for presentations by members of the public at all locations will be determined based upon the number of requests received and will be announced at the beginning of the hearing. The order for public presentations will be determined on a first received—first to speak basis. Written statements should be mailed to the U.S. Nuclear Regulatory Commission, Mailstop O–13H03, Attention: Robert Fretz, Washington, D.C. 20555.

Requests for the opportunity to present information can be made by contacting Robert Fretz, Project Manager, Division of Reactor Projects III/IV, at (301) 415–1324 between 7:00 a.m. to 3:30 p.m. (EST), Monday–Friday. Persons planning to attend this informal public hearing are urged to contact the above NRC representative 1 or 2 working days prior to the informal public hearing to be advised of any changes that may have occurred.

Directions to the video teleconferencing sites located in Baton Rouge and Cleveland are provided below; however, participants are urged to consult local maps and directories for more detailed information to verify exact location.

To Baton Rouge VTC site at LSU from Interstate Highways I–10 and I–12 (East and West): From I–10, take one of the two exits identified for the Louisiana State University and follow the signs to the LSU Campus. Follow the signs to the LSU Visitors' Center. Members of the public will need to pick up a parking permit at the Visitors' Center. Visitors will be allowed to park along Tower Drive or utilize meter parking provided. Additional parking information may be obtained at the Visitors' Center. The video conference will be held in Room 202, Coates Hall, which is located within the Quadrangle at LSU. To Baton Rouge VTC site at LSU from St. Francisville: From US–61 South, take the I–110 exit toward Baton Rouge and merge onto I–110 South; follow I–110 to I–10. Take one of the two exits identified for Louisiana State University and follow the directions to the Visitors' Center and Coates Hall above.

Members of the Public are advised that parking at LSU is limited and are urged to arrive at the LSU Campus early in order to obtain available parking. The public is welcome to utilize the LSU Student Union facilities for lunch prior to the start of the informal public hearing.

To Cleveland VTC from Airport: Take I–71 North to East 9th Street exit of the Innerbelt; travel North on East 9th Street to St. Clair Avenue. From I–77 North: Take the East 9th Street exit; travel North on East 9th Street to St. Clair Avenue. From I–90 Eastbound: Take the East 9th Street exit; travel North on East 9th Street to St. Clair Avenue. From I–90 Westbound: Take the East 9th Street exit; turn left onto East 9th Street to St. Clair Avenue; turn left on St. Clair Avenue for parking.

Dated at Rockville, Maryland, this 5th day of February 1999.

For the Nuclear Regulatory Commission.

John N. Hannon,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–3393 Filed 2–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 3.54, ''Spent Fuel Heat Generation in an Independent Spent Fuel Storage Installation,'' has been revised to present a method that is acceptable to the NRC staff for calculating heat generation rates for use as design input for an independent spent fuel storage installation. The procedures proposed in this guide, for both boiling water reactors and pressurized water reactors, are simpler and therefore are expected to be more useful to applicants and reviewers.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, OCIO, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax at (301) 415–2289. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 26th day of January 1999.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 99–3394 Filed 2–10–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

DATE OF MEETING: February 1, 1999.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 64 FR 3992, January 26, 1999.

CHANGE: At its meeting on February 1, 1999, the Board of Governors of the United States Postal Service voted unanimously to add an item to the agenda of its closed meeting held on that date:

Compensation Issues

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 99–3434 Filed 2–8–99; 4:56 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23681; File No. 812–11280]

The Prudential Series Fund, Inc., et al.

February 4, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (''1940 Act'') granting exemptive relief from 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 OF APPLICATION: Applicants seek an order to permit shares of any current or future series of Prudential Series Fund, Inc. (''Series Fund'') and shares of any other investment company that is offered as a funding medium for insurance products (the current and future series of the Series Fund and such other investment companies are the ''Funds'') and for which The Prudential Insurance Company of America (''Prudential''), or any of its affiliates, may serve, now or in the future, as manager, investment adviser, administrator, principal underwriter or sponsor, to be sold to and held by: (1) separate accounts (''Separate Accounts'') funding variable annuity and variable life insurance contracts of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''); and (2) certain qualified pension and retirement plans (''Plans'').

APPLICANTS: Prudential Series Fund, Inc. and The Prudential Insurance Company of America.

FILING DATE: The application was filed on August 27, 1998, and an amended and restated application was filed on November 30, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m on March 1, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o Shea & Gardner, 11800 Massachusetts Avenue, NW, Washington, DC 20036, Attention: Christopher E. Palmer, Esq.

