00%, respectively, as a percent of average net assets.

14. The proposed transfer of certificate values to the Subaccount investing in the GE Money Market Portfolio will be made in the same manner as any other transfer among Subaccounts, except that no transfer charge otherwise applicable will be assessed. On the date of transfer, shares remaining in the relevant Subaccounts will be redeemed and the cash proceeds thereof will be applied to the purchase of shares of the GE Money Market Portfolio, in each case at net asset value determined in accordance with the requirements of Rule 22c-1 under the 1940 Act. No costs of the substitution of shares of the GE Money Market Portfolio for shares of the Portfolios will be borne by Participants. Moreover, GNA opines that there will be no adverse tax consequences to Participants as a result of the proposed transfer of certificate values.

15. Applicants represent that, on February 22, 1996, certificate values allocated to the Paragon Power Intermediate-Term Bond Portfolio, the Paragon Power Value Growth Portfolio, the Paragon Power Value Equity Income Portfolio, and the Paragon Power Gulf South Growth Portfolio constituted 26.1%, 22.1%, and 17.6% of the total assets of those Portfolios. Under the circumstances, Applicants anticipate that the incidental brokerage costs necessary to effect redemptions from the Portfolios will be insignificant.

#### Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act prohibits the depositor or trustee of a registered unit investment trust holding the security of a single issuer from

substituting another security for such security unless the Commission has approved the substitution. Section 26(b) provides that the Commission will approve a substitution if it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants submit that the proposed substitution is in the best interests of Paragon Contract Participants. Applicants state that the proposal is being made to protect the interests of the Participants in light of actions beyond the control of Applicants. If Applicants do not force Paragon Contract Participants out of the Subaccounts investing in the Portfolios, those Subaccounts, upon the termination of the Portfolios, will end up holding the liquidation proceeds or other consideration that may be received as a result of such termination.

3. Applicants represent that GNA selected the GE Money Market Portfolio as the investment option to which the involuntary transfers should be made because of the relative safety of an investment in that portfolio. Applicants assert that, as the most conservative investment option available, the GE Money Market Portfolio is an appropriate substitute for Paragon Contract Participants' interests in the Portfolios until those Participants make an affirmative investment decision through the exercise of the transfer or exchange rights available to them. Moreover, applicants state that the expense levels of an investment in the GE Money Market Portfolio are favorable to affected Participants.

4. Applicants represent that, in connection with the proposed substitution, GNA is offering Paragon Contract Participants a variety of alternative investment options which are reasonably comparable to each of the Portfolios being eliminated. In this regard, Applicants represent that: the GNA Government Portfolio and the GNA Adjustable Rate Portfolio, presently available to Paragon Contract Participants, each have investment objectives similar to those of the Paragon Power Intermediate-Term Bond Portfolio that is being eliminated; and the GNA Growth Portfolio, presently available to Paragon Contract Participants, has investment objectives similar to those of the Paragon Power Value Growth Portfolio and the Paragon Power Gulf South Growth Portfolio that are being eliminated. Applicants further represent that Participants who opt to exchange a Paragon Contract for a Power Contract will have available as investment options, not only the GNA Government Portfolio, the GNA

<sup>1</sup> Applicants represent that the exchange is being made in compliance with Rule 11a-2 under the 1940 Act.

Adjustable Rate Portfolio, and the GNA Growth noted above, but also the GE Fixed Income Portfolio, the GNA Value Portfolio, and the GE U.S. Equity Portfolio, which have investment objectives similar to the Portfolios being eliminated.

5. Applicants assert that, notwithstanding the availability of investment options with more comparable investment objectives than the GE Money Market Portfolio, GNA takes the position that it is preferable to have Paragon Contract Participants make an affirmative election of the investment options funding their certificate values rather than have GNA make that election for them.

