

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

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

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

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

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

Conclusion

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

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

Jonathan G. Katz,

Secretary.

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[Release No. 35-26497]

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

March 22, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 15, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of

any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

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

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

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

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

² WGI is currently a nonutility subsidiary of PSCO operating in Colorado and Wyoming which is engaged in the natural gas transmission business.

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

("KRM");⁴ (9) seeks an exemption from the at-cost provisions of section 13(b) and rules 90 and 91 thereunder for (a) services provided to certain affiliated qualifying facilities ("QFs"), independent power projects ("IPPs"), exempt wholesale generators ("EWGs"), and foreign utility companies ("FUCOs") by the following entities—(i) e prime, inc.,⁵ (ii) KRM, (iii) NC Services, (iv) Quixx Corporation ("Quixx"),⁶ (v) Quixx Power Services, Inc. ("QPS"),⁷ (vi) UE, (vii) UE Carolina,⁸ and (viii) Utility Services, (b) services provided by e prime to Young Gas Storage Co., Ltd.,⁹ and (c) goods and services provided by PSCo which are used as components of the products and services marketed by e prime; (10) proposes that NC Hold acquire all of the issued and outstanding common stock of e prime, Natural Fuels Corporation ("Natural Fuels"),¹⁰ and Young Gas Storage Company, Inc. ("Young Gas") through a transfer of their common stock to NC Hold pursuant to a declaration of a dividend of their common stock to NCE and subsequent capital contribution of their common stock to NC Hold; (11) proposes that NC

Hold acquire, in exchange for notes issued to SPS, all of the issued and outstanding common stock of Quixx and UE; (12) proposes that SPS acquire such notes; and (13) proposes to register with the Commission, pursuant to section 5 of the Act, as a new public-utility holding company.

PSCo is an exempt holding company, pursuant to rule 2 under section 3(a)(2) of the Act.¹¹ PSCo and Cheyenne are primarily engaged in providing electric and gas service in Colorado and Cheyenne, Wyoming. As of December 31, 1994, PSCo provided electric utility service to 1.1 million customers, and Cheyenne provided service to 33,000 customers in the Cheyenne area. In addition, PSCo and Cheyenne provided gas utility service to approximately 920,000 and 26,000 customers, respectively. As of December 12, 1995, there were 63,150,357 shares of PSCo common stock, par value \$5.00 per share, and 2,888,652 shares of PSCo preferred stock outstanding.

On a consolidated basis, for the year ended December 31, 1994, PSCo's operating revenues were approximately \$2.06 billion of which approximately \$1.4 billion were derived from electric operations, \$625 million from gas operations and \$33 million from other operations. Consolidated assets of PSCo were approximately \$4.2 billion, consisting of \$2.5 billion in identifiable electric utility property, plant, and equipment and \$675 million in identifiable gas utility property, plant, and equipment, and \$990 million in other corporate assets.

PSCo has nine direct and indirect nonutility subsidiaries, eight of which are wholly-owned, and controlling interests in several small water and ditch companies. PSCo's nonutility companies are: e prime; Fuel Resources Development Co. which is engaged in the exploration for, and the development and production of, natural gas and oil, principally in Colorado; Green and Clear Lakes Company, which owns water rights and storage facilities for water used at PSCo's Georgetown Hydroelectric Station; Natural Fuels; PS Colorado Credit Corporation, a company that finances (factors) certain of PSCo's current assets; P.S.R. Investments, Inc., which owns and manages company owned life insurance policies on certain past and present employees, the benefits from which are to provide future funding for general corporate purposes; Young Gas; WGI; and 1480 Welton, Inc., a real estate company which own

certain of PSCo's real estate interests for use in its utility business.

SPS, a New Mexico corporation, is a public utility company engaged in the generation, transmission, distribution and sale of electric energy.¹² It serves a population of approximately one million in a 52,000 square-mile area of the panhandle and south plains of Texas, eastern and southeastern New Mexico, the Oklahoma panhandle and southwestern Kansas. As of December 12, 1995 there were 40,917,908 shares of SPS common stock, par value \$1.00 per share, outstanding. All shares of SPS preferred stock outstanding on that date have been redeemed or repurchased. On a consolidated basis, for the year ended August 31, 1995, SPS's operating revenues were approximately \$834 million, and its total assets were approximately \$1.9 billion.

SPS has two nonutility subsidiaries, UE and Quixx. Both UE and Quixx hold interests in subsidiaries and affiliates as part of their business operations.

NCE was incorporated in Delaware on August 21, 1995 to become a holding company over PSCo and SPS following the proposed merger. At present, the 200 issued and outstanding shares of NCE common stock are owned in equal parts by PSCo and SPS.