FOR FURTHER INFORMATION CONTACT: Laura A. Novack, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 ((202) 942–8090).

Applicant's Representations

1. The Series Fund is a Maryland corporation registered under the 1940 Act as an open-end management investment company. The Series Fund currently consists of 15 separate investment portfolios (''Portfolios''), each of which has its own investment objective and policies. The Series Fund may issue shares of additional Portfolios, and expects to issue new classes of shares of each Portfolio in the future.

2. Prudential is an insurance company organized under the laws of New Jersey, and is registered as an investment adviser under the Investment Advisers Act of 1940. Prudential is the Series Fund's investment adviser. Prudential has entered into a service agreement with The Prudential Investment Corporation (''PIC''), its wholly-owned subsidiary, to provide such services as Prudential may require in connection with the performance of its obligations as investment adviser of the Series Fund. Prudential also has entered into a subadvisory agreement with Jennison Associates LLC (''Jennison'') which handles the day-to-day management of the Jennison Portfolio, one of the 15 Portfolios of the Series Fund.

3. The Series Fund currently sells its shares to separate accounts of Prudential, which are registered as unit investment trusts under the 1940 Act in connection with the issuance of variable contracts. The Series Fund wishes to be able to offer shares of its existing and future Portfolios to Separate Accounts of additional insurance companies, including insurance companies that are not affiliated with Prudential, to serve as the investment vehicle for various types of insurance products, which may include variable annuity and flexible premium variable life insurance contracts (''Contracts''). Prudential also wishes to offer shares of any other current or future investment company to serve as the investment vehicle for the Contracts.

4. Participating Insurance Companies will be those insurance companies that purchase Fund shares to fund Contracts. The Participating Insurance Companies will establish their own Separate Accounts and design their own Contracts. Each Contract will have certain features and probably will differ from other Contracts with respect to insurance guarantees, premium structure, charges, options, distribution method, marketing techniques, sales literature and other aspects. Each Participating Insurance Company will have the legal obligation of satisfying all requirements applicable to such insurance company under the federal securities laws.

5. The Series Fund also wishes to offer shares to the trustees (or custodians) of Plans. The Plans will be qualified pension or retirement plans described in Treas. Reg. § 1.817–5(f)(3)(iii), including Rev. Ruling 94–62, adopted pursuant to Section 817(h) of the Internal Revenue Code of 1986, as amended (''Code''). Prudential also wishes to offer shares of any current or future investment company to Plans. Fund shares sold to Plans will be held by the trustees or custodians of the Plans as required by Section 403(a) of the Employee Retirement Income Security Act (''ERISA'') or other applicable provisions of the Code. Some Plans may provide participants with the right to give voting instructions. The trustee or custodian of each Plan will have the legal obligation of satisfying all requirements applicable to such Plan under the federal securities laws. A Fund's role with respect to the Separate Accounts and the Plans will be limited to that of offering its shares to the Separate Accounts and Plans and fulfilling any conditions the Commission may impose upon granting the Order requested therein.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 6(c) of the 1940 Act exempting scheduled and flexible premium variable life insurance Separate Accounts of Participating Insurance Companies (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) and the other Applicants from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and sub-paragraph (b)(15) of Rules 6e–2 and 6e–3(T) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold to, and held by: (a) variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company (''mixed funding''); (b) separate accounts of unaffiliated life insurance companies (funding both variable annuity and variable life insurance separate accounts) (''shared funding''); and (c) Plans.

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) provides partial exemptions from Sections 9(a), 13(a),

15(a) and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e–2(b) are available 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 any affiliated life insurance company.'' (emphasis added) 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 an investment company that also offers its shares to a variable annuity separate account of the same company or any affiliated or unaffiliated insurance company, or to trustees of a qualified plan.

3. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.'' The use of a common investment company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' The relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying investment company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. Moreover, the relief under Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying investment company that also offers its shares to Plans.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions granted to a separate account are available 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 separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' (emphasis added). Thus, Rule 6e–3(T) permits mixed funding, but precludes shared funding or selling shares to Plans.

