

shareholders of the Funds. Applicants represent that the New Agreements will have substantially the same terms and conditions as the Existing Agreements, except for the dates of commencement and termination and the inclusion of the escrow arrangements. Accordingly, applicants assert that each Fund will receive, during the Interim Period, substantially identical investment advisory and/or subadvisory services, provided in the same manner, as it received prior to the Effective Date. Applicants state that, in the event of any material change in the personnel of the Adviser or the Subadviser providing services during the Interim Period, the Adviser or Subadviser will apprise and consult the Boards to assure that the Boards, including a majority of the Independent Directors, are satisfied that the services provided by the Adviser and Subadviser will not be diminished in scope or quality.

6. Applicants contend that to deprive the Adviser and the Subadviser of their customary fees during the Interim Period would be an unduly harsh and unreasonable penalty. Applicants note that the fees payable to the Adviser and the Subadviser under the New Agreements will be the same as the fees paid under the Existing Agreements. Applicants also note that the fees will not be released by the escrow agent to the Adviser or the Subadviser without the approval of the Funds' shareholders.

#### **Applicants' Conditions**

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. Each New Agreement will have the same terms and conditions as the respective Existing Agreement, except for their effective and termination dates and the inclusion of escrow arrangements.

2. Fees earned by the Adviser or the Subadviser in accordance with a New Agreement during the Interim Period will be maintained in an interest-bearing escrow account with an unaffiliated bank, and amounts in the account (including interest earned on such paid fees) will be paid: (a) to the Adviser and, if applicable, the Subadviser, upon approval of the New Agreements by the respective Fund's shareholders; or (b) to the respective Fund, in the absence of shareholder approval.

3. Each Fund will promptly schedule a meeting of shareholders to vote on approval of the respective New Agreement to be held within 150 days following the commencement of the Interim Period (but in no event later than April 1, 1999).

4. McDonald, KeyCorp and/or one or more of their subsidiaries, but not the Funds, will pay the costs of preparing and filing the application and the costs relating to the solicitation of shareholder approval of the New Agreements.

5. The Adviser and Subadviser will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Fund during the Interim Period will be at least equivalent, in the judgment of the respective Board, including a majority of the Independent Trustees, to the scope and quality of services provided under the Existing Agreement. In the event of any material change in personnel providing services under the New Agreements, the Adviser or Subadviser will apprise and consult the Boards to assure that the Boards, including a majority of the Independent Trustees, are satisfied that the services provided will not be diminished in scope or quality.

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

**Jonathan G. Katz,**  
*Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 35-26917]

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

September 18, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the 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 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 October 13, 1998, to the Secretary, Securities and Exchange Commission, Washington, DC 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 should 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 October 13, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### **Entergy Corporation (70-9049)**

Entergy Corporation ("Entergy"), a registered holding company, 639 Loyola Avenue, New Orleans, Louisiana 70113, has filed an application-declaration under sections 6(a), 7, 12(b), 32 and 33 of the Act and rules 45, 53 and 54 under the Act.

Entergy, through its direct and indirect subsidiary companies, is engaged, among other things, in investing in and developing exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs"), as each is defined in the Act. Entergy is currently authorized by several orders to finance these activities through the issuance and sale of debt and equity securities. Under the terms of two such orders,<sup>1</sup> Entergy is authorized to issue and sell up to 30 million shares of its common stock ("Common Stock") under its dividend reinvestment and stock purchase plan. Under the terms of another such order, dated February 26, 1997 (HCAR No. 26674), Entergy is authorized to issue unsecured notes through December 31, 2002, in an aggregate principal amount at any time outstanding not to exceed \$500 million.

Entergy now requests that the Commission exempt Entergy from the requirements of rule 53(a)(1) under the Act, to allow Entergy to issue securities for the purpose of investing in EWGs and FUCOs, and to issue guarantees relative to the obligations of these entities.<sup>2</sup> Under the proposal, the aggregate amount of these securities and guaranties outstanding at any time would not, when added to Entergy's aggregate investment in EWGs and FUCOs, exceed 100% of Entergy's consolidated retained earnings.

The consolidated retained earnings of Entergy through March 31, 1998 were about \$2.1936 billion. Entergy had aggregate investments of about \$1.1838

<sup>1</sup> HCAR No. 25541 (June 6, 1996) and HCAR No. 26693 (March 25, 1997).

