public utilities in Oregon and which was granted party status by the law judge, supports Enron's application for an exemption pursuant to Section 3(a)(1). The Division of Investment Management opposes Enron's applications and contends that Enron failed to establish that it qualifies for any of the statutory exemptions for which it applied.

Among the issues likely to be considered is whether Enron has established that it is entitled to an exemption under Sections 3(a)(1), 3(a)(3), or 3(a)(5) of the Act.

For further information, please contact the Office of the Secretary at (202) 942–7070.

The subject matter of the Closed Meeting scheduled for Thursday, December 4, 2003 will be:

Post-argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: November 26, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–29910 Filed 11–26–03; 11:16 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27767]

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

November 21, 2003.

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 amendment(s) is/are available for public inspection through the Commission's Branch 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 December 15, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, 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 the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts 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 December 15, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Great Plains Energy Incorporated (70–9861)

Great Plains Energy Incorporated (''GPE''), a registered public utility holding company; Kansas City Power & Light Company (''KCPL''), a public utility subsidiary company of GPE; Great Plains Power Incorporated (''GP Power'') a subsidiary company of GPE; [1] Kansas City Power & Light Receivables Company (''KCPL Receivables''), a nonutility subsidiary of KCPL; [2] all located at 1201 Walnut, Kansas City, MO 64106; and KLT, Inc., an intermediate holding company of GPE at 10740 Nall Street, Overland Park, KS 66211 (collectively, ''Applicants'') have filed an application-declaration (''Application'') under sections 6(a), 7, 9(a)(1), 10 and 12(c) of the Act and rules 45 and 46 under the Act.

I. Prior Authorization

By order dated September 7, 2001 (HCAR No. 27436) (''September Order''), the Commission authorized GPE and its subsidiaries, among other things, to engage in (A) a program of external financing, (B) intrasystem credit support arrangements, (C) interest rate hedging measures, and (D) other intrasystem transactions from time to time through December 31, 2004 (''Authorization Period''). In particular, the Commission authorized GPE to issue and sell common stock and, directly or indirectly, short-term and long-term debt securities and other forms of preferred or equity-linked securities. The aggregate amount of all such securities issued by GPE during the Authorization Period was limited to $450 million under the conditions of the September Order, and the Commission reserved jurisdiction over (A) the retainability of KLT Investment II until October 1, 2004 and (B) payment of dividends by any nonexempt nonutility subsidiary.

II. Current Requests

Applicants request that the current proposal supersede and replace the authorizations under the September Order through December 31, 2005 (''New Authorization Period'').

A. Financing

GPE requests authorization to issue and sell directly, or indirectly through financing subsidiaries, $1.2 billion in the aggregate amount of common stock, short term and long term debt securities and other forms of preferred or equity-linked securities. GPE may issue and sell common stock through underwriters or dealers, through agents, or directly to a limited number of purchasers or a single purchaser. Also, it requests authority to issue common stock, performance shares options, SARs, warrants or other stock purchase rights exercisable for common stock in public or privately negotiated transaction as consideration for the equity securities or assets of other existing companies, provided that the acquisition of any such equity securities or assets has been authorized in a separate proceeding or is exempt under the Act or the rules under the Act. GPE will directly issue preferred and equity-linked securities, including specifically, debt or preferred securities that are convertible, either manditorily or at the option of the holder, into common stock or GPE indebtedness and forward purchase contracts for common stock. Long term debt of GPE may be in the form of unsecured notes (''Debentures'') issued in one or more series. To provide for financing for general corporate purposes, other working capital requirements and investments in new enterprises until long-term financing can be obtained, GPE may sell, directly or indirectly through one or more financing subsidiaries, commercial paper or establish bank lines of credit.

KCPL requests authorization to issue and sell notes and other evidence of indebtedness having a maturity of one year or less in an aggregate principal amount outstanding at any one time not to exceed $500 million, including without limitation commercial paper, bank lines of credit, and other debt securities.[3]

[1] GPE states that GP Power currently is not an independent power producer (''IPP'') or an exempt wholesale generator (''EWG''), and has no interests in IPPS. It is engaged in certain preliminary project development and administrative activities, such as obtaining options to purchase real estate for a potential plant site, filing applications for air, wetlands and other pre-construction matters and filing a market-based rate schedule with the Federal Energy Regulatory Commission (''FERC'').

[2] KCPL Receivables engages in accounts receivables management.

[3] The issuance by KCPL of commercial paper and other short term indebtedness having a maturity of

GPE, the nonutility subsidiaries listed in Exhibit J (''Exhibit J Subsidiaries''), and any future nonutility subsidiaries request authority to make loans to any such associate company at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital when the borrowing Exhibit J Subsidiary is: (1) Not wholly-owned directly or indirectly by GPE and (2) does not sell goods or services to KCPL.

GPE and, to the extent not exempt pursuant to rule 52, KCP&L, the Exhibit J Subsidiaries, and any future nonutility subsidiaries request authorization to enter into interest rate hedging transactions with respect to existing indebtedness, subject to certain limitations and restrictions, in order to reduce or manage interest rate cost. Interest Rate Hedges would only be entered into with counterparties whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors Service, Fitch, or Duff and Phelps.

B. Guarantees

GPE proposes to enter into guarantees and other forms of support agreements on behalf or for the benefit of any subsidiary during the New Authorization Period in an aggregate principal amount not to exceed $600 million outstanding at any one time.

Applicants also request authorization for nonutility subsidiaries to provide credit support on behalf and for the benefit of other nonutility subsidiaries in an aggregate principal amount not to exceed $300 million outstanding at any one time, exclusive of any guarantees and other forms of credit support exempt under rule 45(b)(7) or rule 52(b).

C. Other Requests

Collectively the Applicants request authorization to: (1) Change any wholly owned Exhibit J Subsidiary's capital stock capitalization; (2) acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships or other entities created specifically for the purpose of facilitating the financing of the authorized and exempt activities (''Financing Subsidiaries''); (3) acquire, directly or indirectly through a nonutility subsidiary, the securities of one or more new intermediate subsidiary companies which may be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more EWGs, foreign utility companies (''FUCOs''), exempt telecommunications companies, rule 58 companies or other nonutility subsidiaries (as authorized in this proceeding); and finally (4) on behalf of the following specified subsidiaries: GP Power; Innovative Energy Consultants Inc.; Home Service Solutions Inc.; Worry Free Service Inc.; KLT Inc., KLT Investments II Inc.; KLT Energy Services Inc.; Custom Energy Holdings, LLC; Strategic Energy LLC, KLT Gas Inc.; Apache Canyon Gas LLC; FAR Gas Acquisitions Corporation; Forest City, LLC; Forest City Gathering Company; and Patrick KLT Gas, LLC (collectively, ''Specified Subsidiaries'') that the Specified Subsidiaries be permitted to pay dividends out of capital and unearned surplus (including revaluation reserve), provided that no Specified Subsidiary at the time of payment derives any material part of its revenues from the sale of goods, services, electricity or natural gas to KCPL.

D. Use of Proceeds

GPE states that the proposed increase in the authorized limit on issuing common stock, short-term and long-term debt securities and other forms of preferred or equity-linked securities will enable it to (1) finance investments and capital expenditures by it and its subsidiaries, (2) to fund future investments in any exempt telecommunications company or energy-related or gas-related company within the meaning of rule 58, (3) to repay, redeem, refund or purchase by it or its subsidiaries of their respective securities, and (4) to finance the working capital requirements of it and its subsidiaries. GPE further states that the proposed increase in the authorized limit will provide additional liquidity to it and the ability to increase its equity to total capitalization ratio, which will strengthen its financial position and enhance its access to the capital markets. GPE does not request authority at this time to invest in EWGs or FUCOs.

More specifically, GPE requests authority to invest, directly or indirectly, up to $10 million in the aggregate in GP Power to be used for the same types of preliminary project development and administrative activities as described in the preceding paragraph without obtaining further authorization of the Commission; provided that if GP Power becomes an EWG, investments in GP Power may be made subject to the restrictions of rule 53 under the Act.[4]

E. Financing Parameters

1. Interest Rates on Indebtedness

The interest rate on long-term debt securities (debt securities having maturities of one year or more) issued to non-associate companies pursuant to Commission authorization will not exceed at the time of issuance the greater of (1) 500 basis points of the yield to maturity of a U.S. Treasury security having a remaining term approximately equal to the term of such debt, or (2) competitive market rates for securities of comparable credit quality with similar terms and features. The interest rate on GPE bank lines of credit and short-term debt securities (debt securities having maturities of less than one year) issued to non-associate companies pursuant to Commission authorization will not exceed at the time of issuance the greater of (i) 500 basis points over the comparable term London Interbank Offered Rate (''LIBOR''), or (ii) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality with similar terms and features.

2. Investment Grade Ratings

Apart from securities issued either for intrasystem financings, or by KCPL in the form of commercial paper or short-term bank facilities, no guarantees or other securities, other than common stock, may be issued in reliance upon the authorization granted by the Commission unless (1) the security to be issued, if rated, is rated investment grade; (2) all outstanding securities of the issuer (except in the case of GPE, its preferred stock) that are rated are rated investment grade; and (3) all outstanding securities of GPE (except for GPE's preferred stock) that are rated are rated investment grade. The preferred stock of GPE currently is not rated investment grade. GPE currently has four series of preferred stock outstanding, each of which was originally issued by KCPL. These four series aggregate $39 million in face amount, or approximately 0.2% of GPE's consolidated capitalization. The below-investment grade rating on the preferred stock is a result of the rating agencies' methodology, which views preferred stock to be structurally subordinated to any debt issued by GPE. It would not be economically efficient

less than 12 months will not be exempt under rule 52(a) since it is not subject to approval by its state regulatory commission; however, KCPL must obtain the authorization of the Missouri Public Service commission for any mortgage or other encumbrance of KCPL franchise, works, or system.

[4] GPE has invested, directly or indirectly, approximately $3.3 million in GP Power as of September 30, 2003.

for GPE to redeem the preferred stock at this time.

3. Common Equity Capitalization

GPE & KCPL will not issue guarantees or other securities in reliance upon the authorization by the Commission unless, on a pro-forma basis, taking into account the issuance of guarantees, or other securities up to $1.2 billion, the consolidated common equity capitalization of GPE and KCPL will remain at least 30%.

F. Services

GPE requests authority for these new intermediate subsidiaries, as well as existing intermediate subsidiaries (collectively, the ''Intermediate Subsidiaries''), to provide management, administrative, project development and operating services to such entities at fair market prices determined without regard to cost, and therefore requests an exemption (to the extent that rule 90(d) does not apply) pursuant to section 13(b) from the cost standards of rules 90 and 91 as applicable to such transactions, in any case in which the nonutility subsidiary purchasing such goods or services is:

(1) A FUCO or foreign EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(2) An EWG that sells electricity at market-based rates which have been approved by the FERC, provided that the purchaser is not KCPL;

(3) A ''qualifying facility'' (''QF'') within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA'') that sells electricity exclusively (a) at rates negotiated at arms'-length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, and/or (b) to an electric utility company at the purchaser's ''avoided cost'' as determined in accordance with the regulations under PURPA;

(4) A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser thereof is not KCPL; or

(5) A rule 58 subsidiary or any other nonutility subsidiary that (a) is partially-owned by GPE, provided that the ultimate purchaser of such goods or services is not KCPL (or any other entity that GPE may form whose activities and operations are primarily related to the provision of goods and services to KCPL), (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to nonutility subsidiaries described in clauses (1) through (4) immediately above, or (c) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States.

Entergy Mississippi, Inc. (70–10157)

Entergy Mississippi, Inc. (''Entergy Mississippi''), 308 East Pearl Street, Jackson, MI 39201, an electric utility subsidiary of Entergy Corporation, a registered holding company under the Act, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(c), 12(d), 12(e), 32 and 33 of the Act and rules 42, 53, and 54 under the Act.

Entergy Mississippi seeks authorization to issue and sell, from time to time through March 31, 2007, up to $900 million combined aggregate principal amount of (a) its first mortgage bonds (''Bonds''), (b) its preferred stock (''Preferred Stock''), (c) unsecured long-term indebtedness (''Long-term Debt''), and, (d) directly or indirectly through one or more financing subsidiaries, other forms of preferred or equity-linked securities (''Equity Interests'') (collectively, ''Securities'').

The Bonds (a) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at premiums above their principal amount, (b) may be entitled to mandatory or optional sinking fund provisions, (c) may be issued at fixed or floating rates of interest, (d) may provide for reset of the coupon under a remarketing arrangement, (e) may be called from existing investors by a third party, (f) may be backed by a bond insurance policy and (g) would have a maturity ranging from one year to 50 years. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to the Bonds of a particular series, as well as any associated placement, underwriting or selling fees, commissions and discounts, if any, would be established by negotiation or competitive bidding. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to Bonds of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, would be established by negotiation or competitive bidding.