Pursuant to an Agreement and Plan of Reorganization, dated as of August 22, 1995, as amended on December 8, 1995 ("Merger Agreement"), PSCo Merger Corp.¹³ will be merged with and into PSCo with PSCo continuing as the surviving corporation and SPS Merger Corp.¹⁴ will be merged with and into SPS, with SPS as the surviving corporation. As a result of these mergers, and the declaration of a dividend by PSCo to NCE of all of the stock of Cheyenne, PSCo, SPS and Cheyenne will become operating subsidiaries of NCE, and NCE will be a

¹² SPS's principal corporate office is located in Amarillo, Texas.

¹³ PSCo's Merger Corp. will be incorporated under the laws of the State of Colorado prior to the consummation of the Transaction. The only authorized capital stock of PSCo Merger Corp. will be common stock, no par value and all outstanding shares will be held by NCE. PSCo Merger Corp. has not had, and prior to the closing of the Transaction will not have, any operations other than the activities contemplated by the Merger Agreement necessary to accomplish the combination of PSCo Merger Corp. and PSCo.

¹⁴ SPS Merger Corp. will be incorporated under the laws of the State of New Mexico prior to the consummation of the Transaction. The only authorized capital stock of SPS Merger Corp. will be common stock, no par value, and all outstanding shares will be held by NCE. SPS Merger Corp. has not had, and prior to the closing of the Transaction will not have, any operations other than the activities contemplated by the Merger Agreement necessary to accomplish the combination of SPS Merger Corp. and SPS.

⁴ NCE proposes that KRM would provide a resource database service consisting of names of people who can be dispatched to provide temporary services to various projects.

⁵ e prime, inc. is a nonutility subsidiary company of PSCo described as a company which offers energy related products and services to energy-using customers and to selected segments of the utility industry.

⁶ Quixx is currently a subsidiary of SPS. Quixx's primary business is investing in and developing cogeneration and energy-related projects. Quixx also holds water rights and certain other non-utility assets.

⁷ QPS is a wholly owned subsidiary of Quixx which will operate and maintain generation facilities in various locations, including two cogeneration facilities in which Quixx holds an equity interest: (1) BCH Energy Limited Partnership ("BCH"), which is constructing a waste-to-energy cogeneration facility located near Fayetteville, North Carolina to provide steam to a Du Pont De Nemours & Company ("Du Pont") plant near Fayetteville and electric power to Carolina Power & Light; and (2) Carolina Energy Limited Partnership ("Carolina Energy"), which is developing, and will own and operate solid waste fueled cogeneration facilities in Wilson and Lenoir Counties, North Carolina, which will provide steam to a Du Pont plant and will sell electric power to Carolina Power & Light.

⁸ UE Carolina is currently a wholly owned nonutility subsidiary of UE which provides engineering, design and construction related services to the Carolina Energy project.

⁹ Young Gas Storage Co., Ltd. is a partnership which owns and underground gas storage facility. Young Gas Storage Company, Inc., currently a subsidiary of PSCo, holds a 47.5% general partnership interest in Young Gas Storage Co., Ltd.

¹⁰ PSCo currently owns 80% of the capital stock of Natural Fuels, a nonutility company which: sells compressed natural gas as a transportation fuel to retail markets; converts vehicles for natural gas usage; constructs fueling facilities; and sells miscellaneous fueling facility equipment.

¹¹ PSCo's principal executive office is located in Denver, Colorado.

holding company within the meaning of the Act.

Upon consummation of the proposed transaction: (1) each issued and outstanding share of PSCo common stock, together with the appurtenant rights (other than treasury and certain other shares which will be cancelled, fractional shares and shares held by holders who dissent in compliance with Colorado law) will be converted into the right to receive one share of NCE common stock, par value \$1.00 per share ("PSCo Conversion Ratio"); (2) each issued and outstanding share of SPS common stock, together with the appurtenant rights, (other than treasury and certain other shares which will be canceled, fractional shares and shares held by holders who dissent in compliance with New Mexico law) will be converted into the right to receive 0.95 of one share of NCE common stock ("SPS Conversion Ratio"); (3) each share of PSCo Merger Corp. common stock issued and outstanding prior to the transaction will be converted into the right to receive one share of common stock of PSCo as the surviving corporation; (4) each share of SPS Merger Corp. common stock issued and outstanding prior to the transaction will be converted into the right to receive one share of common stock of SPS as the surviving corporation and (5) all shares of capital stock of NCE issued and outstanding immediately prior to the transaction will be canceled. The shares of preferred stock of PSCo and SPS outstanding at the time of the consummation of the Transaction will remain preferred stock of PSCo and SPS, respectively. NCE states that the transaction is expected to be tax-free to PSCo and SPS shareholders (except as to dissenters' rights and fractional shares). Based on the capitalization of PSCo and SPS on December 1, 1995, the shareholders of PSCo and SPS would own securities representing approximately 62.0% and 38.0%, respectively, of the outstanding voting power of NCE. NCE states that the proposed merger qualifies for treatment as a pooling of interests.