<sup>2</sup> Entergy is currently seeking Commission approval in a separate filing to finance its investments in EWGs and FUCOs through providing guarantees or other forms of credit support in respect of the securities or other obligations.

billion through March 31, 1998 (or approximately 54% of its consolidated retained earnings).<sup>3</sup>

#### **Conectiv, et al. (70-9095)**

Conectiv, a registered public utility holding company under the Act, and Conectiv's subsidiary companies, Delmarva Power & Light Company ("Delmarva"), Conectiv Resource Partners, Inc. and Conectiv Energy Supply Company, all located at 800 King Street, Wilmington, Delaware 19899; Delmarva Capital Investments, Inc., Conectiv Services, Inc., Conectiv Communications, Inc., Delmarva Services Company, DCI I, Inc., DCI II, Inc., DCTC-Burney, Inc., Christiana Capital Management, Inc., Delmarva Operating Services Co., Conectiv Solutions, LLC, Conectiv Energy, Inc., Power Consulting Group, Inc., and Conectiv Plumbing LLC, all located at 252 Chapman Road, P.O. Box 6066, Newark, Delaware 19714; Atlantic City Electric Company, Atlantic Energy Enterprises, Inc., and Atlantic Energy International, Inc., all located at 6801 Black Horse Pike, Egg Harbor Township, New Jersey 08234; Atlantic Generation, Inc., Atlantic Southern Properties, Inc., ATE Investment, Inc., Conectiv Thermal Systems, Inc., CoastalComm, Inc., Atlantic Energy Technology, Inc., Binghamton General, Inc., Binghamton Limited, Inc., Pedrick Ltd., Inc., Pedrick Gen. Inc., Vineland Limited, Inc., Vineland General, Inc., Atlantic Jersey Thermal Systems, Inc., ATS Operating Services, Inc., The Earth Exchange, Inc., and Atlantic Paxton Cogeneration, Inc., all located at 5100 Harding Highway, Mays Landing, New Jersey 08330; and Petron Oil Corporation ("Petron"), 180 Gordon Drive, Exton, Pennsylvania 19341-1328, collectively, "Applicants"), have filed a post-effective amendment to an application-declaration filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 43(a), 45 and 54 under the Act.

By order dated February 26, 1998 (HCAR No. 26833) ("Financing Order"), the Commission authorized Conectiv to issue short-term debt through December 31, 2000 up to an amount which, when aggregated with outstanding short-term debt issued by Delmarva, would not

exceed \$500 million at any one time outstanding ("Short-Term Debt Authorization").<sup>4</sup> In the Financing Order, the Commission also authorized Conectiv to issue up to 10 million shares of its common stock ("Common Stock") for benefit plans and a dividend reinvestment plan. In addition, the Financing Order authorized Conectiv and its subsidiaries to establish a system money pool ("Money Pool").

Conectiv now requests that the Short-Term Debt Authorization for Conectiv be increased from \$500 million to \$800 million. Conectiv states that it seeks no other changes to the authority granted by the Financing Order to incur short-term debt. The short-term debt will be used to provide working capital for the general corporate purposes of Conectiv and its subsidiaries and to fund the capital requirements of Conectiv's subsidiaries until long-term financing can be obtained.<sup>5</sup>

Applicants also request that the description of the benefit plans under which Common Stock may be issued be amended to include a prior Delmarva incentive plan. In the Financing Order, Conectiv was authorized to issue Common Stock under the terms of the Conectiv incentive compensation plan (the "Conectiv Plan") and of future compensation plans, subject to certain conditions. However, Conectiv states that options had been issued under an existing Delmarva long-term incentive plan (the "Delmarva Plan") that were not extinguished upon the effective date of the acquisition of Delmarva and Atlantic Energy, Inc. by Conectiv. These options were converted to options to buy Common Stock. Conectiv proposes to expand its authority under the Financing Order so as to include authority to issue Common Stock under the Delmarva Plan as well as the Conectiv Plan and future plans.

Finally, Applicants request authority for Petron to participate in the Money Pool. Conectiv states that Petron was purchased by Conectiv Energy Supply Company (previously Delmarva Energy Company) in an exempt acquisition of securities under rule 58 under the Act after the Money Pool was established.