The Preferred Stock or Equity Interests may be issued in one or more series with whatever rights, preferences and priorities, including those related to redemption, are designated in the instrument creating each series. The Preferred Stock or Equity Interests may be redeemable or may be perpetual.

The Long-term Debt of a particular series (a) would be unsecured, (b) may be convertible into any other securities of Entergy Mississippi (except common stock), (c) would have a maturity ranging from one year to 50 years, (d) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at premiums above its principal amount, (e) may be entitled to mandatory or optional sinking fund provisions, (f) may be issued at fixed or floating rates of interest, (g) may provide for reset of the coupon in accordance with a remarketing arrangement, and (h) may be called from existing investors by a third party. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to Long-term Debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, would be established by negotiation or competitive bidding. Entergy Mississippi states that it presently contemplates selling the Securities by competitive bidding, negotiated public offering or private placement.

Entergy Mississippi proposes to use the net proceeds derived from the issuance and sale of the Securities for general corporate purposes, including (a) financing its capital expenditures, (b) repaying, redeeming, refunding or purchasing any of its securities issued in accordance with rule 42 under the Act and/or those issued on Entergy Mississippi's behalf in accordance with section 9(c)(1) of the Act, and (c) financing its working capital requirements.

Entergy Mississippi also proposes to enter into arrangements to finance or refinance on a tax-exempt basis certain pollution control facilities and/or sewage or solid waste disposal facilities (''Facilities''). Entergy Mississippi proposes, from time to time through March 31, 2007, to enter into one or more leases, subleases, installment sale agreements, refunding agreements or other agreements (''Agreements'') and/or supplements and/or amendments to those Agreements (''Facilities Agreements'') with one or more issuing governmental authorities (''Authorities''), under which the Authority may issue one or more series of tax-exempt bonds (''Tax-exempt Bonds'') in an aggregate principal amount not to exceed $50 million (including the possible issuance and pledge by Entergy Mississippi of up to $55 million in aggregate principal

amount of Entergy Mississippi Collateral Bonds (as defined below), which $55 million is not included in the $900 million referenced above). The net proceeds from the sale of Tax-exempt Bonds would be applied to financing, or refinancing tax-exempt bonds issued for the purpose of financing, the Facilities. Entergy Mississippi further proposes, under the Facilities Agreement, to purchase, acquire, construct and install the Facilities unless the Facilities are already in operation. Under the Facilities Agreements, Entergy Mississippi would be obligated to make payments sufficient to pay the principal or redemption price of, premium, if any, and the interest on, and other amounts owing with respect to, the Tax-exempt Bonds, together with related expenses.

The Tax-exempt Bonds of a particular series (a) would have a maturity ranging from one year to 50 years, (b) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at premiums above their principal amount, (c) may be entitled to mandatory or optional sinking fund provisions, (d) may be issued at fixed or floating rates of interest, (e) may provide for reset of the coupon under a remarketing arrangement, (f) may be called from existing investors by a third party, (g) may be backed by a municipal bond insurance policy, (h) may be supported by credit support such as a bank letter of credit and reimbursement agreement, (i) may be supported by a lien subordinate to EMI's Mortgage and Deed of Trust, as amended and supplemented both in the past and in the future (''Mortgage''), on the Facilities related to those Tax-exempt Bonds and (j) may be supported by the issuance and pledge of Bonds issued as collateral security for those Tax-exempt Bonds (''Collateral Bonds''). The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to Tax-exempt Bonds of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, would be established by negotiation or competitive bidding.

Entergy Mississippi also proposes to enter into arrangements to issue up to $300 million in aggregate principal amount of municipal securities (''Municipal Securities'') (including the possible issuance and pledge by Entergy Mississippi of up to $350 million in aggregate principal amount of Entergy Mississippi Municipal Collateral Bonds (as defined below), which $350 million is not included in the $900 million referenced above). Entergy Mississippi proposes, from time to time through March 31, 2007, to enter into one or more agreements, either directly or through an affiliate (''Municipal Securities Agreements''), with one or more issuing governmental authorities (''Municipal Entities''), under which a Municipal Entity could issue securities to the public on behalf of Entergy Mississippi or loan money to Entergy Mississippi through a bank, an affiliate of Entergy Mississippi, or other person. The net proceeds from the sale of Municipal Securities would be applied to finance certain costs of Entergy Mississippi. Under any Municipal Securities Agreement, Entergy Mississippi would be obligated to make payments sufficient to provide for payment by the Municipal Entity of the principal or redemption price of, premium, if any, and interest on, and other amounts owing with respect to the Municipal Securities, together with related expenses.

The Municipal Securities of a particular series (a) would have a maturity ranging from one year to fifty years, (b) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at premiums above their principal amount, (c) may be entitled to mandatory or optional sinking fund provisions, (d) may be issued at fixed or floating rules of interest, (e) may provide for reset of the coupon under a remarketing arrangement, (f) may be called from existing investors by a third party, (g) may be backed by a municipal securities insurance policy, (h) may be supported by credit support such as a bank letter of credit and reimbursement agreement, (i) may be supported by a lien subordinate to the Mortgage on certain of EMI's facilities and other assets, and (j) may be supported by the issuance and pledge of Bonds issued as collateral security for them (''Municipal Collateral Bonds''). The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to Municipal Securities of a particular series as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, would be established by negotiation or competitive bidding.

Entergy Mississippi also proposes to (a) acquire the equity securities of one or more financing subsidiaries and/or special-purpose subsidiaries, organized solely to facilitate financing, (b) to guarantee the securities issued by those financing subsidiaries and/or special purpose subsidiaries, and (c) to have the financing subsidiaries and/or special purpose subsidiaries pay Entergy Mississippi, either directly or indirectly, dividends out of capital.

Entergy Gulf States, Inc. (70–10158)

Entergy Gulf States, Inc. (''Entergy Gulf States''), 350 Pine Street, Beaumont, Texas 77701, an electric utility subsidiary of Entergy Corporation, a registered holding company under the Act, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(c), 12(d), 12(e), 32 and 33 of the Act and rules 42, 53, and 54 under the Act.

Entergy Gulf States seeks authorization to issue and sell, from time to time through March 31, 2007, up to $2 billion combined aggregate principal amount of (a) its first mortgage bonds (''Bonds'') including first mortgage bonds of the medium term note series (''MTNs''), (b) its preferred stock (''Preferred Stock''), (c) its preference stock (''Preference Stock''), (d) unsecured long-term indebtedness (''Long-term Debt''), and (e) directly or indirectly through one or more financing subsidiaries, other forms of preferred or equity-linked securities (''Equity Interests'').

The Bonds and MTNs (a) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at premiums above their principal amount, (b) may be entitled to mandatory or optional sinking fund provisions, (c) may be issued at fixed or floating rates of interest, (d) may provide for reset of the coupon under a remarketing arrangement, (e) may be called from existing investors by a third party, (f) may be backed by a bond insurance policy and (g) would have a maturity ranging from one year to fifty years. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, of the Bonds of a particular series, as well as any associated placement, underwriting or selling fees, commissions and discounts, would be established by negotiation or competitive bidding. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, of Bonds of a particular series, or MTNs of a particular sub-series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, would be established by negotiation or competitive bidding.

The Preferred Stock or Equity Interests may be issued in one or more series with whatever rights, preferences and priorities, including those related to redemption, are designated in the instrument creating each series. The Preferred Stock or Equity Interests may be redeemable or may be perpetual.

The Long-term Debt (a) would be unsecured, (b) may be convertible into any other securities of Entergy Gulf States (except common stock), (c) would have a maturity ranging from one year to fifty years, (d) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at premiums above its principal amount, (e) may be entitled to mandatory or optional sinking fund provisions, (f) may be issued at fixed or floating rates of interest, (g) may provide for reset of the coupon under a remarketing arrangement, and (h) may be called from existing investors by a third party. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to Long-term Debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, would be established by negotiation or competitive bidding.

Entergy Gulf States proposes to use the net proceeds from the issuance and sale of Bonds, and/or MTNs and/or the Preferred Stock and/or the Preference Stock and/or the Long-term Debt and/or the Equity Interests for general corporate purposes, including (a) financing its capital expenditures, (b) repaying, redeeming, refunding or purchasing any of its securities under rule 42 and/or those issued on Entergy Gulf States' behalf under section 9(c)(1), and (c) financing its working capital requirements.

Entergy Gulf States states that it contemplates selling the Bonds and/or MTNs and/or the Preferred Stock and/or the Preference Stock and/or the Long-term Debt and/or the Equity Interests by competitive bidding, negotiated public offering or private placement.

Entergy Gulf States also proposes to enter into arrangements to finance or refinance on a tax-exempt basis certain facilities eligible to be financed with tax-exempt debt, including, but not limited to, sewage and/or solid waste disposal facilities (''Facilities''). Entergy Gulf States proposes, from time to time through March 31, 2007, to enter into one or more leases, subleases, installment sale agreements, refunding agreements or other agreements (''Agreements'') and/or supplements and/or amendments to those Agreements (''Facilities Agreements'') with one or more issuing governmental authorities (''Authorities''), under which the Authorities may issue one or more series of tax-exempt bonds (''Tax-exempt Bonds'') in an aggregate principal amount up to $500 million (including the possible issuance and pledge by Entergy Gulf States of up to $560 million in aggregate principal amount of Entergy Gulf States Collateral Securities (as defined below), which $560 million is not included in the $2 billion mentioned above). The net proceeds from the sale of Tax-exempt Bonds would be applied to financing, or refinancing tax-exempt bonds issued for the purpose of financing, the Facilities.

Under the terms of the Facilities Agreements, Entergy Gulf States may commit to purchase, acquire, construct, install, operate and/or maintain the Facilities. Under the Facilities Agreements, Entergy Gulf States would be obligated to make payments sufficient to pay the principal or redemption price of, premium, if any, and the interest on, and other amounts owing with respect to, the Tax-exempt Bonds, together with related expenses.

The Tax-exempt Bonds (a) would have a maturity ranging from one year to fifty years, (b) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at premiums above their principal amount, (c) may be entitled to mandatory or optional sinking fund provisions, (d) may be issued at fixed or floating rates of interest, (e) may provide for reset of the coupon under a remarketing arrangement, (f) may be called from existing investors by a third party, (g) may be backed by a municipal bond insurance policy, (h) may be supported by credit support such as a bank letter of credit and reimbursement agreement, (i) may be supported by a lien subordinate to Entergy Gulf States' Indenture of Mortgage (as before and later amended and supplemented) on the Facilities related to those Tax-exempt Bonds and (j) may be supported by the issuance and pledge of Bonds issued as collateral security for those Tax-exempt Bonds (''Collateral Securities''). The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to Tax-exempt Bonds of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, would be established by negotiation or competitive bidding.

Entergy Gulf States also proposes to (a) acquire the equity securities of one or more financing subsidiaries and/or special-purpose subsidiaries, organized solely to facilitate financing, (b) to guarantee the securities issued by those financing subsidiaries and/or special purpose subsidiaries, and (c) to have the financing subsidiaries and/or special purpose subsidiaries pay Entergy Gulf States, either directly or indirectly, dividends out of capital.

Ameren Corporation, et al. (70–10159)

Ameren Corporation (''Ameren''), a registered holding company, Ameren Energy, Inc., and Ameren's nonutility subsidiaries Ameren Development Company (''Ameren Development''), Ameren ERC, Inc. (''Ameren ERC''), Ameren Energy Resources Company (''Ameren Energy Resources''), Ameren Energy Marketing Company, Ameren Energy Fuels and Services Company, Illinois Materials Supply Co., Missouri Central Railroad Company, Union Electric Development Company (''UEDC''), AFS Development Company, LLC, all located at 1901 Chouteau Avenue, St. Louis, Missouri 63103, and nonutility subsidiaries CIPSCO Investment Company (''CIC''), 607 East Adams Street, Springfield, Illinois 62739, CILCORP Investment Management Inc., CILCORP Ventures Inc., CILCORP Energy Services, Inc., QST Enterprises Inc., CILCO Exploration and Development Company, and CILCO Energy Corporation, all located at 300 Liberty Street, Peoria, Illinois 61602, and nonutility subsidiaries AmerenEnergy Medina Valley Cogen (No. 4), L.L.C., AmerenEnergy Medina Valley Cogen (No. 2) L.L.C., AmerenEnergy Medina Valley Cogen, L.L.C., an exempt wholesale generator (''EWG'') and AmerenEnergy Medina Valley Operations, L.L.C., a nonutility subsidiary all at P.O. Box 230, Mossville, Illinois, 61552–0230 (collectively, ''Applicants'' and excluding Ameren ''Nonutility Subsidiaries'') have filed an application-declaration (''Application'') under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 13(b) of the Act and rules 43, 45, 46, 90 and 91 under the Act.