5. Applicants state that current tax law permits the Funds to increase their asset base through the sale of shares to Plans. Applicants state that Section 817(h) of the Code imposes certain diversification standards on the underlying assets of the Contracts invested in the Funds. The Code provides that the Contracts will not be treated as annuity contracts or life insurance contracts for any period during which the underlying assets are not adequately diversified in accordance with regulations prescribed by the Treasury Department. The regulations provide that to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more insurance companies. Treas. Reg. § 1.817–5. The regulations do, however, contain certain exceptions to this requirement, one of which permits shares of an investment company to be held by the trustee of a Plan without adversely affecting the ability of the shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their Contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

6. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these Treasury regulations, and that the sale of shares of the same investment company to both Separate Accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2).

8. Rules 6e–2(b)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a), subject to the limitations discussed above on mixed and shared funding. These rules provide that the eligibility restrictions of Section 9(a) shall not apply to persons disqualified under Section 9(a) who are officers, directors, or employees of the life insurer or its affiliates, so long as that person does not participate directly in the management or administration of the underlying investment company, and that an insurer shall be ineligible to serve as an investment adviser or principal underwriter of the underlying fund only if an affiliated person of the life insurer who is disqualified by Section 9(a) participates in the management or administration of the fund.

9. Applicants state that the partial relief granted in Rules 6e–2 and 6e–3(T) from the requirements of Section 9 of the 1940 Act, limits, in effect, the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of that section, when the life insurer serves as investment adviser to or principal underwriter for the underlying fund. Applicants state that this relief parallels the relief granted by Rules 6e–2(b)(4) and 6e–3(T)(b)(4) to the insurer in its role as depositor of the separate account. Applicants state that those rules recognize that it is not necessary to apply the provisions of Section 9(a) to the many individuals who may be involved in a typical insurance company complex, most of whom will have no involvement in matters pertaining to underlying investment companies. Applicants assert, therefore, that there is no regulatory purpose in denying the partial exemptions because of mixed and shared funding and sales to Plans because sales to Plans do not change the fact that the purposes of the 1940 Act are not advanced by applying the prohibitions of Section 9(a) to persons in a life insurance complex who have no involvement in the underlying fund.

10. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) under the 1940 Act assumes that contract owners are entitled to pass-through voting privileges with respect to investment company shares held by a separate account. However, subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provides exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations discussed above on mixed and shared funding are observed.

11. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provides that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when an insurance regulatory authority so requires, subject to certain requirements. In addition, an insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in the investment company's investment policies, principal underwriter, or investment adviser (provided that disregarding such voting instructions is

reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T)). Under the rules, voting instructions with respect to a change in investment policies may be disregarded if the insurance company makes a good-faith determination that such change would: (a) violate state law; or (b) result in investments that either would not be consistent with the investment objectives of the separate account; or would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. Voting instructions with respect to a change in an investment adviser may be disregarded if the insurance company makes a good-faith determination that either: (a) the adviser's fees would exceed the maximum rate that may be charged against the separate account's assets; or (b) the proposed adviser may be expected to employ investment techniques that vary from the general techniques used by the current adviser, or the proposed adviser may be expected to manage the investments in a manner that would be inconsistent with the investment objectives of the separate account or in a manner that would result in investments that vary from certain standards.

12. Applicants state that Rule 6e–2 recognizes that variable life insurance contracts have important elements unique to insurance contracts and are subject to extensive state regulation of insurance. Applicants maintain that in adopting Rule 6e–2, the Commission recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers or principal underwriters. Applicants also state that the Commission expressly recognized that state insurance regulators have authority to require an insurance company to draw from its general account to cover costs imposed upon the insurance company by a change approved by contract owners over the insurance company's objection. Therefore, the Commission deemed exemptions from pass-through voting requirements necessary ''to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' Applicants assert that in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; and that therefore the corresponding provisions of Rule 6e–3(T) undoubtedly were adopted in recognition of the same factors.

13. Applicants submit that state insurance regulators have much the same authority with respect to variable annuity separate accounts as they have with respect to variable life insurance separate accounts, and that variable annuity contracts pose some of the same kinds of risks to insurers as variable life insurance contracts. Applicants submit that while the Commission staff has not been called upon to address the general issue of state insurance regulators' authority in the context of variable annuity contracts, the Commission staff apparently recommended the exclusivity requirement of Rule 6e–2 in order to reserve the widest possible latitude in regulating what was then a new and unfamiliar product.