#### **GPU, Inc., et al. (70-9309)**

GPU, Inc. ("GPU"), 300 Madison Avenue, Morristown, New Jersey 07962, a registered holding company, and its electric utility subsidiary companies,

Jersey Central Power & Light Company ("JCP&L"), Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec"), all located at 2800 Pottsville Pike, Reading Pennsylvania 19605, have filed a declaration under section 12(b) of the Act and rules 45 and 54 under the Act.

By order dated March 24, 1997 (HCAR No. 26690) ("1997 Order"), GPU was authorized to enter into letter of credit reimbursement agreements ("Reimbursement Agreements") with banks in aggregate face amounts of up to \$40 million, through December 31, 2006. The letters of credit underlying the Reimbursement Agreements were executed to provide security for the workers compensation obligations of GPU subsidiaries GPU Service, Inc. ("GPUS"), JCP&L, GPU Nuclear Corporation ("GPUN") and GPU Generation, Inc. ("GPUG").<sup>6</sup> The Commission reserved jurisdiction in that order over GPU's request to enter into similar letter of credit reimbursement agreements for the benefit of Met-Ed and Penelec. Separately, by orders dated April 14, 1993 ("1993 Order") and March 15, 1994 ("1994 Order") (HCAR Nos. 25793 and 26003, respectively), Met-Ed and Penelec, together, and JCP&L, alone, were authorized to enter into similar letter of credit reimbursement agreements to aggregate face amounts of up to \$20 and \$15 million, respectively, through December 31, 1998.<sup>7</sup>

GPUS now intends, through December 31, 2006, to enter into a reimbursement agreement for the New Jersey employees and a reimbursement agreement for the Pennsylvania employees of itself, JCP&L, Met-Ed, Penelec, GPUN and GPUG. GPU proposes to be a party to these agreements or to guarantee GPUS' obligations under them. GPU, JCP&L, Met-Ed and Penelec propose that an order in this matter supersede the 1993, 1994 and 1997 Orders, except that existing reimbursement agreements made under those orders will not be affected.

Each agreement will have a face amount of up to \$20 million and will be co-signed or guaranteed by GPU.

<sup>3</sup> Entergy states that its aggregate investment in EWGs and FUCOs currently exceeds the 50% limitation in Rule 53(a)(1). It states that this is due to certain write-offs against Entergy's consolidated retained earnings, including a net decrease of approximately \$140 million from the second quarter to the third quarter of 1997. Entergy attributes this net decrease primarily to the recording of a one-time "windfall profits tax" imposed by the British government on London Electricity plc, an indirect subsidiary of Entergy and a FUCO.

<sup>4</sup> Delmarva is limited by order of the Virginia State Corporation Commission to a maximum of \$275 million short-term debt at any one time outstanding through December 31, 1999.

<sup>5</sup> Conectiv states that general corporate purposes could include interim funding of the repurchase of outstanding long-term securities.

<sup>6</sup> GPU maintains two separate Reimbursement Agreements under the 1997 Order for workers compensation obligations related to New Jersey and Pennsylvania employees of JCP&L, GPUS, GPUN and GPUG, with face amounts of \$9.68 million and \$4.84 million, respectively, that expire December 31, 1998.

<sup>7</sup> Under authority of the 1993 Order, Penelec and Met-Ed each have reimbursement agreements with face amounts of \$2.73 million and \$706,000, also expiring December 31, 1998. JCP&L did not exercise its authority under the 1994 Order to enter into any reimbursement agreements.

Drawings under the Reimbursement Agreements will bear interest at no more than the effective prime rate of the bank issuing a letter of credit. The terms for the Reimbursement Agreements will not exceed three years.

GPUS will seek reimbursement directly from the associate company responsible for the drawing. It will allocate Reimbursement Agreement fees based on loss exposure (determined generally by payroll) in the relevant state.

#### **Niagara Mohawk Holdings, Inc. (70-9339)**

Niagara Mohawk Holdings, Inc. ("Holdings"), 300 Erie Boulevard, Syracuse, New York 13202, a wholly owned subsidiary company of Niagara Mohawk Power Corporation ("Niagara Mohawk"), a New York gas and electric utility holding company exempt from registration under section 3(a)(2) and rule 2 of the Act, has filed an application under sections 3(a)(1), 9(a)(2) and 10 of the Act.

Holdings proposes to acquire all of the outstanding common stock of Niagara Mohawk and, indirectly, 86% of the outstanding common stock of Beebe Island Corp. ("Beebe Island"), 67% of the outstanding common stock of Moreau Manufacturing Corp. ("Moreau"), and 50% of Canadian Niagara Power Company ("CNP") as described below.