By order dated July 23, 1999 (the ''1999 Order''),[5] Ameren, Ameren Union Electric Company d/b/a AmerenUE, and certain direct and indirect non-utility subsidiaries of Ameren were authorized to engage in various transactions from time to time through December 31, 2003, relating generally to Ameren's reorganization of its nonutility subsidiary companies and the acquisition and ownership of new non-utility subsidiaries.

In this Application, the Applicants are seeking to extend and restate their current authorization under the 1999 Order for the period through December 31, 2006 (the ''Authorization Period''), subject to a continuation of the Commission's reservation of jurisdiction over certain specified proposals, as described below.

[5] Holding Co. Act Release No. 27053.

I. Intermediate Subsidiaries

Ameren proposes to acquire, directly or indirectly through the Nonutility Subsidiaries, the securities of one or more new subsidiaries (''Intermediate Subsidiaries'') organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in EWGs, foreign utility companies (''FUCOs''), exempt telecommunications companies'' (''ETCs'') under section 34 of the Act, energy-related companies'' under rule 58 (''Rule 58 Subsidiaries'') or other non utility companies the acquisition of which has been expressly authorized by the Commission. Applicants state that the Intermediate Subsidiaries would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more of EWGs, FUCOs, ETCs under section 34 of the Act, (collectively, ''Exempt Subsidiaries''), Rule 58 Subsidiaries, or other current or future non-exempt subsidiaries that have been authorized by the Commission (''Non-Exempt Subsidiaries''), provided that Intermediate Subsidiaries may also engage in Development Activities [6] and Administrative Activities [7] relating to such subsidiaries.

II. Financing Subsidiaries

Applicants request authority to acquire, directly or indirectly, the equity securities of one or more new subsidiaries (''Financing Subsidiaries'') organized exclusively for the purpose of issuing long-term debt or equity securities to investors other than Ameren in order to finance, in whole or in part, Ameren's direct or indirect acquisition of Exempt Subsidiaries and Rule 58 Subsidiaries created specifically for the purpose of facilitating the financing of the Applicants' authorized and exempt activities (including exempt and authorized acquisitions) through the issuance of long-term debt or equity securities to third parties and the transfer of the proceeds of such financings to the parent company of the Financing Subsidiary.

The amount and terms (*i.e.*, interest rate, maturity, etc.) of any long-term debt or preferred equity securities issued by a Financing Subsidiary of Ameren will count against the limitation and comply with the specific terms applicable to that type of security under the any applicable order approving financing by Ameren. Ameren also proposes, if required, to guarantee or enter into expense agreements in respect of the obligations of any such Financing Subsidiaries. To avoid double counting, however, the guarantee of that security by Ameren would not also be counted against the then current limit on guarantees that Ameren is authorized to issue under any applicable order. Nonutility Subsidiaries may also provide guarantees and enter into expense agreements, if required, on behalf of such entities pursuant to rules 45(b)(7) and 52, as applicable. Ameren further requests authorization to issue its unsecured subordinated promissory notes (''Subordinated Notes'') to any Financing Subsidiary to evidence a loan of the proceeds of any financing by a Financing Subsidiary to Ameren. The amount and terms (*i.e.*, interest rate, maturity, default provisions, prepayment terms, etc.) of any Subordinated Notes issued by Ameren to a Financing Subsidiary will be designed to parallel the amount and terms of the specific securities of a Financing Subsidiary in respect of which such Subordinated Notes are issued. Again, to avoid double counting, the amount of Subordinated Notes issued by Ameren to any Financing Subsidiary will not be counted against the then applicable limit on long-term debt and preferred equity securities that Ameren is authorized to issue.

III. Special Purpose Subsidiaries

Ameren requests authority to acquire, directly or indirectly through a Nonutility Subsidiary, the equity securities of one or more new subsidiaries (''Special Purpose Subsidiaries'') organized to purchase or otherwise acquire any of the assets of or securities held by UEDC and/or CIC at the time Ameren became a registered holding company, and UEDC and CIC request authorization to sell or otherwise transfer such assets or securities to Special Purpose Subsidiaries. In addition, Special Purpose Subsidiaries may also be formed to engage in any of the following additional business activities:

(i) Making or guaranteeing loans to customers to finance the purchase of home and business heating, ventilation and cooling equipment; energy conservation and management equipment, products and services; lighting equipment and supplies; and home and business security systems. Ameren proposes that the aggregate principal amount of loans, guarantees or customer installment obligations with respect to which there is recourse to any Special Purpose Subsidiary shall not exceed $300 million at any one time during the Authorization Period.

(ii) Development Activities and operations and maintenance, construction and construction management, fuel procurement and other types of services for or on behalf of any Nonutility Subsidiary. The Applicants are requesting a continuation of their current authority to expend up to $250 million in the aggregate outstanding at any time during the Authorization Period on all Development Activities.

(iii) The marketing of energy bill payment insurance in Illinois and Missouri, which would enable utility customers to pay their energy bills in the event of unemployment, illness, disability or death. This program would be underwritten and administered by an independent insurance company or companies.

(iv) The offering of economic development services for businesses wishing to expand or relocate their facilities to anywhere within the wholesale or retail service area of the Union Electric Company d/b/a AmerenUE (''AmerenUE''), Central Illinois Public Service Company d/b/a AmerenCIPS (''AmerenCIPS''), and Central Illinois Light Company, d/b/a AmerenCILCO (''AmerenCILCO,'' and together with AmerenUE and AmerenCIPS, the ''Utility Subsidiaries''), including consultation with local economic development officials, building and site screening, customized tax comparison studies and workforce analyses, liaison services to identify financing and leasing sources for building construction, equipment and working capital, and other similar services. These services will be similar in scope to those which the Utility Subsidiaries have in the past provided to relocating businesses, often without charge. Ameren states that minimal capital will be required to provide these types of services and that, without further order of the Commission, it will not acquire any securities of or other interest in any industrial/commercial

[6] Development Activities are limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal ''hosts,'' fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition or construction of facilities or the securities of other companies.

[7] Administrative Activities include ongoing personnel, accounting, engineering, legal, financial, and other support activities necessary to manage Development Activities and investments in non-utility subsidiaries.

development enterprise except as may be permitted by rule 40(a)(5).

(v) The offering of customer goodwill or retention programs, such as packaged discounts on products for the home, travel, and health services, prepaid phone cards or ''affinity'' cards to promote customer goodwill, and programs to help customers stay informed and protect their credit rating, driving record, and social security number.

(vi) The marketing of ''outage'' insurance, which would enable customers to protect against lost revenues due to power interruptions, and surge protection service. Ameren requests authorization to invest in Special Purpose Subsidiaries an aggregate amount at any time outstanding not to exceed $250 million.

IV. Guarantees by Nonutility Subsidiaries

Nonutility Subsidiaries request authorization to provide guarantees or other forms of credit support in respect of obligations of each other in an aggregate principal amount at any time outstanding during the Authorization Period not to exceed $300 million, in addition to any guarantees that are exempt under rules 45(b) and 52(b), as applicable, provided that any guaranty or other form of credit support outstanding on December 31, 2006, shall remain in effect until it expires in accordance with its terms.

V. Sales of Services and Goods Among Nonutility Subsidiaries

Nonutility Subsidiaries request authorization to provide services or sell goods to each other at fair market prices determined without regard to cost, and therefore request an exemption pursuant to section 13(b) from the cost standard of rules 90 and 91 as applicable to such transactions, in any case in which any of the following circumstances may apply:

(i) The client company is a FUCO or foreign EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(ii) The client company is an EWG that sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission (''FERC''), provided that the purchaser thereof is not a Utility Subsidiary;

(iii) The client company is a ''qualifying facility'' (''QF'') within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA'') that sells electricity exclusively (a) at rates negotiated at arms'-length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, and/or (ii) to an electric utility company (other than a Utility Subsidiary) at the purchaser's ''avoided cost'' as determined in accordance with the regulations under PURPA;

(iv) The client company is a domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser thereof is not a Utility Subsidiary; or

(v) The client company is a Rule 58 Subsidiary or any other Nonutility Subsidiary that (1) is partially-owned, provided that the ultimate purchaser of such goods or services is not a Utility Subsidiary or Ameren Services Company (''Ameren Services''), a service company subsidiary, (or any other entity within the Ameren system whose activities and operations are primarily related to the provision of goods and services to the Utility Subsidiaries, (2) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries described in paragraphs (i) through (iv) immediately above, or (3) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States.

VI. Sale of Certain Goods and Services by Rule 58 Subsidiaries and Special Purpose Subsidiaries Outside the United States

Rule 58 Subsidiaries and Special Purpose Subsidiaries request authority to sell goods and services to customers both within and outside the United States. These goods and services include:

(i) The brokering and marketing of electricity, natural gas and other energy commodities;

(ii) Energy Management Services, which include the marketing, sale, installation, operation and maintenance of various products and services related to energy management and demand-side management, including energy and efficiency audits; facility design and process control and enhancements; construction, installation, testing, sales and maintenance of (and training client personnel to operate) energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies, design and specification of energy consuming equipment; and general advice on programs; the design, construction, installation, testing, sales and maintenance of new and retrofit heating, ventilating, and air conditioning (''HVAC''), electrical and power systems, alarm and warning systems, motors, pumps, lighting, water, water-purification and plumbing systems, and related structures, in connection with energy-related needs; and the provision of services and products designed to prevent, control, or mitigate adverse effects of power disturbances on a customer's electrical systems;

(iii) Performance contracting services aimed at assisting customers in realizing energy and other resource efficiency goals in the areas of process control, fuel management, and asset management services (including operation and maintenance services) in respect of energy-related systems, facilities and equipment located on or adjacent to the premises of a customer and used by that customer in connection with business activities, including: (a) Distribution systems and substations, (b) transmission, storage and peak-shaving facilities, (c) gas supply and/or electrical generation facilities (*i.e.*, stand-by generators and self-generation facilities), (d) boilers and chillers, (e) alarm/warning systems, (f) HVAC, water and lighting systems, and (g) environmental compliance, energy supply and building automation systems and controls;

(iv) Technical Support Services, which include technology assessments, power factor correction and harmonics mitigation analysis, meter reading and repair, rate schedule design and analysis, environmental services, engineering services, billing services (including consolidation billing and bill disaggregation tools), risk management services, communications systems, information systems/data processing, system planning, strategic planning, finance, feasibility studies, and other similar services;

(v) Certain retail services, including the provision of centralized bill payment centers for payment of all utility and municipal bills and related services; annual inspection, maintenance and replacement of energy-related equipment and appliances; service line repair and extended warranties with respect to all of the utility- or energy-related service lines internal and external to a customer's premises; provision of surge protection equipment and services; marketing services to associate and nonassociate businesses in the form of bill insert; and automated meter-reading services;

(vi) Sale of monitoring and response goods and services, which include products used in connection with energy and gas-related activities that enhance safety, increase energy/process efficiency; sale of energy-related information, as well as repair services, in connection with such problems as carbon monoxide leaks and faulty equipment wiring; operation of call/dispatch centers on behalf of associate and nonassociate companies in connection with the proposed sale of goods and services or with activities that Nonutility Subsidiaries are otherwise authorized to engage in under the Act;

(vii) Sale of energy-peaking services via propane-air or liquefied natural gas (''LNG''), which involves the provision of back-up electricity or gas supply in periods of high or ''peak'' energy demand using a propane-air mixture or LNG as fuel sources for such back-up services; and

(viii) Project development and ownership activities, which involves the installation and ownership of gas-fired turbines for on-site generation and consumption of electricity.

In addition, Nonutility Subsidiaries request authorization to provide other energy-related goods and services that may not be permitted under Rule 58. These include incidental goods and services closely related to the consumption of energy and the maintenance of energy consuming property by customers, provided that the proposed incidental goods and services would not involve the manufacture of energy consuming equipment but could be related to, among other things, the maintenance, financing, sale or installation of such equipment.

The Applicants request that the Commission (1) authorize electricity and energy commodity brokering and marketing activities in Canada and reserve jurisdiction over such activities outside the United States and Canada pending completion of the record in this proceeding, (2) authorize the proposed sale of Energy Management Services and Technical Support Services and related customer financing anywhere outside the United States, and (3) continue to reserve jurisdiction over sale of the remaining goods and services described above outside the United States, pending completion of the record.