14. Applicants further state that the offer and sale of Fund shares to Plans will not have any impact on the relief requested in this regard. As previously noted, shares of the Funds will be held by the trustees or custodians of the Plans as required by Section 403(a) of ERISA or other applicable provisions of the Code. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan investments with two exceptions: (a) when the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. In any event, ERISA permits, but does not require, pass-through voting to the participants in Plans. Accordingly, Applicants submit that unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Plans since Plans are not entitled to pass-through voting privileges.

15. Applicants submit that while some Plans may provide participants with the right to give voting instructions, there is no reason to believe that participants in Plans generally, or those in a particular Plan, either as a single group or in combination with other Plans, would vote in a manner that would disadvantage Contract owners. In this regard, Applicants submit that the purchase of Fund shares by Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed and shared funding.

16. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants note that where an insurer is domiciled in different states, it is possible that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Applicants submit that this possibility is no different or greater than exists where different insurers may be domiciled in different states.

17. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the Fund.

18. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. Potential disagreement is limited by the requirement that disregarding voting instructions be reasonable and based on specified good faith determinations. However, if an insurer's decision to disregard contract

owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund. No charge or penalty will be imposed as a result of such a withdrawal. Applicants submit, however, that the likelihood that voting instructions of insurance company separate account holders will ever be disregarded or that withdrawal will occur is extremely remote, and that this possibility will be known through prospectus disclosure.

19. Applicants submit that investment by Plans in any of the Funds will similarly present no conflict. While votes cast by the Plan trustees cannot be disregarded and must be counted and given effect, if a material irreconcilable conflict involving Plans arises, the Plans may simply redeem their shares and make alternative investments.

20. Applicants submit that there is no reason why the investment policies of the Funds would or should be materially different from what these policies would or should be if the Funds funded only variable annuity contracts or variable life insurance contracts, whether flexible premium or scheduled premium contracts. Each type of insurance product is designed as a long-term investment program. Similarly, the investment objectives of Plans are long-term. Moreover, Applicants represent that each Fund will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company insurer or type of insurance product.

21. As noted above, Section 817(h) of the Code imposes certain diversification standards on the assets underlying variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation § 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying management investment company. Therefore, Applicants assert that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder, recognize any inherent conflicts of interest if Plans and variable life insurance separate accounts all invest in the same management investment company.

22. Applicants note that while there may be differences in the manner in which distributions from variable annuity contracts, variable life insurance contracts and Plans are taxed, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or Plan cannot net purchase payments to make the distributions, the Separate Account or Plan will redeem Fund shares at their net asset value. The Plan will then make distributions in accordance with the terms of the Plan, and the Participating Insurance Company will make distributions in accordance with the terms of the Contract.

23. Applicants also state that it is possible to provide an equitable means of giving voting rights to Contract owners and to Plans. Each Fund will inform each shareholder, including each Separate Account and each Plan, of its respective share of ownership in the Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement.

24. Applicants submit that the ability of the Funds to sell their respective shares directly to qualified plan does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of participants under the Plans or Contract owners under the Contracts, the Plans and the Separate Accounts only have rights with respect to their respective shares of the Funds. They can only redeem such shares at their net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

25. Applicants state that there are no conflicts between the Contract owners of Separate Accounts and participants under the Plans with respect to the state insurance commissioners' veto powers over investment objectives. The basic premise of shareholder voting is that not all shareholders may all agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their Separate Accounts out of one Fund and invest in another. Complex and time-consuming transactions must be undertaken to accomplish such redemptions and transfers. Conversely, trustees of Plans can make the decision quickly and redeem their shares from a Fund and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts, or, as is the case with most Plans, even hold cash pending a suitable investment. Based on the Foregoing, Applicants represent that even should the interests of Contract owners and Plans conflict, thru conflicts can be resolved almost immediately because the trustees of the Plans can, independently, redeem shares out of the Fund.

26. Applicants state that no one investment strategy can be identified as appropriate to a particular insurance product or to a Plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. Applicants further state that a Fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants also state that permitting mixed and shared funding will provide economic support for the continuation of the Funds. In addition, Applicants assert that permitting mixed and shared funding will facilitate the establishment of additional Funds serving diverse goals.

27. Applicants assert that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts. Applicants state that these factors include the costs of organizing and operating a fund medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts. Applicants assert that use of the Funds as common investment mediums for variable contracts would reduce or eliminate these concerns.