The acquisition will be accomplished through an exchange ("Exchange") of each outstanding share of Niagara Mohawk common stock for one share of Holdings common stock. As a result of the Exchange, Holdings will become a holding company, Niagara Mohawk will become a subsidiary of Holdings, and all of Holdings' common stock outstanding immediately after the Exchange will be owned by the former holders of Niagara Mohawk common stock outstanding immediately prior to the Exchange.

After the Exchange, certain of Niagara Mohawk's existing nonutility subsidiaries will be transferred to Holdings and become subsidiaries of Holdings.<sup>8</sup> Holdings will have no material assets other than its ownership of the stock of its subsidiaries. Holdings states that it will not assume or guarantee the current indebtedness of Niagara Mohawk in connection with the Exchange.

Niagara Mohawk is engaged in the generation, transmission, distribution and purchase of electricity in the eastern, central, northern and western

sections of the State of New York having a total population of 3.5 million, and purchasing, transporting and distributing natural gas in the eastern, central and northern sections of the State of New York. Niagara Mohawk had \$3,966,404,000 in consolidated operating revenues in 1997. Niagara Mohawk is subject to the regulatory authority of the New York Public Service Commission.

Niagara Mohawk currently owns a subsidiary company, Opinac North America, Inc. ("Opinac NA"), which in turn owns Opinac Energy Corporation, Plum Street Enterprises, Inc. and Plum Street Energy Marketing, Inc. (a subsidiary of Plum Street Enterprises, Inc.). Opinac Energy Corporation owns 50% of CNP, a public utility as defined in the Act, which owns a 99.99% interest in Canadian Niagara Wind Power Company, Inc. and Cowley Ridge Partnership and generates electricity at the William B. Rankine Generating Station located in Niagara Falls, Ontario, Canada.<sup>9</sup> CNP distributes electricity to residential, commercial and industrial customers in Niagara Falls and Fort Erie, Ontario. CNP also has an international electric interconnection with Niagara Mohawk and both sell power to, and purchase power from, Niagara Mohawk at wholesale. Otherwise, CNP conducts its business wholly within Canada.

Niagara Mohawk also owns a majority interest in two additional utility companies: Beebe Island<sup>10</sup> and Moreau.<sup>11</sup> Beebe Island operates a 7.7 megawatt hydroelectric generating station located on the Black River in the State of New York. Moreau operates a 5.0 megawatt hydroelectric generating station located on the Hudson River in New York state. Beebe Island and Moreau have contractual agreements with their respective owners to sell 100% of their power in accordance with ownership percentages on a wholesale basis.

Holdings states that the proposed corporate restructuring is intended to permit Niagara Mohawk and its subsidiaries the financial and regulatory flexibility to compete more effectively in an increasingly competitive energy industry by providing a structure that

can accommodate both regulated and unregulated lines of business.

Holdings asserts that following the Exchange, it will be a public utility holding company entitled to an exemption under section 3(a)(1) of the Act because it and each of its public utility subsidiaries from which it derives a material part of its income will be predominately intrastate in character and will carry on their business substantially in the State of New York.

#### **Northeast Utilities (70-9343)**

Northeast Utilities ("NU"), a registered holding company, located at 174 Brush Hill Avenue, West Springfield, Massachusetts 01090-0010, has filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 45 and 54 under the Act.

NU requests authorization through December 31, 1999, to organize, acquire the capital stock, and provide financing in respect to a new, wholly owned subsidiary ("NEWCO"), which will, through multiple subsidiaries, engage in a variety of energy-related and other activities and acquire and manage nonnuclear generating plants. Upon formation, NEWCO will issue, and NU will acquire, one hundred shares of common stock, par value \$1 per share for \$100,000. NU further proposes through December 31, 1999, to invest up to \$150 million<sup>12</sup> for NEWCO's preliminary development activities and administrative costs associated with, among other things, (1) identifying and analyzing generation acquisition opportunities for these projects (in the aggregate amount of up to \$10 million) and (2) developing and managing NEWCO's other investments (in the aggregate amount of up to \$140 million).