VII. Sale of Agency Services by Ameren Energy and AE Marketing to Utility Subsidiaries

Ameren Energy requests authorization to continue to act as agent for AmerenUE in connection with the brokering and marketing of electricity and other energy commodities by AmerenUE. Such services include negotiation and administration of power sales agreements with third parties and negotiation of associated credit support and risk management documents. Ameren Energy will provide agency and any other incidental services at cost, determined in accordance with rules 90 and 91. Ameren Energy Marketing Company (''AE Marketing''), an ''energy-related company'' under rule 58, requests authorization to provide similar agency services to AmerenEnergy Resources Generating Company (f/k/a Central Illinois Generation, Inc.) (''AERG''), in connection with brokering and marketing of electricity produced by AERG.

VIII. Investments in Energy Assets

Ameren, indirectly through one or more Nonutility Subsidiaries (including any Rule 58 Subsidiary), requests authorization to acquire or construct nonutility energy assets in the United States, including, without limitation, natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities (collectively, ''Energy Assets''), that would be incidental or functionally related to energy marketing, brokering and trading. Ameren requests authorization to invest up to $400 million at any one time during the Authorization Period (the ''Investment Limitation'') in Energy Assets or in the equity securities of existing or new companies substantially all of whose physical properties consist or will consist of Energy Assets. Such Energy Assets (or equity securities of companies owning Energy Assets) may be acquired for cash or in exchange for common stock or other securities of Ameren or any Nonutility Subsidiary. If common stock of Ameren is used as consideration in connection with any such acquisition, the market value of the stock on the date of issuance will be counted against the proposed Investment Limitation. The stated amount or principal amount of any other securities issued as consideration in any such transaction will also be counted against the Investment Limitation. Under no circumstances will Ameren Energy or any marketing subsidiary acquire, directly or indirectly, any assets or properties the ownership or operation of which would cause such companies to be considered an ''electric utility company'' or ''gas utility company'' as defined under the Act.

IX. Payment of Dividends Out of Capital and Unearned Surplus

Ameren, on behalf of its direct or indirect Nonutility Subsidiaries, requests that these Nonutility Subsidiaries be permitted to pay dividends with respect to the securities of these Nonutility Subsidiaries and/or reacquire their securities that are held by any associate company, from time to time through the Authorization Period, out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law, provided that, without further approval of the Commission, no Nonutility Subsidiary will declare or pay any dividend out of capital or unearned surplus if that Nonutility Subsidiary derives any material part of its revenues from sales of goods, services, electricity or natural gas to any of the Utility Subsidiaries or if, at the time of such declaration or payment, such Nonutility Subsidiary has negative retained earnings.

X. Anticipatory Interest Rate Hedges by Nonutility Subsidiaries

Nonutility Subsidiaries request authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings (''Anticipatory Hedges''), subject to certain limitations and restrictions. These Anticipatory Hedges would only be entered into with counterparties whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors Service, Fitch Investor Service or Duff and Phelps.

XI. Changes in Capitalization of Non-Utility Subsidiaries; Subsequent Internal Reorganizations of Non-Utility Subsidiaries

Applicants request authorization to change the terms of any Nonutility Subsidiary's authorized capitalization by an amount deemed appropriate by Ameren or other parent company, provided that, if a Nonutility Subsidiary is not wholly owned, the consent of all other shareholders has been obtained for such change. Thus, a Nonutility Subsidiary would be able to increase the number of its authorized shares of capital stock, change the par value of its capital stock, change between par value and no-par value stock, or convert from one form of business organization to another without additional Commission approval.

In addition, to the extent that such transactions are not otherwise exempt under the Act or rules under the Act, Ameren requests approval to consolidate, sell, transfer or otherwise reorganize all or any part of its direct and indirect ownership interests in Nonutility Subsidiaries, as well as investment interests in entities that are not subsidiary companies. To effect any such consolidation or other reorganization, Ameren may wish to either contribute the equity securities of one Nonutility Subsidiary to another Nonutility Subsidiary (including a newly formed Intermediate Subsidiary) or sell (or cause a Nonutility Subsidiary to sell) the equity securities or all or part of the assets of one Nonutility Subsidiary to another one. Such transactions may also take the form of a Nonutility Subsidiary selling or transferring the equity securities of a subsidiary or all or part of such subsidiary's assets as a dividend to an Intermediate Subsidiary or to another Nonutility Subsidiary, and the acquisition, directly or indirectly, of the equity securities or assets of such subsidiary, either by purchase or by receipt of a dividend. The purchasing Nonutility Subsidiary in any transaction structured as an intrasystem sale of equity securities or assets may execute and deliver its promissory note evidencing all or a portion of the consideration given. Ameren may also liquidate or merge Nonutility Subsidiaries.

Ohio Valley Electric Corporation (70–10160)

Ohio Valley Electric Corporation (''OVEC''), 3932 U.S. Route 23, P.O. Box 468, Piketon, Ohio 45661, an electric public utility subsidiary of American Electric Power Company, Inc. (''AEP''), Allegheny Energy, Inc. (''Allegheny''), and FirstEnergy Corporation (''FirstEnergy''), each a registered public utility holding company under the Act, has filed a declaration (''Declaration'') under sections 6 and 7 of the Act and rule 54 under the Act.

By order dated December 6, 1999 (Holding Company Act Release No. 35–27109) OVEC was authorized to incur short-term indebtedness through the issuance and sale of notes to banks or other financial institutions in an aggregate principal amount not to exceed $100 million outstanding at any one time, from time-to-time, through December 31, 2003, provided that no note would mature later than June 30, 2004.

OVEC requests authorization to incur short-term indebtedness through the issuance and sale of notes (''Notes'') to banks or other financial institutions in an aggregate principal amount not to exceed $200 million outstanding at any one time, from time-to-time, through December 31, 2006, provided that no note shall mature later than June 30, 2007. OVEC requests that the Commission reserve jurisdiction over the issuance of $100 million principal amount of Notes, out of the $200 million principal amount of debt authority requested, until completion of the record.

OVEC and its wholly-owned subsidiary, Indiana-Kentucky Electric Company, own two generating stations located in Ohio and Indiana with a combined electric production capability of approximately 2,256 megawatts. OVEC is owned by AEP, Allegheny, FirstEnergy and other utilities.[8] AEP owns directly and indirectly 44.2% of OVEC, of which 4.35% is owned by its subsidiary Columbus Southern Power Company. FirstEnergy owns indirectly 20.5% of OVEC through its subsidiaries Ohio Edison Company (16.5%) and The Toledo Edison Company (4.0%). Allegheny owns directly 12.5% of OVEC. The owners, or their affiliates, purchase power from OVEC according to the terms of an inter-company power agreement.

The operation of OVEC's generating stations requires the storage of substantial quantities of coal to ensure the availability of power to pay its customers. OVEC has used short term debt to finance the coal inventory at its plants, to purchase SO2 allowances, to purchase material supplies and inventory, to provide interim financing of capital improvements pending the issuance of long-term debt, and for cash management to pay general obligations. The proceeds of the short-term debt incurred by OVEC will be used to pay for these and other general obligations and for other corporate purposes.

The Notes will mature not more than 365/366 days after the date of issuance or renewal, provided that no Note will mature later than June 30, 2007. Notes will be offered at terms consistent with those of similar companies and will bear interest at an annual rate not greater than the prime commercial rate of Citibank, N.A. (or any successor) in effect from time-to-time. Any credit arrangements may require payment of a fee that is not greater than ½ of 1% of the size of the line of credit made available by the bank and the maintenance of additional balances of not greater than 20% of the line of credit. Any other line of credit fees will be consistent with fees paid for like transactions. The maximum effective annual interest cost under the above arrangements, assuming full use of the line of credit, will not exceed 125% of the prime commercial rate in effect from time to time or not more than 7.5% on the basis of a prime commercial rate of 6%.

NiSource, Inc., et al. (70–10169)

NiSource Inc. (''NiSource''), a registered public-utility holding company, Northern Indiana Public Service Company (''Northern Indiana''), Kokomo Gas and Fuel Company (''Kokomo'') and its subsidiary, Northern Indiana Fuel and Light Company, Inc. (''NIFL''), all public-utility company subsidiaries of NiSource, and its subsidiary, EnergyUSA, Inc., and its subsidiaries, PEI Holdings, Inc. (f/k/a Primary Energy, Inc.), NiSource Capital Markets, Inc. (''Capital Markets''), NiSource Corporate Services Company (''NiSource Services''), a subsidiary service company, NiSource Finance Corp. (''NiSource Finance''), Granite State Transmission, Inc., Crossroads Pipeline Company, NiSource Development Company, Inc., and its subsidiaries, NI Energy Services, Inc., and its subsidiaries, NiSource Energy Technologies, Inc., IWC Resources Corporation and its subsidiaries; Columbia Energy Group (''Columbia''), a registered public-utility holding company, Columbia Atlantic Trading Corporation, Columbia Deep Water Services Company, Columbia Energy Services Corporation and Columbia Remainder Corporation and its subsidiary, all located at 801 East 86th Avenue, Merrillville, Indiana 46410–6272; Bay State Gas Company (''Bay State''), Northern Utilities, Inc. (''Northern Utilities''), both gas utility companies, and Bay State GPE, Inc., located at 300 Friberg Parkway, Westborough, Massachusetts 01581–5039; Columbia Gas of Kentucky, Inc. (''Columbia Kentucky''), Columbia Gas of Maryland, Inc. (''Columbia Maryland''), Columbia Gas of Ohio, Inc. (''Columbia Ohio''), Columbia Gas of Pennsylvania, Inc. (''Columbia Pennsylvania''), Columbia Gas of Virginia, Inc. (''Columbia Virginia''), all gas utility companies, and Columbia Accounts Receivable Corporation, 200 Civic Center Drive, Columbus, Ohio

[8] The other utilities that own OVEC are: The Cincinnati Gas & Electric Company (9.0%), a subsidiary of Cinergy Corp.; Louisville Gas and Electric Company (4.9%) and Kentucky Utilities Company (2.5%), both subsidiaries of E.ON AG; The Dayton Power and Light Company (4.9%), a subsidiary of DPL Inc.; and Southern Indiana Gas and Electric Company (1.5%), a subsidiary of Vectren Corp. Both Cinergy and E.ON AG are registered public utility holding companies under the Act.

43215; Columbia Gas Transmission Corporation, located at 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146; Columbia Gulf Transmission Company, located at 2603 Augusta, Suite 125, Houston, Texas 77057; Columbia Network Services Corporation and its subsidiary, both located at 1600 Dublin Road, Columbus, Ohio 43215–1082; and NiSource Insurance Corporation Limited (f/k/a Columbia Insurance Corporation, Ltd.), located at 20 Parliament Street, P.O. Box HM 649, Hamilton HM CX, Bermuda (collectively ''Applicants''), have filed an application-declaration, as amended (''Application''), under sections 6(a), 7, 9(a), 10, 12(b), (c) and (f) and 13(b) and rules 26(c), 45(a) and (c) and 46. NiSource and its direct and indirect public-utility and nonutility subsidiary companies are seeking to extend, restate and modify their current authorizations under various orders to engage in external and intrasystem financing and related transactions (''Current Orders'')[9] during the period through December 31, 2006 (''Authorization Period'') and replace and supersede the Current Orders.

I. Background

NiSource and its wholly owned subsidiary, Columbia, also a registered public-utility holding company, own ten public-utility company subsidiaries: Northern Indiana, Kokomo and NIFL, Bay State,[10] Northern Utilities, Columbia Kentucky, Columbia Maryland, Columbia Ohio, Columbia Pennsylvania and Columbia Virginia (collectively ''Utility Subsidiaries''). Together, the Utility Subsidiaries distribute gas at retail in portions of Indiana, Ohio, Virginia, Maryland, Kentucky, Pennsylvania, Massachusetts, New Hampshire and Maine. Northern Indiana also generates, transmits and sells electricity in 21 counties in the northern part of Indiana.