Following the merger, PSCo, SPS and Cheyenne will become direct public utility subsidiaries of NCE and the nonutility subsidiaries of PSCo and SPS will become either direct or indirect nonutility subsidiaries of NCE. The Merger Agreement provides that NCE's principal corporate office will be in Denver, Colorado, with significant operating offices in Ararillo, Texas. NCE's board of directors will consist of a total of 14 directors, 8 of whom will be designated by PSCo and 6 of whom will be designated by SPS.

NCE proposes that the Commission authorize two system service companies; NC Services and UE. NC Services will be a direct subsidiary of NCE and will be incorporated in Delaware. NC Services will provide companies in the NCE system with a variety of administrative, management and support services. It is anticipated that NC Services will be staffed by a transfer of personnel from PSCo, SPS and their subsidiaries. In contrast, UE will be a subsidiary of an intermediate holding company, NC Hold (discussed below), which will hold the system's nonutility interests. UE will provide a variety of engineering, design, construction, management and other miscellaneous services to NCE system companies.

NCE states that the accounting and cost allocation methods of both NC Services and UE will comply with the Commission's standards for service companies in registered holding-company systems and that NC Services' and UE's billing system will use the Commission's "Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies."¹⁵ Except as permitted by the Act or the Commission, and except as summarized below, all services provided by NC Services and UE to affiliated companies will be "at-cost" pursuant to rules 90 and 91.

NCE requests an exemption from the at-cost provisions of rules 90 and 91 in connection with the provision of services to affiliated QFs, IPPs, EWGs and FUCOs by the following companies: (1) NC Services, (2) UE, (3) KRM, (4) Utility Services, (5) UE Carolina, (6) Quixx, (7) QPS, and (8) e prime. In addition, NCE requests an exemption from rules 90 and 91 in connection with the provision of services by e prime to Young Gas Storage Co., Ltd. Finally, to facilitate e prime's marketing of certain products and services to nonaffiliates, NCE requests that PSCo be exempted from rules 90 and 91 for the sale of certain products and services to e prime.

NCE further requests authority to form a new subsidiary, NC Hold Co., which will be incorporated in Delaware, to hold certain of the NCE system's nonutility interests. At the consummation of the Transaction, all outstanding shares of NC Hold common stock will be held by NCE. NC Hold will acquire the common stock of certain of PSCo's nonutility subsidiaries via a capital contribution from NCE and will purchase the common stock of SPS's nonutility subsidiaries by issuing debt to SPS.

¹⁵ 17 CFR Part 256 (1995).

The debt issued by NC Hold will have a twenty-year maturity and bear interest at a fixed rate, with interest payments to be made semi-annually. The interest rate will be determined at the time of issuance based on the then prevailing rate which would be charged by an unaffiliated third party. The principal will be repaid in twenty equal annual installments. NC Hold will have the option to prepay the entire obligation, including accrued and unpaid interest, at any time without any prepayment premium.

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

Jonathan G. Katz,
Secretary.

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[Investment Company Act Release No. 21851; 812-9924]

U.S. Trust Corporation, et al.; Notice of Application

March 22, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

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

APPLICANTS: U.S. Trust Corporation, United States Trust Company of New York ("U.S. Trust"), the Excelsior Institutional Trust ("Excelsior Trust"), the Excelsior Funds, Inc. ("Excelsior Funds, Inc. ("Excelsior Funds"),¹ and any registered open-end management investment company that may be advised by U.S. Trust or any entity controlling, controlled by, or under common control with U.S. Trust (together, with Excelsior Trust and Excelsior Funds, the "Funds"), the United States Trust Company of New York Pooled Pension and Profit Sharing Trust ("CIF"), and other collective investment funds that may be sponsored by U.S. Trust which U.S. Trust in the future may decide to convert into registered open-end investment companies in the manner described below, and in which, at that time, pension plans established and maintained for the benefit of employees of U.S. Trust and its subsidiaries have invested assets.

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a)

¹ The Excelsior Funds formerly were known as the UST Master Funds, Inc. The name was changed, effective January 2, 1996, primarily for marketing purposes.