NEWCO proposes to participate in the auction of nonnuclear generating assets through formation of a wholly owned subsidiary GENCO. GENCO will issue, and NEWCO will acquire, one hundred shares of common stock, par value \$1 per share. NEWCO will invest an additional \$10 million in GENCO through December 31, 1999. Subsequently, NEWCO will issue to NU and NU will acquire, 100 shares of NEWCO common stock for \$100,000, and in turn, GENCO will issue to NEWCO and NEWCO will acquire 100 shares of GENCO common stock for \$100,000.

NU and NEWCO also propose through December 31, 1999 to issue guarantees

<sup>9</sup> Opinac Energy Corporation is an exempt holding company under section 3(a)(5) of the Public Utility Holding Company Act. (HCAR No. 25632, September 16, 1992).

<sup>10</sup> Niagara Mohawk owns 86% of the outstanding common stock of Beebe Island, the remaining 13% is owned by Ahlstrom Filtration, Inc.

<sup>11</sup> Niagara Mohawk owns 67% of the outstanding common stock of Moreau, the remaining 33% is owned by Finch, Pruyn and Company.

<sup>8</sup> Niagara Mohawk's nonutility subsidiaries include: NM Uranium, Inc., NM Holdings, Inc. and NM Receivables Corp.

<sup>12</sup> Each investment by NU in NEWCO will take the form of additional acquisitions of capital stock, capital contributions, open account advances or subordinated loans.

or provide other forms of credit support or enhancements (collectively, "Guarantees") to, or for the benefit of, nonutility companies and other direct or indirect subsidiaries or affiliates of NEWCO in an aggregate amount not to exceed \$75 million. Guarantees may take the form of NU or NEWCO agreeing to guarantee, undertake reimbursement obligations, assume liabilities or other obligations with respect to or act as surety on, bonds, letters of credit, evidences of indebtedness, equity commitments, performance and other obligations undertaken by NU, NEWCO, GENCO, the nonutility companies or its affiliates.

NU and NEWCO represent that the terms and conditions of the Guarantees will be established through arm's length negotiations based upon current market conditions. NU and NEWCO further undertake that any Guarantee they issue will be without recourse to any of the system operating companies to the extent not authorized under rule 52.

NU and NEWCO represent that no Commission authorization is sought under this application-declaration for the acquisition or operation of any public utility company as defined under the Act.

#### Northern States Power Company (70-9337)

Northern States Power Company ("NSP"), 414 Nicollet Mall, Minneapolis, Minnesota 55401, a Minnesota combination electric and gas public-utility company and a public-utility holding company exempt from registration by order under section 3(a)(2) of the Act,<sup>13</sup> has filed an application under sections 3(a)(2), 9(a) and 10 of the Act in connection with its acquisition of all of the issued and outstanding common stock of Black Mountain Gas Company ("BMG"), an Arizona gas utility company.

NSP is engaged primarily in the generation, transmission and distribution of electricity throughout a 30,000 square mile service area in Minnesota, South Dakota and North Dakota. NSP also purchases, distributes and sells natural gas to retail customers, and transports customer-owned gas, in approximately 118 communities within this area. NSP provides electric utility service in South Dakota and electric and gas utility service in Minnesota and

North Dakota. Of the more than 2.5 million people served by NSP, the majority are concentrated in the Minneapolis-St. Paul metropolitan area. In 1997, more than 73% of the electric retail revenue of NSP was derived from sales in the Minneapolis-St. Paul metropolitan area and more than 66% of its retail gas revenue was derived from sales in the St. Paul metropolitan area. As of December 31, 1997, NSP provided electric utility service to approximately 1,220,000 customers and gas utility service to approximately 375,000 customers.<sup>14</sup>

NSP is subject to regulation by the Minnesota Public Utilities Commission ("Minnesota Commission"), the North Dakota Public Service Commission ("North Dakota Commission") and the South Dakota Public Utilities Commission ("South Dakota Commission") with respect to its retail sales rates, services and other aspects of its retail operations.<sup>15</sup>

NSP owns all of the outstanding common stock of Northern States Power Company ("NSP-W"), a Wisconsin public-utility company. NSP-W is engaged in the generation, transmission and distribution of electricity to approximately 206,700 retail customers in an approximately 18,900 square mile area in northwestern Wisconsin; to approximately 9,200 electric retail customers in an approximately 300 square mile area in the western portion of the Upper Peninsula of Michigan; and to 10 wholesale customers in the same general area. NSP-W relies primarily on NSP for base load generation and purchases of power to meet the needs of its customers. The electric operations of NSP and NSP-W are fully integrated and all generating units are centrally dispatched by NSP.