NiSource also holds, directly or indirectly, numerous nonutility subsidiaries and investments. Its principal nonutility subsidiaries are: NiSource Services, a subsidiary service company; Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, Granite State Transmission, Inc., and Crossroads Pipeline Company, all of which are engaged in interstate natural gas transportation and storage; PEI Holdings (f/k/a Primary Energy, Inc.), an intermediate subsidiary that owns all of the outstanding common stock of Whiting Clean Energy, Inc., an ''exempt wholesale generator'' (''EWG'') under section 32 of the Act; EnergyUSA, Inc., which serves as the holding company for subsidiaries that are engaged in energy marketing and in providing energy management services; NiSource Development Company, Inc., which holds passive investments in affordable housing projects that qualify for federal income tax credits and in other real estate ventures that are intended to complement NiSource's energy businesses; and NiSource Insurance Corporation Limited, a captive insurance subsidiary. NiSource also owns IWC Resources Corporation, which was previously the holding company for several water distribution companies;[11] and two special purpose financing subsidiaries, NiSource Finance and Capital Markets, through which NiSource issues long-term and short-term debt securities. The term ''Nonutility Subsidiaries'' shall mean each of the direct and indirect nonutility subsidiaries of NiSource (other than Columbia). The term ''Nonutility Subsidiaries'' also includes any direct or indirect nonutility subsidiary acquired or formed, directly or indirectly, by NiSource after the effective date of the order in this proceeding pursuant to the authorization of the Commission (including the authorizations requested in the Application) or in a transaction that is exempt under the Act (specifically, sections 32, 33 and 34) or the rules (including, specifically, rule 58). The term ''Subsidiaries'' means the Utility Subsidiaries and the Nonutility Subsidiaries. NiSource, Columbia and the Subsidiaries are sometimes collectively referred to as ''Applicants.''

NiSource and Columbia and their respective subsidiaries are authorized to engage in a program of external and intrasystem financing, to issue guarantees and other forms of credit support, to organize and acquire the securities of specified types of new subsidiaries, to pay dividends out of capital and unearned surplus, to reorganize and recapitalize subsidiaries and to engage in other related transactions through December 31, 2003. *See* the Current Orders.

Applicants now request the following authorizations through the Authorization Period:

1. For NiSource to increase its capitalization by issuing and selling, through one or more financing subsidiaries: (i) additional shares of common stock or other rights that are exercisable or exchangeable for or convertible into common stock, (ii) preferred securities (including trust preferred securities) (together ''Preferred Securities'') and equity-linked securities (''Equity-linked Securities''), and (iii) unsecured long-term debt securities (''Long-term Debt'') and unsecured short-term indebtedness (''Short-term Debt'');

2. For Columbia to increase its capitalization by issuing additional shares and/or Long-term Debt to NiSource or a financing subsidiary (''Financing Subsidiary''), as further defined below in section VII (Financing Subsidiaries), of NiSource or to third party lenders;

3. For Columbia Maryland to issue and sell, and Columbia to acquire, additional shares of Columbia Maryland's common stock and unsecured and secured Long-term Debt;

4. For NiSource, through Nonutility Subsidiaries, to make loans to less than wholly owned subsidiaries at interest rates and maturities designed to provide a return of not less than its effective cost of capital, in the circumstance where the borrowing Nonutility Subsidiary is not wholly owned by NiSource;

5. To continue the Money Pool and to permit additional Nonutility Subsidiaries to participate, as investors only, without further Commission approval;

6. For NiSource, directly or through Financing Subsidiaries, and Columbia to guarantee indebtedness or contractual obligations or provide other forms of credit support (''Parent Guarantees'') on behalf of, or for, their Subsidiaries;

7. For Nonutility Subsidiaries to provide guarantees of indebtedness or contractual obligations, or other credit support, on behalf of, or for, the other Nonutility Subsidiaries (''Nonutility Subsidiary Guarantees'');

8. For NiSource, Columbia and the Subsidiaries to enter into interest rate hedging transactions (''Interest Rate Hedges'') and or anticipatory hedging transactions (''Anticipatory Hedges'') with respect to interest rates;

[9] *See NiSource, Inc., et al.*, Holding Co. Act Release Nos. 27263 (Oct. 30, 2000 (''Merger Order'')), 27265 (Nov. 1, 2000 (November 1, 2000 Order'')), 27361 (Mar. 21, 2001) (authorizing increase in NiSource Short-term Debt from $2 billion to $3.4 billion), 27567 (Sept. 12, 2002) (authorizing tax allocation agreement), 27479 (Dec. 19, 2001), 27535 (June 3, 2000) (releasing jurisdiction over Bay State and Northern Utilities money pool participation), 27559 (Aug. 8, 2002) (releasing jurisdiction over Granite State Gas Transmission, Inc., money pool participation); *Columbia Energy Group, Inc., et al.*, Holding Co. Act Release Nos. 26634 (Dec.23, 1996), 26798 (Dec. 22, 1997), 27035 (June 8, 1999).

[10] Bay State is also a section 3(a)(2) exempt holding company. *See* SEC File No. 69–340.

[11] The principal operating assets of IWC Resources Corporation and its subsidiaries were sold in April 2002 in accordance with the Commission's divestiture order under section 11(b)(1) of the Act. *See* Merger Order.

9. For NiSource and the Subsidiaries to change the terms of the authorized capitalization of any Subsidiary;

10. For NiSource and Columbia to acquire the equity securities of one or more additional Financing Subsidiaries, to guarantee securities issued by Financing Subsidiaries and to issue unsecured subordinated notes to any Financing Subsidiary;

11. For NiSource to acquire equity securities of intermediate subsidiaries organized to acquire, finance and hold securities of existing or future Nonutility Subsidiaries, including, but not limited to, EWGs, foreign utility holding companies (''FUCOs''), exempt telecommunications companies (''ETCs'') and subsidiaries exempt under rule 58 (''Rule 58 Subsidiaries'') (all ''Intermediate Subsidiaries''), also to authorize Intermediate Subsidiaries to provide management, administrative, project development and operating services to one another, and to exempt Intermediate Subsidiaries from section 13(b) of the Act, permitting them to charge fair market rates in certain circumstances;

12. For NiSource to reorganize its Nonutility Subsidiaries and their activities and functions;

13. For Nonutility Subsidiaries (including Intermediate Subsidiaries) to expend up to $250 million on preliminary development activities relating to potential nonutility investments;

14. For Nonutility Subsidiaries to perform services and sell goods to each other at fair market prices, determined without regard to ''cost'';

15. For NiSource, on behalf of any current and future Rule 58 Subsidiaries, to engage in certain rule 58 categories of activities outside the United States and reserving jurisdiction with respect to certain jurisdictions, pending completion of the record;

16. For Columbia, and for Nonutility Subsidiaries, to pay dividends out of capital and unearned surplus and/or to reacquire shares of its common stock held by NiSource, and by any associate company, respectively; and

17. For Applicants to continue to allocate consolidated income tax liabilities in accordance with the Tax Allocation Agreement previously approved by the Commission for tax years ending during the Authorization Period.

II. The Proposed External Financings

A. General Terms and Conditions

Financing transactions with third parties will be subject to the following general terms and conditions (including, without limitation, securities issued for the purpose of refinancing or refunding outstanding securities of the issuer) (''Financing Parameters''):

Effective Cost of Money. The effective cost of capital on Long-term Debt, Preferred Securities, Equity-linked Securities, and Short-term Debt will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality. Applicants state that in no event will the effective cost of capital (i) on any series of Long-term Debt exceed 500 basis points over a U.S. Treasury security having a remaining term equal to the term of such series, (ii) on any series of Preferred Securities or Equity-linked Securities exceed 600 basis points over a U.S. Treasury security having a remaining term equal to the term of such series, and (iii) on Short-term Debt exceed 500 basis points over the London Interbank Offered Rate for maturities of less than one year.

Maturity. The maturity of Long-term Debt will be between one and 50 years after the issuance. Preferred Securities and Equity-linked Securities will be redeemed no later than 50 years after the issuance, unless converted into common stock, except that Preferred Stock issued directly by NiSource may be perpetual in duration.

Issuance Expenses. The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities will not exceed the greater of (i) 5% of the principal or total amount of the securities being issued, or (ii) issuance expenses that are generally paid at the time of the pricing for sales of the particular issuance, having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

Common Equity Ratio. At all times during the Authorization Period, NiSource, Columbia and each Utility Subsidiary will maintain common equity of at least 30% of its consolidated capitalization (common equity, preferred stock, long-term debt and short-term debt); nevertheless, NiSource and Columbia will be authorized to issue common stock (including common stock issued pursuant to stock-based plans maintained for shareholders, employees and management) to the extent authorized.

Investment Grade Ratings. Applicants further represent that, except for securities issued for the purpose of funding Money Pool operations, no guarantees or other securities, other than common stock, may be issued in reliance upon the authorization to be granted by the Commission, unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer, that are rated, are rated investment grade; and (iii) all outstanding securities of the top level registered holding company, that are rated, are rated investment grade. For purposes of this provision, a security will be deemed to be rated ''investment grade'' if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934, as amended. Applicants request that the Commission reserve jurisdiction over the issuance of any such securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities at any time that the conditions set forth in clauses (i) through (iii) above are not satisfied.

B. NiSource External Financing

NiSource requests authorization, through the Authorization Period, to increase its capitalization through the issuance and sale of common stock, Preferred Securities, Equity-linked Securities and/or unsecured Long-term Debt.[12] The aggregate amount of new long-term financing obtained by NiSource, during the Authorization Period, from the issuance and sale of common stock, when combined with the amount of new financing obtained from the issuance and sale of Preferred Securities, Equity-linked Securities and/or Long-term Debt, shall not exceed $6 billion. Applicant states, however, that (a) securities issued for purposes of

[12] NiSource contemplates that securities will be issued and sold directly to one or more purchasers in privately negotiated transactions or to one or more investment banking or underwriting firms or other entities who would resell such securities without registration under the Securities Act of 1933, as amended (''1933 Act'') in reliance upon one or more applicable exemptions from registration, or to the pubic, either (i) through underwriters selected by negotiation or competitive bidding or (ii) through selling agents acting either as agent or as principal for resale to the public, or (iii) through dealers.

NiSource and NiSource Finance have filed under the 1933 Act utilizing the ''shelf'' registration process, under which NiSource, directly or through NiSource Finance, may offer for sale, in one or more transactions, any combination of common stock, Preferred Stock, warrants to purchase common stock or Preferred Stock, Long-term Debt of NiSource Finance and Equity-Linked Securities in an aggregate amount up to $2,807,500,000. The prospectus contained in the Registration Statement provides a general description of the securities NiSource may offer.

refunding or replacing other outstanding long-term securities, where NiSource's capitalization is not increased as a result, and (b) any shares of Preferred Stock issued under the NiSource Shareholder Agreement (''Rights Plan'')[13] shall not be counted against this limitation.

NiSource also requests authority to issue and sell, directly or indirectly, through one or more Financing Subsidiaries, Short-term Debt in an aggregate principal amount at any time outstanding not to exceed $2.5 billion. All securities issued by NiSource under this authorization, including, without limitation, securities issued for the purpose of refunding or retiring outstanding securities, will comply with the Financing Parameters described above.

C. Financing by Columbia

To provide capital to its subsidiaries, as well as to retire and/or prepay its outstanding long-term indebtedness, Columbia requests authorization to issue (1) additional shares of its common stock directly to NiSource and (2) unsecured notes evidencing long-term borrowings from NiSource Finance or another Financing Subsidiary of NiSource and/or unaffiliated third party lenders in an aggregate amount not to exceed $3 billion (excluding securities issued for purposes of refunding or replacing other outstanding securities of Columbia where Columbia's capitalization is not increased as a result).[14] The interest rate and maturity of any series of Long-term Debt issued by Columbia to NiSource Finance or another Financing Subsidiary of NiSource will parallel the effective cost of funds of Long-term Debt recently issued by NiSource Finance or any other Financing Subsidiary of NiSource. Applicants state further that, in the event no Long-term Debt was issued during the previous calendar quarter, then the interest rate and maturity of any series of Long-term Debt issued by Columbia to NiSource Finance, or another Financing Subsidiary of NiSource, will be either the estimated new long-term rate that would be in effect if NiSource Finance, or another Financing Subsidiary of NiSource, were to issue Long-term Debt, as projected by a major investment bank, or the prevailing market rate for a newly issued BBB-rated utility bond. Long-term Debt of any series of Columbia issued to an unaffiliated third party lender will comply with the Financing Parameters.

D. Utility Subsidiary Financing

Columbia Maryland requests authorization to issue and sell, and Columbia requests authorization to acquire, additional shares of Columbia Maryland's common stock and Long-term Debt, during the Authorization Period. The aggregate amount of common stock and/or Long-term Debt to be issued by Columbia Maryland, during the Authorization Period, will not exceed $40 million. Columbia Maryland will use the proceeds of common stock and Long-term Debt to finance, in part, capital expenditures and other general and corporate purposes.[15]

Long-term notes issued by Columbia Maryland to Columbia may have maturities of up to 30 years and may be either secured or unsecured. The Utility Subsidiaries do not intend to issue any Short-term Debt externally. Instead, the Utility Subsidiaries will satisfy their short-term borrowing needs through borrowings under the Money Pool, described below.