28. Applicants also submit that mixed and shared funding should provide benefits to Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of Prudential, PIC, and Jennison, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Mixed and shared funding also would permit a greater amount of assets available for investment by the Funds, thereby promoting economies of scale, by permitting increased safety through greater diversification and by making the addition of new series more feasible. Therefore, making the Funds available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with

respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants assert that the sale of Fund shares to Plans also can be expected to increase the amount of assets available for investment by the Funds and thus promote economies of scale and greater diversification.

29. Applicants assert that they do not believe that mixed and shared funding and sales to qualified Plans will have any adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Directors of each Fund (''Board'') will consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the 1940 Act and rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any director or directors, then the operation of this condition shall be suspended: (a) for a period of 45 days, if the vacancy or vacancies may be filled by the remaining directors; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) of such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict between the interests of the Contract owners of all Separate Accounts and of the Plan participants investing in the Fund and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Fund are being managed; (e) a difference in voting instructions given by variable annuity Contract owners, variable life insurance Contract owners and trustees of Plans; (f) a decision by an insurer to disregard the voting instructions of Contract owners; or (g) if applicable, decision by a Plan to disregard voting instructions of Plan participants.

3. Participating Insurance Companies, Prudential (or any other investment adviser of the Fund), and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of the Fund (collectively, the ''Participants'') will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Contract owner voting instructions are disregarded, and if pass-through voting is applicable, an obligation of each Plan to inform the Board whenever it is determined to disregard Plan participants' voting instructions. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Insurance Companies investing in the Fund under their agreements governing participation in the Fund, and Plans under their participation agreements, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Contract owners and, if applicable, Plan participants.

4. If a majority of the Board, or a majority of its disinterested directors, determine that a material irreconcilable conflict exists with respect to a Fund, the relevant Participating Insurance Companies and Plans will, at their own expense and the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the Fund, and reinvesting such assets in a different investment medium, which may include another Fund, or submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owners' voting instructions, and that decision represents a minority position or would preclude a majority vote, then that insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the Fund's election, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility of taking remedial action in the event of a Board determination of material irreconcilable conflict and bearing the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Plans under their agreements governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of Contract owners and, if applicable, Plan participants.

5. For purposes of Condition 4, a majority of the disinterested directors of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or Prudential (or any other investment adviser of a Fund) be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Contract if a majority of Contract owners materially and adversely affected by the material irreconcilable conflict vote to decline such offer. No Plan shall be required by Condition 4 to establish a new funding medium for such Plan if: (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer; or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

6. The Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act to require pass-through voting for Contract owners.

Accordingly, Participating Insurance Companies will vote shares of the Funds held in their separate accounts in a manner consistent with voting instructions timely received from Contract owners. In addition, each Participating Insurance Company will vote shares of the Fund held in its separate accounts for which it has not received timely voting instructions as well as shares of the Funds which the Participating Insurance Company itself owns, in the same proportion as those shares for which voting instructions from Contract owners are timely received. Participating Insurance Companies will be responsible for assuring that each of their separate accounts investing in each Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies investing in that Fund. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in each Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in that Fund.

8. Each Plan will vote as required by applicable law and governing Plan documents.

9. All reports of potential or existing conflicts received by a Board, and all Board actions with regard to: (a) determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

10. Each Fund will notify all Participants in that Fund that disclosure in separate account prospectuses regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its prospectus that: (a) the Fund is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for qualified pension and retirement plans; (b) because of differences of tax treatment and other considerations, the interests of various Contract owners participating in the Fund and the interests of Plans investing in the Fund may conflict; and (c) the Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken.

11. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Fund). In particular, each Fund either will provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Funds are not one of the trusts described in Section 16(c)), as well as Section 16(a) of the 1940 Act and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

12. If and to the extent that Rules 6e–2, 6e–3(T) under the 1940 Act are amended, or if Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules thereunder, with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent applicable.

13. The Participants no less than annually, shall submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data to the Board when it so reasonably requests, shall be a contractual obligation of all Participants under the agreements governing their participation in the Fund.

14. If a Plan should become a holder of 10% or more of the assets of a Fund, such Plan will execute a participation agreement with the Fund which will include the conditions set forth herein, to the extent applicable. A Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are 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.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26974]

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

February 5, 1999.

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 applications(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 March 1, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarants(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 March 1, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Roanoke Gas Company, et al. (70–9391)

Roanoke Gas Company (''Roanoke Gas''), an exempt Virginia gas public utility holding company,[1] and its wholly owned nonutility subsidiary

[1] Roanoke Gas claims exemption from regulation under section 3(a) in accordance with rule 2 under the Act.