NSP-W also purchases, distributes and sells natural gas to retail customers, or transports customer-owned natural gas, in the same service territory to approximately 72,100 customers in Wisconsin and 4,900 customers in Michigan. In 1997, NSP-W provided

approximately 13% of NSP's consolidated revenues. NSP-W is subject to regulation by the Public Service Commission of Wisconsin ("Wisconsin Commission") and the Michigan Public Service Commission ("Michigan Commission") with respect to its retail sales rates, services and other aspects of its retail operations.

For the year ended December 31, 1997, NSP's operating revenues on a consolidated basis were \$3.2 billion, consisting of the following (before intercompany eliminations):

(Dollars in millions)

	Electric utility	Gas utility	Other
NSP .....	\$2,101	\$415	\$0
NSP-W ..	312	90	0
Non-Utility Subsidiaries .....	0	0	198

Consolidated assets of NSP and its subsidiaries at December 31, 1997 were approximately \$7.1 billion, consisting of \$3.7 billion in net electric utility property, plant and equipment (\$3.1 billion for NSP and \$573 million for NSP-W); \$415 million in net gas utility property, plant and equipment (\$355 million for NSP and \$60 million for NSP-W); \$1.4 billion in nonutility subsidiary assets; and \$1.6 billion in other corporate assets.

For the twelve months ended March 31, 1998, NSP's operating revenues were \$3.1 billion, consisting of the following (before intercompany eliminations):

(Dollars in millions)

	Electric utility	Gas utility	Other
NSP .....	\$2,105	\$378	\$0
NSP-W ..	312	82	0
Non-Utility Subsidiaries .....	0	0	198

Consolidated assets of NSP and its subsidiaries as of March 31, 1998 were approximately \$7.2 billion, consisting of \$3.7 billion in net electric utility property, plant and equipment (\$3.1 billion for NSP and \$574 million for NSP-W); \$414 million in net gas utility property, plant and equipment (\$355 million for NSP and \$59 million for NSP-W); \$1.4 billion in nonutility subsidiary assets; and \$1.7 billion in other corporate assets.

As of July 31, 1998, there were 151,415,882 shares of common stock, \$2.50 par value ("NSP Common Stock"), and 1,050,000 shares of cumulative

<sup>13</sup> See *Northern States Power Co., Holding Co.* ACt Release No. 22334 (Dec. 23, 1981). Section 3(a)(2) of the Act provides for the exemption of a public-utility holding company that "is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto."

<sup>14</sup> NSP is also engaged, directly and indirectly, in various nonutility businesses. For the year ended December 31, 1997, approximately 8% of NSP's consolidated operating revenues (before intercompany eliminations) and 8% of its consolidated net income were derived from the nonutility businesses. As of December 31, 1997, approximately 20% of NSP's consolidated assets were invested in nonutility businesses.

<sup>15</sup> Wholesale rates for electric energy sold in interstate commerce, wheeling rates for energy transmission in interstate commerce, and certain other activities of NSP and NSP-W, defined below, are subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"). The operation and construction of NSP's Prairie Island and Monticello nuclear facilities are subject to regulation by the Nuclear Regulatory Commission.

preferred stock, issued and outstanding. NSP-W does not have any preferred stock outstanding and all of its common stock is owned by NSP.

In accordance with an Agreement and Plan of Merger dated as of December 29, 1997, and following receipt of necessary state regulatory approvals, BMG was merged into NSP, with NSP as the surviving corporation ("Merger"), on July 24, 1998. The Merger was approved by the Arizona Corporation Service Commission ("Arizona Commission"), the Minnesota Commission and the North Dakota Commission. The application states that the Merger was a transitional combination, an initial step designed to effect the objective, discussed below, of NSP's becoming the holding company of a second public-utility subsidiary, BMG.

BMG, an Arizona corporation, is a gas utility company as defined in section 2(a)(4) of the Act.<sup>16</sup> It provides natural gas distribution in an approximately 100 square mile area in Maricopa County, Arizona, and provides propane gas distribution in an approximately 20 square mile area in Coconino County, Arizona. As of the year ended December 31, 1997, BMG provided utility services to 6,097 customers, primarily residential.<sup>17</sup> The Arizona Commission regulates the retail rates of BMG. BMG is not subject to regulation under the jurisdiction of the FERC.<sup>18</sup>

BMG's total operating revenues for the years ended December 31, 1995, 1996 and 1997 were approximately \$4.5 million, \$5.2 million, and \$6.2 million, respectively.<sup>19</sup> For the same periods, BMG's net income was approximately \$900,000, \$975,000 and \$1.3 million, respectively. BMG's net utility assets as of December 31, 1996 and 1997 were approximately \$9.7 million and \$10.3 million, respectively.