E. Nonutility Subsidiary Financing

NiSource, through the Nonutility Subsidiaries, expects to continue to be active in the development and expansion of energy-related, or otherwise functionally-related, nonutility businesses. To finance investments in such competitive businesses, the Nonutility Subsidiaries will need the ability to engage in financing transactions that are commonly accepted for such types of investments.

NiSource, or a Nonutility Subsidiary, as the case may be, request authority to make loans to less than wholly owned subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital, in the limited circumstances where the Nonutility Subsidiary making the borrowing is not wholly owned, directly or indirectly, by NiSource.[16] In the

[13] Under this plan, 4,000,000 shares of Preferred Stock (designated as Series A Junior Participating Preferred Shares (''Series A Shares'')) and reserved for issuance. Each share includes one preferred purchase right (''Right''), which entitles its holder to purchase one-hundredth (1/100) of a Series A Share at a price of $60 per one-hundredth of a share, subject to adjustment. The Rights become exercisable if a person or group acquires 25% or more of the voting power of NiSource or announces a tender or exchange offer following which such person or group would hold 25% or more of NiSource's voting power. If such an acquisition is consummated, or if NiSource is acquired by the person or group in a merger or other business combination, then each Right will be exercisable for that number of shares of common stock or the acquiring company's common shares having a market value of two times the exercise price of the Right. The Rights will also become exercisable on or after the date on which the 25% threshold is triggered, if NiSource is acquired in a merger or other business combination in which NiSource is not the survivor or in which NiSource is the survivor but its common stock is changed into or exchanged for securities of another entity, cash or other property, or 50% or more of the assests or earning power of NiSource and its subsidiaries is sold. At such time, each Right will become exercisable for that number of common shares of the acquiring company having a market value of two times the exercise price of the Right, but the Rights will not be exercisable in this instance if the person who acquired sufficient shares to reach the 25% threshold did so at a price and on terms determined by the board of directors to be fair to NiSource's shareholders and in the best interests of NiSource, provided that the price per common share offered in the merger or other business combination is not less than the price paid in the offer and the form of the consideration offered in the merger or other business combination is the same as that paid in the offer, NiSource may redeem the Rights at a price of $.01 per Right prior to the occurrence of an event that causes the Rights to be exercisable for common stock. The Rights will expire on March 12, 2010.

[14] Columbia will continue to provide equity and long-term debt capital to its Utility and Nonutility Subsidiaries in the form of purchases of additional equity securities, cash capital contributions and open account advances under rule 45(b), and intercompany loans, which, except in the case of Columbia Maryland, are exempt under rule 52.

[15] Because Columbia Maryland is a Delaware corporation, it is not able to rely upon rule 52(a) for an exemption from sections 6(a) and 7 of the Act. Other than Columbia Maryland, the issue and sale of securities by the utility Subsidiaries will be exempt, under rule 52(a), from the preapproval requirements of sections 64(a) and 7 of the Act, as most such securities must be approved by the public service commission in the state in which each Utility Subsidiary is incorporated and operating.

Specifically, the Indiana Utility Regulatory Commission must approve all financings by Northern Indiana, Kokomo and NIFL, other than short-term indebtedness having a maturity of 12 months or less; the Massachusetts Department of Telecommunications and energy must approve all financings by Bay State other than short-term indebtedness having a maturity of one year or less; the New Hampshire Public Utilities Commission (''NHPUC'') must approve most financings by Northern Utilities other than short-term indebtedness having a maturity of one year or less up to a maximum amount equal to 10% of net plant; the Public Utilities Commission of Ohio must approve all financings by Columbia Ohio other than short-term indebtedness with a maturity of less than one year, the Public Service Commission of Kentucky must approve all financings by Columbia Kentucky other than notes with a maturity of less than two years; the Pennsylvania Public Utilities Commission must approve all financings by Columbia Pennsylvania other than short-term indebtedness with a maturity of one year or less or having no fixed maturity but payable on demand; and the Virginia State Corporation Commission must approve all financings by Columbia Virginia other than short-term indebtedness with a maturity of less than one year if the amount is less than 12% of total capitalization of Columbia Virginia.

[16] Applicants believe that, in almost all cases, financings by the Nonutility Subsidiaries will be exempt from Commission authorization pursuant to rule 52(b). To be exempt under rule 52(b), any loans by NiSource to a Nonutility Subsidiary, or by any Nonutility Subsidiary, including a Financing Subsidiary, to another Nonutility Subsidiary, must have interest rates and maturities that are designed

Continued

event loans are made to a less than wholly owned Nonutility Subsidiary, Applicants represent that the company will not sell any services to any associate company unless it falls within one of the categories of companies to which goods and services may be sold on a basis other than ''at cost,'' as described below in section XI (Sales of Services and Goods Among Subsidiaries).

III. Continuation of Money Pool

NiSource, the Utility Subsidiaries and certain Nonutility Subsidiaries request authorization to continue to participate in the Money Pool. The Money Pool participants request authorization, during the Authorization Period, to make unsecured short-term borrowings from the Money Pool, to contribute surplus funds to the Money Pool and to lend and extend credit to (and acquire promissory notes from) one another through the Money Pool. NiSource, directly or indirectly, through NiSource Finance, requests authorization to invest surplus funds and/or lend and extend credit to the participating subsidiaries through the Money Pool.

The following direct and indirect Nonutility Subsidiaries are participants in the Money Pool, in addition to NiSource and Columbia and the ten Utility Subsidiaries:

NiSource Corporate Services Company
EnergyUSA, Inc. (an Indiana corporation)
EnergyUSA–TPC Corp.
EnergyUSA, Inc. (a Massachusetts corporation)
PEI Holdings, Inc.
NiSource Capital Markets, Inc.
NiSource Finance Corp.
Granite State Transmission, Inc.
Crossroads Pipeline Company
NiSource Development Company, Inc.
NI Energy Services, Inc.
NiSource Energy Technologies, Inc.
Columbia Gas Transmission Corporation
Columbia Gulf Transmission Company
Columbia Assurance Agency, Inc.
Columbia Accounts Receivable Corporation
Columbia Atlantic Trading Corporation
Columbia Deep Water Services Company
Columbia Remainder Corporation
Columbia Energy Services Corporation
NiSource Insurance Corporation Limited

In addition, Applicants propose that other existing or new nonutility subsidiaries of NiSource may participate in the Money Pool, as investors only, without further approval of the Commission. NiSource, Columbia, NiSource Finance and Capital Markets will continue to participate in the Money Pool as investors only and not as borrowers. EWGs, FUCOs, and ETCs will be specifically excluded from participating in the Money Pool as borrowers.

The Utility Subsidiaries (other than Columbia Virginia)[17] request authority to make borrowings through the Money Pool in the following maximum amounts at any time outstanding:

Utility subsidiary	Borrowing limit
Northern Indiana	$1,000,000,000
Kokomo	50,000,000
NIFL	50,000,000
Bay State	300,000,000
Northern Utilities[18]	50,000,000
Columbia Ohio	700,000,000
Columbia Kentucky	80,000,000
Columbia Pennsylvania	300,000,000
Columbia Maryland	50,000,000

Borrowings from the Money Pool by participating Subsidiaries that are authorized to borrow from the Money Pool (*i.e.*, ''Eligible Borrowers''), other than Utility Subsidiary borrowers, are exempt under rule 52(b).

IV. Guarantees

Parent Guarantees. NiSource, directly or indirectly, through one or more Financing Subsidiaries, and Columbia request authorization to provide Parent Guarantees of debt securities or contractual obligations of any Subsidiary as may be appropriate in the ordinary course of a Subsidiary's business, in an aggregate principal or nominal amount, in the case of NiSource, not to exceed $3.5 billion and, in the case of Columbia, not to exceed $3.5 billion outstanding at any one time. In addition, Applicants state that the amount of any Parent Guarantees of any Subsidiary obligations shall also be subject to the limitations of rule 53(a)(1) or rule 58(a)(1), as applicable. Parent Guarantees may take the form of, among others, direct guarantees, reimbursement undertakings under letters of credit, ''keep well'' undertakings, indemnification agreements and expense reimbursement agreements. Any Parent Guarantee that is outstanding at the end of the Authorization Period shall remain in force until it expires or terminates in accordance with its terms.

In addition, NiSource and Columbia request authorization to charge each Subsidiary a fee for each Parent Guarantee. The fee proposed will not be greater than the cost, if any, of obtaining the liquidity necessary to perform on the Parent Guarantee (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses) for the period of time that it remains outstanding.

Nonutility Subsidiary Guarantees. In addition to guarantees that may be provided by NiSource or Columbia or by a Financing Subsidiary of either, as described above, Nonutility Subsidiaries (including Financing Subsidiaries without credit support from NiSource or Columbia) request authority to provide, to other Nonutility Subsidiaries, Nonutility Subsidiary Guarantees (*i.e.*, guarantees of indebtedness or contractual obligations, or other forms of credit support, in an aggregate principal amount not to exceed $2 billion outstanding at any one time, exclusive of any guarantees and other forms of credit support that are exempt under rules 45(b) and 52(b)). Nonutility Subsidiaries request authorization to charge associate companies a fee for each guarantee, determined in the same manner as specified above.

V. Hedging Transactions

NiSource and the Subsidiaries request authorization to enter into Interest Rate Hedges in order to reduce or manage interest rate cost, subject to certain limitations and restrictions. NiSource and the Subsidiaries also request authorization to enter into Anticipatory Hedges, subject to certain limitations and restrictions.

VI. Changes in Capitalization of Majority-Owned Subsidiaries

In order to accommodate the proposed sale of capital securities (*i.e.*, common stock or Preferred Stock) transactions and provide for future issues, NiSource and the Subsidiaries request authority to change the terms of any 50% or more owned Subsidiary's authorized capital stock capitalization, or other equity interests, by an amount deemed appropriate by NiSource or other intermediate parent company.[19] Applicants state that the consents of all other shareholders will have been

to parallel the lending company's effective cost of capital.

[17] Columbia Virginia borrowings under the Money Pool are exempt under rule 52(a).

[18] Borrowings by Northern Utilities under the Money Pool that are in excess of 10% of its net fixed plant must be approved by the NHPUC and, therefore, would be exempt under rule 52(a).

[19] Applicants state that the portion of an individual Subsidiary's aggregate financing to be effected through the sale of stock to NiSource or another immediate parent company during hte Authorization Period cannot be ascertained at this time. The sale of capital securities (*i.e.,* common stock or Preferred Stock) may in some cases exceed the then authorized capital stock of a Subsidiary and a Subsidiary may choose to use capital stock with no par value.

obtained for the proposed change. This request for authorization is limited to NiSource's 50% or more owned Subsidiaries and is not intended to affect aggregate limits or other conditions.

Applicants further propose that a Subsidiary would be able to change the par value, or to change between par value and no par stock, or to change the form of equity from common stock to limited partnership or limited liability company interests or similar instruments, or from such instruments to common stock, without additional Commission approval. Any action by a Utility Subsidiary would be subject to, and would only be taken upon, the receipt of any necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business. In addition, Applicants state that NiSource will be subject to all applicable laws regarding the fiduciary duty of fairness of a majority shareholder to minority shareholders in any such 50% or more owned Subsidiary and NiSource will undertake to ensure that any change comports with such legal requirements.

VII. Financing Subsidiaries

NiSource and the Subsidiaries request authority to organize and acquire the equity securities of one or more corporations, trusts, partnerships or other entities organized specifically for the purpose of financing the activities of NiSource and certain of its Subsidiaries (''Financing Subsidiaries''), in addition to the two previously authorized.[20] Specifically, Financing Subsidiaries may be organized to issue Preferred Securities (including but not limited to monthly income preferred securities), Long-term Debt and Short-term Debt to third parties and to transfer the proceeds of the financings to NiSource or other Subsidiaries.

NiSource and Subsidiaries also request authorization to issue their subordinated unsecured notes (''Subordinated Notes'') to any Financing Subsidiary to evidence the transfer of financing proceeds by a Financing Subsidiary to its parent company. The principal amount, maturity and interest rate on any such Subordinated Notes will be designed to parallel the amount, maturity and interest or distribution rate on the securities issued by a Financing Subsidiary. The amount of securities issued by any Financing Subsidiary to third parties will be included in the overall external financing limitation, if any, authorized for the immediate parent company of the Financing Subsidiary. The amount of Subordinated Notes issued by a parent company to its Financing Subsidiary will not be counted against the external financing limitation, to avoid double counting.