6. Applicants also assert that, even where the investment objectives of alternative investment options are reasonably comparable, differences in the level of portfolio operating expenses may make the choice among available investment options less than clear-cut. Applicants submit that Paragon Contract Participants with certificate values invested in the Paragon Power Value Growth Portfolio, the Paragon Power Value Equity Income Portfolio, or the Paragon Power Gulf South Growth Portfolio could choose among other growth portfolios with either higher (in the case of the GNA Growth Portfolio or the GNA Value Portfolio) or lower (in the case of the GE U.S. Equity Portfolio) estimated operated expenses. Likewise, Paragon Contract Participants with certificate values invested in the Paragon Power Intermediate-Term Bond Portfolio may choose among income portfolios with higher (in the case of GNA Government Portfolio), the same (in the case of GE Fixed Income Portfolio), or lower (in the case of GNA Adjustable Rate Portfolio) estimated operating expenses. Applicants submit that a choice among investment options with varying expense levels is more appropriately made by the affected Paragon Contract Participants than by GNA.

7. Applicants submit that Section 26(b) of the 1940 Act was intended to provide for Commission scrutiny of proposed substitutions which could, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both. Applicants further submit that, while a Paragon Contract Participant may be dissatisfied with the proposed forced transfer of his or her certificate value to the GE Money Market Portfolio Subaccount, GNA also is giving each

Participant the opportunity: to transfer Paragon Contract certificate value to any of the four remaining investment options under the Paragon Contract; or, by exchanging a Paragon Contract certificate for a Power Contract certificate, to allocate certificate value among the seven investment options available under the Power Contract. Such transfers and allocations may occur at no cost to the Participant.

#### Conclusion

For the reasons discussed above, Applicants submit that the proposed substitution of shares of the GE Money Market Portfolio of the Variable Investment Trust for shares of the Portfolios is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Jonathan G. Katz,

*Secretary.*

[FR Doc. 96-7540 Filed 3-27-96; 8:45 am]

BILLING CODE 8010-01-M

#### [Release No. 35-26497]

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

March 22, 1996.

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 thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 15, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact 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 said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New Century Energies, Inc., (70-8787)

New Century Energies, Inc. ("NCE"), 1225 17th Street, Denver, Colorado 80202, a Delaware corporation not currently subject to the Act, has filed an application-declaration under sections 5, 6(a), 7, 8, 9(a), 10, 13(b) and rules 43, 45, 81, 83, 87, 88, 90 and 91 thereunder.

As described in more detail below, NCE: (1) proposes to acquire, by means of the mergers described below ("Transaction"), all of the issued and outstanding common stock of Public Service Company of Colorado ("PSCo"), Southwestern Public Service Company ("SPS") and Cheyenne Light, Fuel and Power Company ("Cheyenne"), a Wyoming public utility company and currently a wholly owned subsidiary of PSCo; (2) proposes to form a new service company subsidiary through the acquisition by NCE of all of the outstanding voting securities of New Century Services, Inc. ("NC Services"); (3) requests that NC Services and Utility Engineering Corporation ("UE")<sup>1</sup> be approved as subsidiary service companies in accordance with the provisions of rule 88 of the Act; (4) requests that the terms of (a) a service agreement among NC Services and the utility subsidiaries of NCE and (b) a nonutility service agreement among NC Services and the nonutility subsidiaries of NCE be approved; (5) requests that the terms of (a) the UE service agreement among UE and the utility subsidiaries of NCE and (b) the UE nonutility service agreement among UE and the nonutility subsidiaries of NCE be approved; (6) proposes to form a new holding company subsidiary to hold NCE's interests in its nonutility subsidiaries through the acquisition by NCE of all of the outstanding voting securities of New Century Hold Co. ("NC Hold"); (7) proposes to acquire all of the outstanding voting securities of West Gas Interstate, Inc. ("WGI");<sup>2</sup> (8) proposes that UE create two additional subsidiaries—(a) Utility Services,<sup>3</sup> and (b) Key Resource Management

<sup>1</sup> UE is currently a subsidiary of SPS. Following the consummation of the Transaction, UE will be an indirect subsidiary of NCE.

<sup>2</sup> WGI is currently a nonutility subsidiary of PSCo operating in Colorado and Wyoming which is engaged in the natural gas transmission business.

<sup>3</sup> NCE proposes that Utility Services would provide services related to the engineering, design and construction of cooling towers for power plants.