On a *pro forma* basis, as of December 31, 1997, the combined gas operating revenues of NSP, NSP-W and BMG would have totaled approximately \$510 million, of which BMG would have

provided approximately 1% of the total. BMG would have represented approximately 0.54% of consolidated net income, 0.24% of consolidated net utility plant and 0.19% of consolidated total assets.

As of December 29, 1997, there were 911,492 shares of BMG common stock ("BMG Common Stock"), no par value, issued and outstanding. The shareholders of BMG Common Stock approved the Merger at a special meeting held on May 21, 1998.

Upon consummation of the Merger, each share of BMG Common Stock (except shares owned by BMG as treasury stock or held by BMG shareholders who perfected dissenters' rights ("Dissenting Shares")) was cancelled and converted into a fraction of a share of NSP Common Stock equal to the quotient derived by dividing (A) \$17,750,000 by (B) the product of (i) the volume weighted average on the New York Stock Exchange for the twenty full trading days ending on the third full trading day prior to the date ("Effective Time") the Merger became effective ("Average NSP Share Price") and (ii) the number of shares of BMG Common Stock issued and outstanding immediately prior to the Effective Time.

The application relates to the separation ("Spin-Off," and, together with the Merger, "Transaction") of the former assets of BMG into a wholly owned, first-tier subsidiary of NSP. NSP will cause the assets to be transferred following receipt of the requested order of the Commission. Upon completion of the Transaction, NSP will own 100% of the common stock of each of NSP-W and BMG. The application states that current utility operations of NSP and NSP-W and the nonutility activities of NSP's other subsidiaries will be unaffected. BMG, as a wholly owned subsidiary of NSP, will continue to distribute natural gas in Arizona and will continue to maintain its headquarters in that state. No significant changes to the operations of BMG are anticipated.

The application states that the Transaction will produce benefits to the gas utility businesses of NSP, NSP-W and BMG. These benefits include: joint procurement of gas and other supplies; sharing of NSP's extensive technological, operational, gas purchasing and other expertise; enhanced computer services; and access to NSP's management, legal, financial, accounting and consulting services.

The NSP, NSP-W and BMG gas systems are not physically interconnected. Following the Transaction, it is anticipated that gas purchasing economic efficiencies can be

achieved by having NSP's gas department, which procures gas for NSP and NSP-W, meet the gas purchasing needs of BMG as well. Thus, some of each company's gas supply will be handled by the same entity and on a coordinated basis. The application states that, although these gas purchases for BMG will be made on an economic basis and not with the main goal of ensuring a common source of supply, given economies of scale and the past practice by the same purchasers, it can be expected that each of the three companies will continue to purchase significant amounts of their respective gas supply from the same fields (*i.e.*, the Anadarko and Permian basins). NSP, NSP-W and BMG, through Burlington Resources, Inc., purchase gas from the following major supply fields:

Field/basin	NSP	NSP-W	BMG
Hogton/Anadarko ..	X	X	X
Permian .....	X		X
Rocky Mountain .....	X	X	
Williston .....	X		
San Juan .....			X
Alberta, Canada .....	X	X	

Much of the rest of their respective gas supply will travel through the same pipelines even if it is not from the same field.<sup>20</sup>

The application further states that the combination of the NSP, NSP-W and BMG will tend toward the economic and efficient development of a coordinated gas system in that there will be centralized computer and customer service systems, marketing and operations planning and consulting between the three companies after the Transaction. Improved technology and centralized computer services for customer services and centralized planning will occur to the benefit of BMG and its customers.

Consummation of the Spin-Off will require the prior approval of the Arizona Commission. NSP will also seek the approval of the Spin-Off by the Minnesota Commission and the North Dakota Commission. Following consummation of the Transaction, NSP and BMG expect to engage in various intercompany transactions. These affiliated interest transactions require prior approval of the Arizona Commission and the Minnesota Commission. Accordingly, as part of the application for approval of the Spin-Off, NSP will seek authorization for these

<sup>20</sup> The purchased gas will be delivered through integrated interstate pipelines, all of which are open access transportation only pipelines under FERC order 636.