VIII. Intermediate Subsidiaries

NiSource requests authority to acquire, directly or indirectly, during the Authorization Period, the securities of one or more additional Intermediate Subsidiaries, which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of, or other interest in, one or more EWGs or FUCOs, Rule 58 Subsidiaries, ETCs or other non-exempt Nonutility Subsidiaries (as may be authorized in this proceeding or in a separate proceeding).[21] In addition, NiSource requests that its Intermediate Subsidiaries be permitted to engage in administrative activities and development activities (''Administrative Activities'' and ''Development Activities,'' respectively, as defined further below) relating to such subsidiaries. ''Administrative Activities'' include ongoing personnel, accounting, engineering, legal, financial and other support activities necessary to manage NiSource's investments in Nonutility Subsidiaries. ''Development Activities'' will be limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal ''hosts,'' fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the acquisition of securities of or interests in new businesses.

NiSource also requests an exemption under section 13(b) of the Act for Intermediate Subsidiaries to provide management, administrative, project development and operating services to associate companies at fair market prices in the specific circumstances discussed further below. *See* section XI (Sales of Services and Goods Among Subsidiaries).

Applicants state that investments in Intermediate Subsidiaries may take the form of any combination of the following: (1) Purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of equity interests; (2) capital contributions; (3) open account advances with or without interest; (4) loans; and (5) guarantees issued, provided or arranged, for the securities or other obligations of any Intermediate Subsidiaries. Applicants state, further, that funds for any direct or indirect investment in any Intermediate Subsidiary will be obtained from (1) financings authorized in this proceeding; (2) any appropriate future debt or equity securities issuance authorization of NiSource; and (3) other available cash resources, including proceeds of securities sales by Nonutility Subsidiaries under rule 52.[22]

IX. Reorganizations of Nonutility Subsidiaries

NiSource requests approval to consolidate or otherwise reorganize all, or any part, of its direct and indirect ownership interests in Nonutility Subsidiaries and the activities and functions related to such investments. NiSource requests authorization to consolidate, or otherwise reorganize under one or more, direct or indirect, Intermediate Subsidiaries, NiSource's ownership interests in existing and future Nonutility Subsidiaries. The transactions may take the form of a Nonutility Subsidiary selling, contributing or transferring the equity securities of a subsidiary or all or part of such subsidiary's assets as a dividend to an Intermediate Subsidiary, or to another Nonutility Subsidiary and the acquisition, directly or indirectly, of the equity securities or assets of a subsidiary, either by purchase or by receipt of a dividend. The purchasing Nonutility Subsidiary in any transaction structured as an intrasystem sale of equity securities or assets may execute and deliver its promissory note

[20] NiSource, as noted previously, currently owns the stock of two Financing Subsidiaries: NiSource Finance and Capital Markets.

[21] The Commission has previously authorized Columbia to organize intermediate subsidiary companies to acquire and hold various nonutility subsidiaries. *See Columbia Energy Group, Inc., et al.,* Holding Co. Act Release No. 27099 (Nov. 5, 1999).

[22] Applicants state that, to the extent that NiSource provides funds or guarantees, directly or indirectly, to an Intermediate Subsidiary that are used to make an investment in any EWG or FUCO or a Rule 58 Subsidiary, the amount of such funds or guarantees will be included in NiSource's ''aggregate investment'' in such entities, as calculated in accordance with rule 53 or rule 58, as applicable.

evidencing all, or a portion, of the consideration given.[23]

X. Expenditures on Development Activities

NiSource requests a continuation of its authority under the November 1, 2000 Order to make expenditures on Development Activities, as defined above, in an aggregate amount of up to $250 million. NiSource proposes a ''revolving fund'' concept for permitted expenditures on Development Activities: The revolving fund concept would be that, to the extent expenditures on Development Activities are made for a Nonutility Subsidiary which then becomes an EWG or FUCO, or qualifies as an ''energy-related company'' under rule 58, the amount expended will cease to be an expenditure for Development Activities and will, instead, be counted as part of the ''aggregate investment'' in the entity under rule 53 or 58, as applicable.

XI. Sales of Services and Goods Among Subsidiaries

The Nonutility Subsidiaries request an exemption under section 13(b) from the at cost standards of rules 90 and 91, to the extent necessary, to provide services and sell goods to one another at fair market prices, determined without regard to cost, where the Nonutility Subsidiary purchasing the service or good is: (i) A FUCO or foreign EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the U.S.; (ii) an EWG that sells electricity at market-based rates, that have been approved by the Federal Energy Regulatory Commission (''FERC''), *provided that* the purchaser is not Northern Indiana; (iii) a ''qualifying facility'' (''QF''), within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), that sells electricity exclusively (a) at rates negotiated at arms length to one or more industrial or commercial customers purchasing electricity for their own use and not for resale, and/or (ii) to an electric utility company (other than Northern Indiana) at the purchaser's ''avoided cost,'' as determined in accordance with PURPA regulations; (iv) a domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public-utility commission having jurisdiction, *provided that* the purchaser is not Northern Indiana; or (v) a Rule 58 Subsidiary or any other Nonutility Subsidiary that (a) is partially owned by NiSource, *provided that* the ultimate purchaser of the goods or services is not a Utility Subsidiary, NiSource Services (or any other entity within the NiSource system whose activities and operations are primarily related to the provision of goods and services to Utility Subsidiaries), (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries, described in clauses (i) through (iv) immediately above, or (c) does not derive, directly or indirectly, any material part of its income from sources within the U.S. and is not a public-utility company operating within the U.S.

XII. Activities of Energy-Related Subsidiaries Outside the U.S.

NiSource, on behalf of any current or future Nonutility Subsidiaries, requests authority for its Nonutility Subsidiaries to engage in certain ''energy-related'' activities outside the U.S. Such activities may include: (i) The brokering and marketing of electricity, natural gas and other energy commodities (''Energy Marketing''); (ii) energy management services (''Energy Management Services''), including the marketing, sale, installation, operation and maintenance of various products and services related to energy management and demand-side management, including energy and efficiency audits; facility design and process control and enhancements; construction, installation, testing, sales and maintenance of (and training client personnel to operate) energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies, design and specification of energy consuming equipment; and general advice on programs; the design, construction, installation, testing, sales and maintenance of new and retrofit heating, ventilating, and air conditioning, electrical and power systems, alarm and warning systems, motors, pumps, lighting, water, water-purification and plumbing systems, and related structures, in connection with energy-related needs; and the provision of services and products designed to prevent, control, or mitigate adverse effects of power disturbances on a customer's electrical systems; and (iii) engineering, consulting and other technical support services (''Consulting Services'') with respect to energy-related businesses, as well as for individuals. Such Consulting Services would include technology assessments, power factor correction and harmonics mitigation analysis, meter reading and repair, rate schedule design and analysis, environmental services, engineering services, billing services (including consolidation billing and bill disaggregation tools), risk management services, communications systems, information systems/data processing, system planning, strategic planning, finance, feasibility studies, and other similar services.

NiSource requests authority for Nonutility Subsidiaries to engage in Energy Marketing activities in Canada. NiSource also requests the Commission to reserve jurisdiction over Energy Marketing activities outside of Canada, pending completion of the record. Further, NiSource requests authority for Nonutility Subsidiaries to provide Energy Management Services and Consulting Services anywhere outside the United States. NiSource asks the Commission to reserve jurisdiction over other activities of Nonutility Subsidiaries outside the United States, pending completion of the record. In addition, NiSource requests authorization for Nonutility Subsidiaries to engage in ''gas-related company'' activities outside the United States, subject to certain proposed limitations and a request for reservation of jurisdiction. Specifically, NiSource requests approval for Nonutility Subsidiaries to engage in the development, exploration and production of natural gas and oil in Canada and to invest up to $300 million in the equity securities or assets of new or existing companies that derive substantially all of their income from such activities. NiSource also requests approval for Nonutility Subsidiaries to invest, directly or indirectly, through other Subsidiaries, in natural gas pipelines or storage facilities located outside the U.S. Investments in the entities would count against the $300 million investment limitation. NiSource requests the Commission (i) to reserve jurisdiction over the proposed exploration and production activities in foreign countries, other than Canada, pending completion of the record.

[23] Applicants state that each transaction would be carried out in compliance with all applicable U.S or foreign laws and accounting requirements and any transaction structured as a sale would be carried out for a consideration equal to the book value of the equity securities being sold. The Commission has authorized other registered holding companies to carry out future reorganizations of their nonutility businesses without further approval. *See Columbia Energy Group, Inc., et al.,* Holding Co. Act Release No. 27099 (Nov. 5, 1999).

XIII. Distributions Out of Capital or Unearned Surplus

Distributions by Columbia. Columbia requests authorization to transfer some or all of the net proceeds of any sale or sales of the securities or assets of Nonutility Subsidiaries of Columbia to NiSource, either by paying a dividend or by repurchasing shares of its common stock that are held by NiSource. Columbia has sold or entered into agreements to sell the stock or assets of several of its Nonutility Subsidiaries since being acquired by NiSource and seeks to distribute some or all of the proceeds to NiSource.[24] The ability of Columbia to distribute the cash proceeds from the sales to NiSource as a dividend is limited by section 12(c) of the Act and rules 26(c) and 46. Columbia states that it will not pay any dividend to NiSource or repurchase shares of its common stock from NiSource if, as a result, common equity as a percentage of its capitalization would be less than 30% on a consolidated basis.

Payment of Dividends by Nonutility Subsidiaries. NiSource also proposes, on behalf of its current and future Nonutility Subsidiaries, that they be permitted to pay dividends, through the Authorization Period, out of capital and unearned surplus, to the extent permitted under applicable corporate law and the terms of any credit agreements and indentures that restrict the amount and timing of distributions to shareholders.

XIV. Tax Allocation Agreement

Applicants request authorization to continue to file consolidated income tax returns for tax years ending during the Authorization Period in accordance with the previously approved Tax Allocation Agreement. Applicants are authorized to file consolidated income tax returns and allocate the consolidated income tax liability of the group in accordance with the Tax Allocation Agreement which does not conform in all respects to the requirements of rule 45(c). *See* Supplemental Order dated September 12, 2002 (SEC File No. 70–9681). Specifically, under the Tax Allocation Agreement, NiSource is permitted to retain the benefit (*i.e.*, the tax savings) in consolidated tax liability that is attributable to the interest expense on the acquisition debt,[25] subject to certain limitations and restrictions.

E.ON AG, et al. (70–10171)

E.ON AG (''E.ON''), a registered public-utility holding company under the Act, and Hibernia Industriewerte GmbH (''Hibernia''), a wholly owned nonutility subsidiary (together ''Applicants''), both located at E.ON-Platz 1 40479 Düsseldorf, Germany, have filed an application (''Application'') under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 54. The Applicants request authorization to modify certain terms of the E.ON nonutility money pool (''E.ON Nonutility Money Pool'') permitted by a previous Commission order, dated June 14, 2002 (Holding Co. Act Release No. 27539) (''June 2002 Order'').

E.ON proposes (1) that the E.ON Nonutility Money Pool be administered by Hibernia, an E.ON subsidiary currently used to provide financing to all of the companies in the E.ON registered holding company system (the ''E.ON Group''), and (2) that the interest rate paid to lenders to the pool be set at market rates.

Background

By the June 2002 Order, the Commission authorized E.ON to acquire Powergen plc, a registered public-utility holding company, and, subsequent to the acquisition, E.ON registered as a public-utility holding company. The June 2002 Order also authorized E.ON and its subsidiaries to issue and sell securities and, further, authorized E.ON to establish three money pools, including the E.ON Nonutility Money Pool, to facilitate the financing of the E.ON Group.[26] The E.ON Nonutility Money Pool, the subject of the Application, includes as participants all the companies in the E.ON Group, as borrowers and lenders to the pool, except E.ON, the registered holding company subsidiaries of E.ON, and LG&E Energy and its subsidiaries. E.ON and its registered holding company subsidiaries may lend funds to the E.ON Nonutility Money Pool.

Under the June 2002 Order, the E.ON Nonutility Money Pool was authorized to ''be administered by E.ON at no charge or by E.ON NA or its special purpose subsidiary at cost. The interest rate charged by the pool would be set according to the Market Rate Method[27] and surplus funds would be invested in the same manner proposed for the Utility Money Pool. The interest rate paid on deposits to the E.ON Nonutility Money Pool [would] be a weighted average of the rates charged borrowers and the money pool investment rate.''[28]

The Proposal

E.ON now proposes that the E.ON Nonutility Money Pool be administered by Hibernia, a different affiliate, and that the interest rate paid to lenders to the pool be set at market rates. First, with respect to the change in the money pool administrator, the Applicants state that Hibernia would receive financial management services from E.ON employees in connection with managing the pool, and conducting Hibernia's other functions, as an E.ON Group financing entity. The Applicants state that these services would be provided at no charge, unless a Commission exemption from the restrictions of section 13(a) is obtained. In addition, the E.ON Nonutility Money Pool will operate as described in the June 2002 Order[29] and as elaborated on in the Application.

Secondly, Applicants state that authorizing the proposed change in interest rates to the payment of market rates will avoid the transfer pricing issues that arise in loans between affiliated companies when transactions

[24] Columbia has sold or announced its agreement to sell the stock or assets of Columbia LNG Corporation, Columbia Energy Retail Corporation, Columbia Electric Corporation and its subsidiaries, Columbia Propane Corporation, Columbia Petroleum Corporation, Columbia Energy Resources, Inc. and its subsidiaries, Columbia Transmission Communications Corporation and Columbia Service Partners, Inc. and its subsidiaries.

[25] The acquisition debt includes $2.95 billion of senior unsecured notes with varying maturities, between April 15, 2003 and November 15, 2010, that were issued by NiSource Finance to refinance most of the commercial paper borrowings incurred by NiSource Finance during the merger in order to fund the cash portion of the consideration paid for Columbia's shares and certain debentures. The term also includes indebtedness that may be incurred by NiSource or NiSource Finance during the Authorization Period for the purpose of refinancing any of the acquisition indebtedness. For the tax year ended December 31, 2001, the tax benefit attributable to the interest expense on the debt was approximately $100.2 million and, for the tax year ended December 31, 2002, it is estimated that the tax benefit will be approximately $97.0 million.

[26] Specifically, E.ON was authorized to organize: (1) A Utility Money Pool to include E.ON's public utility subsidiary companies, Louisville Gas and Electric Company and Kentucky Utilities Company as borrowers and lenders to the pool, and certain other companies as lenders only; (2) a U.S. Nonutility Money Pool to include the nonutility subsidiaries of LG&E Energy Corp., as borrowers and lenders to the pool, and certain other companies as lenders only, and; (3) the E.ON Nonutility Money Pool.

[27] In determining a lending rate under the Market Rate Method, the Money Pool administrator would review the nature of each borrowing subsidiary's business, evaluate its capital structure, the particular risks to which it is subject and generally prevailing market conditions, all in the context of information from third parties (such as banks) that would indicate the prevailing market rates for similar businesses. Information on the range of rates used by one or more banks for loans to similar businesses would serve as an index against which an appropriate market rate could be determined. This analysis is referred to as the Market Rate Method and would be provided to the Commission upon request. June 2002 Order at 109.

[28] June 2002 Order at 83.

[29] *See generally* June 2002 Order at 81–83.

are not priced at market rates.[30] Applicants state that the intercompany loans from pool participants to Hibernia for the E.ON Nonutility Money Pool should be priced at market rates in order to better meet the transfer pricing and affiliate transactions requirements.[31] Applicants state, furthermore, that changing to market interest rates on money pool deposits is fair to a lender because it provides the lender with an arm's-length interest rate that is better, or equivalent to, what a lender could earn in separate bank account.

The Applicants state that the requirement under German law that affiliate transactions be conducted at arm's length makes it important that Hibernia pay pool depositors interest at market rates. Applicants state that, in addition, new legislation recently introduced in the German parliament will require documentation of all transactions with affiliated companies to substantiate that the transactions are conducted at arm's length. Applicants further state that, operating the E.ON Nonutility Money Pool, as currently authorized, may cause Hibernia to pay interest at above-market rates and may conflict with this proposed legislation. Applicants assert that having Hibernia operate the E.ON Nonutility Money Pool to pay market rates on both sides of the pool transactions will provide a solution consistent with the Market Rate Method financing authorization of the Commission in the June 2002 Order, consistent with current and proposed requirements of German law and be fair to the E.ON Group participants in the pool.

E.ON AG, et al. (70–10176)

E.ON AG (''E.ON''), E.ON-Platz 1, 40479 Dusseldorf, Germany, a registered holding company, E.ON U.S. Investments Corp. (''EUSIC''), a registered holding company, and LG&E Energy Corp. (''LG&E Energy''), a subsidiary of E.ON and a public utility holding company exempt from registration by order under section 3(a)(1) of the Act, both located at 220 West Main Street, Louisville, Kentucky 40202 (collectively, ''Applicants''), have filed an application-declaration (''Application'') under sections 3(a)(1), 6(a), 7, 9(a), 10 and 12(d) of the Act and rules 43 and 54 under the Act. Applicants request authority to reorganize LG&E Energy resulting in a change of organizational form from a Kentucky corporation to a Kentucky limited liability company (the ''Transaction'').

E.ON became a registered holding company under the Act on July 1, 2002, as a result of E.ON's acquisition of Powergen plc (''Powergen''). The Commission approved the acquisition in Holding Company Act Release No. 27539 (June 14, 2002) (the ''Acquisition Order''). E.ON owns LG&E Energy, which in turn owns two public utility companies, Louisville Gas and Electric Company (''LG&E'') and Kentucky Utilities Company (''KU''). E.ON's interest in LG&E Energy is held indirectly through several intermediate holding companies with EUSIC being the direct parent of LG&E Energy.

As stated above, LG&E Energy is a wholly-owned, first tier subsidiary of EUSIC. LG&E Energy proposes to change its organizational form from a Kentucky corporation to a Kentucky limited liability company. Applicants state that in order to accomplish the Transaction under Kentucky law and in a tax-efficient manner, the following successive steps must be completed. First, New LG&E Energy will be formed by EUSIC as a Kentucky limited liability company. At this point, EUSIC will be the sole member of New LG&E Energy. Second, LG&E Energy will transfer to New LG&E Energy substantially all of its assets and liabilities in exchange for membership interests in New LG&E Energy. Then, pursuant to an agreement and plan of merger, LG&E Energy will merge with and into New LG&E Energy (the ''Merger''), with New LG&E Energy as the surviving entity and as successor to LG&E Energy. To effect the Merger, New LG&E Energy will file Articles of Merger with the Secretary of State of the Commonwealth of Kentucky. The Merger will be effective upon acceptance of such filing by the Secretary of State of the Commonwealth of Kentucky. Thus, when the Transaction is completed, LG&E Energy will continue to be wholly-owned by EUSIC, with the only substantive change being that LG&E Energy will have changed its organizational form from a Kentucky corporation to a Kentucky limited liability company.

In addition to requesting authorization under the Act for the Transaction, Applicants request that the Commission issue an order exempting New LG&E Energy, as the owner of LG&E and KU, from registration under the Act under section 3(a)(1) of the Act. LG&E Energy is exempt from registration under the Act pursuant to section 3(a)(1) of the Act. Applicants state that the proposed Transaction, which merely effects a change of the organizational structure of LG&E Energy, does not change any of the facts underlying the qualification of LG&E Energy for exemption from registration under the Act pursuant to section 3(a)(1) of the Act and, accordingly, that New LG&E Energy, as the successor to LG&E Energy, qualifies for the exemption from registration under the Act pursuant to section 3(a)(1) of the Act.

New LG&E Energy will succeed to LG&E Energy's ownership of LG&E and KU, as well as its nonutility subsidiaries. New LG&E Energy will also be the successor of LG&E Energy with respect to its commitments and authorizations set forth in the

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[30] The transfer pricing issues were described in E.ON's application in SEC File No. 70–9985, which formed the basis in part for the June 2002 Order. E.ON's application stated that, in transactions between German companies and their foreign subsidiaries, German tax law assumes market rate financing between companies in the same corporate group because market rate pricing assures that intercompany loans will not be used to transfer profits from one related entity to another (including, to transfer profits to entities based outside Germany in jurisdictions with lower tax rates). Section 1 of the German Foreign Tax Law provides: ''If the income of a taxpayer resulting from his transaction with the related party is reduced because the taxpayer has, in the transaction with the foreign related party, agreed on terms and conditions which deviate from those which unrelated third parties would have agreed to upon under the same or similar circumstances, then the taxpayer's income shall, not withstanding other provisions, be so determined as if such income would have been earned under terms and conditions agreed upon between unrelated parties.''

[31] The Applicants state that German corporations also are required by corporate law to conduct affiliate transactions on an arm's-length basis. German corporate law requires all joint stock companies to provide a dependency statement that addresses affiliate relationships in their annual financial reports. The dependency statement almost always concludes that all transactions with affiliated companies have been conducted on an arm's-length basis and not to the reporting company's disadvantage because a failure to follow arm's-length terms could subject the company to a shareholder suit.

German joint stock company law sets additional specific requirements for the conduct of business between group companies. Any disadvantageous influence of the parent company on its subsidiary is restricted and any damage caused by the parent must be compensated. If not compensated, the parent and its legal representatives (in this context, the management board and the supervisory board), would be subject to damage claims. Under Section 57 of the Joint Stock Company Act (Germany), a German joint stock company may not repay to its shareholders any capital contributed by them. Any payments to shareholders must be made only from company profits as shown in the balance sheet. A prohibited repayment of capital can occur implicitly if a transaction between a company and its shareholder shows a disproportion or incongruity between consideration and performance. This would be the case if there are market prices or rates for the respective consideration and these are not taken into account in the relevant transaction. The legal consequence under the Joint Stock Company Act of any such repayment of capital is that the respective transaction or contract would be legally void, overpayments must be reimbursed and the management board may be subject to damage claims. Interest payments on funds loaned to affiliated companies that are either above or below market can, therefore, raise difficult issues under German law and in many cases would be prohibited.

Acquisition Order and any and all other orders of the Commission applicable to LG&E Energy.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–29763 Filed 11–28–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48817; File No. SR–CSE–2003–10]

Self-Regulatory Organizations; The Cincinnati Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change by The Cincinnati Stock Exchange, Inc. To Eliminate Market Order Exposure Requirements

November 21, 2003.

I. Introduction

On August 7, 2003, The Cincinnati Stock Exchange, Inc. (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CSE Rule 11.9(u) to eliminate Interpretation .01, concerning market order exposure requirements (''Market Order Exposure Requirement'').[3] The proposed rule change would also amend CSE Rule 8.15 to remove a reference to Interpretation .01 of Rule 11.9(u). The proposed rule change was published for comment in the **Federal Register** on September 19, 2003.[4]

The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission finds that the proposed rule change is reasonably designed to accomplish these ends because the elimination of the CSE's Market Order Exposure Requirement is consistent with the narrowing of spreads since the advent of decimal pricing. The Commission notes, and the CSE acknowledges, that the best execution responsibilities of preferencing designated dealers will continue to apply. Moreover, the proposed rule change is the second of two filings intended by the CSE to codify existing CSE practices set forth in various regulatory circulars[8] and conform its rules to industry standards.[9] The Commission notes that, while it is approving the proposed rule change at the present time, the Commission makes no determination as to whether it would have approved the proposed rule change had it been filed at the time that the regulatory circulars setting forth the CSE's practices with respect to the Market Order Exposure Requirement were issued.

III. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CSE–2003–10), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The CSE has represented that the Commission's approval of the proposed rule change will constitute the repeal of the interpretations and policies with respect to the Market Order Exposure Requirement set forth in CSE Regulatory Circulars 01–07, 99–03, 98–06, 97–07, 96–04.

[4] Securities Exchange Act Release No. 48491 (September 12, 2003), 68 FR 54924.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See supra* note 3.

[9] *See also* Securities Exchange Act Release No. 48388 (August 21, 2003), 68 FR 51820 (August 28, 2003) (SR–CSE–2003–09).

[10] 15 U.S.C. 78(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48823; File No. SR–NASD–2003–154]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Concerning Late Trade Reports, Reports of Trades Executed Outside Normal Market Hours, and Clarifying NASD Rule 6420

November 21, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 7, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq amended the proposed rule change on November 12, 2003.[3] On November 20, 2003, Nasdaq again amended the proposed rule change.[4] Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act,[5] and Rule 19b–4(f)(1) thereunder,[6] as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective upon filing with the Commission. The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* November 10, 2003 letter from Peter R. Geraghty, Associate Vice President (''AVP'') and Associate General Counsel (''AGC''), Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission (''Amendment No. 1''). In Amendment No. 1, Nasdaq added language to the proposed rule indicating that Nasdaq will append the .T modifier automatically in the circumstances described in the filing, and clarifies that the language governs the appending of the .T and .SLD modifiers in the circumstances described in the instant proposed rule change as well as in SR–NASD–2003–83. Securities Exchange Act Release No. 48120 (July 2, 2003), 68 FR 41032 (July 9, 2003).

[4] *See* November 19, 2003 letter from Peter R. Geraghty, AVP and AGC, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission (''Amendment No. 2''). Amendment No. 2 does not propose any substantive modifications to the proposed rule change. It provides in a single document the proposed rule language, as modified by Amendment No. 1. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have begun on November 20, 2003, the day Nasdaq filed Amendment No. 2.

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).