<sup>16</sup> BMG has no subsidiaries.

<sup>17</sup> Non-residential customers include two school districts, three resorts and multiple light commercial customers.

<sup>18</sup> BMG also provides nonutility services and bulk propane sales through its Lake Powell Propane division. Such nonutility services also include appliance repair. In 1997, revenues and net income from nonutility services totalled \$865,000 and \$190,000, respectively, representing 14% and 14.7% of BMG's operating revenue and net income, respectively, for the year ended December 31, 1997.

<sup>19</sup> Of the total operating revenues of \$6.2 million reported for the year ended December 31, 1997, \$865,000 (14%) was attributable to BMG's nonutility operations. For the same period, BMG net income was approximately \$1.3 million, of which \$190,000 (14.7%) was attributable to its nonutility operations.

affiliated interest transactions from the Arizona and Minnesota Commissions.

The waiting period under the Hart-Scott-Radion Antitrust Improvements Act of 1976, as amended, has expired. Apart from the approval of this Commission, the foregoing approvals are the only governmental approvals required for the Transaction.

NSP requests an order under section 3(a)(2) exempting it from all provisions of the Act, except section 9(a)(2), following consummation of the Transaction. NSP states that it will continue to be entitled to an exemption under section 3(a)(2) because it will continue to be predominately a public utility company operating in Minnesota, its state of incorporation, and the contiguous states of North Dakota and South Dakota.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-25656 Filed 9-24-98; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23440; File No. 812-11070]

### The White Elk Funds, et al.

September 21, 1998.

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

**ACTION:** Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

**SUMMARY:** Applicants seek an order to permit shares of certain series of The White Elk Funds that are designed to fund insurance products (the "Funds") and shares of any other investment company that is designed to fund insurance products and for which White Elk Asset Management, Inc. or any of its affiliates may serve as investment advisor, administrator, manager, principal underwriter, or sponsor (collectively with the Funds, the "Insurance Product Funds") to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts ("Separate Accounts") of both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies"); and (2) qualified pension or retirement plans ("Plans").

**APPLICANTS:** The White Elk Funds (the "Company") and White Elk Asset Management, Inc. (the "Advisor").

**FILING DATE:** The application was filed on March 13, 1998, and amended and restated on July 14, 1998.

**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, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on October 16, 1998, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Joseph J. McBrien, Esq., State Street Bank and Trust Company, 1776 Heritage Drive, AFB4, North Quincy, MA 02171-2197.

**FOR FURTHER INFORMATION CONTACT:** Zandra Y. Bailes, Senior Counsel, or Mark C. Amorosi, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942-8090).

### Applicant's Representations

1. The Company is a Massachusetts business trust and is registered under the 1940 Act as an open-end diversified management investment company. The Company currently consists of eleven separate Funds, each of which has its own investment objective and policies. The Company may in the future issue shares of additional Funds and/or multiple classes of shares of each Fund.

2. The Advisor, an investment manager newly registered under the Investment Advisers Act of 1940, is the investment adviser to each of the Funds and is responsible for the overall administration of the Company. The Advisor has entered into a contract with William D. Witter, Inc. ("Witter"), whereby Witter will serve as sub-portfolio manager to various of the Funds.

3. Shares of each Fund may be offered to Separate Accounts, which are either registered or unregistered under the federal securities laws, that fund variable annuity contracts or variable life insurance policies ("Contracts"). Shares of the Funds may also be offered to Plans.

### Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provisions of the 1940 Act or the rules promulgated thereunder, if and 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 1940 Act.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e-2(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e-2(b)(15) are available, however, only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company" (emphasis added).<sup>1</sup> Therefore, the relief granted by Rule 6e-2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of a management company that also offers its shares to variable annuity and variable life insurance separate accounts of the same insurance company or any other insurance company or to trustees of a Plan. The use of a common management investment company as the underlying investment medium for a variable annuity or a variable life insurance separate account of the same insurance company or of any affiliated life insurance company is referred to herein as "mixed funding." In addition, the relief granted by Rule 6e-2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of any underlying

<sup>1</sup> The relief provided by Rule 6e-2 is also available to a separate account's investment adviser, principal underwriter, and sponsor or depositor.