which Affected Contractholders may otherwise be entitled.

3. Each Affected Contractholder will receive, within five days following the Effective Date of Substitutions, written notice (''Confirmation Notice''). The Confirmation Notice will: (a) Confirm that the Substitutions were carried out; (b) reiterate that each Affected Contractholder may make one transfer to all of the contract value or cash value under their Variable Product that is invested in any one of the Subaccounts that were affected by the Substitutions to any other Subaccount available under their Variable Product without such transfer being subject to any administrative charge, or being counted as one of any ''free transfers'' (or one of the limited number of transfers) to which Affected Contractholders may be entitled under their Variable Product; and (c) state that Penn Mutual will not exercise any rights reserved by it under the Variable Products to impose additional restrictions on transfers until at least 30 days after the Effective Date. The Confirmation Notice will be accompanied by a then-current prospectus for the relevant Variable Product, reflecting the inclusion of the New Funds, as well as an amended prospectus for the New Funds.

4. Penn Mutual shall have satisfied itself, that: (a) The Variable Products allow the substitution of investments in the manner contemplated by the Substitutions and related transactions described herein; (b) the transactions can be consummated as described in this Application under the applicable insurance laws; and (c) that any regulatory requirements in each jurisdiction where the Variable Products are qualified for sale, have been complied with to the extent necessary to complete the transactions.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions and related transactions involving in-kind transactions should be granted.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9398 Filed 4–12–00; 10:11 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27162]

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

April 7, 2000.

Notice is hereby given that the following filings(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 May 2, 2000, 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 May 2, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Unitil Corporation (70–8050)

Unitil Corporation (''Unitil''), 6 Liberty Lane West, Hampton, New Hampshire 03842–1720, a registered holding company, has filed a post-effective amendment under sections 6(a) and 7 of the Act to a declaration previously filed under the Act.

By orders dated November 16, 1992 and February 7, 1997 (NCAR Nos. 25677 and 26663) (''Orders''), Unitil has authorized, among other things, to issue and sell up to 253,654 shares (''DRIP Shares'') of its no par value common stock (''Common Stock) under its dividend reinvestment and stock purchase plan (''DRIP Plan''). As of February 1, 2000, 15,030 of the authorized DRIP Shares remained unsold. The Orders also authorized Unitil to issue and sell up to 229,636 shares (''401(k) Shares'' and, together with DRIP Shares, ''Authorized Shares'') [1] of Common Stock under its tax-deferred savings and investment plan (''401(k) Plan''). As of February 1, 2000, 44,393 of the authorized 401(k) Shares were unsold.

In addition to the Authorized Shares, Unitil now proposes to issue and sell up to 200,000 shares of its Common Stock under its DRIP Plan and up to 150,000 shares under its 401(k) Plan. Shares available for issuance under each of these plans may come from authorized but unissued Common Stock or from Common Stock purchased by Unitil on the open market.

Unitil Corporation (70–9633)

Unitil Corporation (''Unitil''), a registered holding company under the Act, and its subsidiary companies, Concord Electric Company, Exeter & Hampton Electric Company, Fitchburg Gas and Electric Light Company (''Fitchburg''), Unitil Power Corp., Unitil Realty Corp., Unitil Resources, Inc. and Unitil Service Corp. (''Unitil Service'') (collectively, ''Subsidiaries'' and, together with Unitil, ''Applicants''), all at 6 Liberty Lane West, Hampton, New Hampshire 03842, have filed an application-declaration under sections 6(b), 9(a), 10 and 12(b) of the Act and rules 43 and 45 under the Act.

By order dated June 30, 1997 (HCAR No. 26737), Applicants were authorized to make unsecured short-term borrowings and to operate a system money pool (''Money Pool'') through June 30, 2000. The Applicants now request authority to make additional short-term borrowings and extend the operation of the Money Pool through June 30, 2003 (''Authorization Period'').

Specifically, Unitil requests authority to incur short-term borrowings from banks in an aggregate amount that will not exceed $25 million outstanding. In addition, Fitchburg requests authority to incur short-term borrowings from third parties and the other Applicants, and Unitil and the other Subsidiaries request authority to lend funds to Fitchburg under the Money Pool. [2] Borrowings by Fitchburg under the Money Pool and its short-term borrowings from banks would not exceed $20 million at any one time outstanding.

Unitil's existing [3] and proposed borrowing arrangements will provide for borrowings at (1) ''base'' or ''prime''

[1] The number of Authorized Shares was adjusted to reflect a two-for-one stock split that occurred on December 11, 1992.

[2] Applicants claim that borrowings by the Subsidiaries other than Fitchburg are exempt from Commission review under rule 52 under the Act.

[3] As of February 17, 2000, Unitil had three unsecured lines of credit totaling $23 million.

rates publicly announced by a bank as the rate charged on loans to its most creditworthy business firms; or (2) ''money market'' rates (market-based rates that are generally lower than base or prime rates, made available by banks on an offering or ''when available'' basis). In addition, borrowings may be based on the daily federal funds rate. Borrowings under the credit arrangements will mature not more than nine months from the date of issue.

Unitil expects to use the proceeds from the requested borrowings for: (1) loans or advances to subsidiaries through the money pool; (2) payment of outstanding indebtedness; (3) short-term cash needs that may arise due to payment timing differences; and (4) other general corporate purposes.

Any of the proposed short-term borrowings by Fitchburg from commercial banks will be under terms and conditions substantially similar to those of the borrowing arrangements between Unitil and its commercial bank lenders, described above. Fitchburg will use the proceeds from these borrowings to meet working capital requirements, provide interim financing for construction expenditures, and to meet debt and preferred stock sinking fund requirements.

The Applicants participate in the Unitil system money pool in accordance with a pooling agreement (''Pooling Agreement''). Under the Pooling Agreement, Unitil and the Subsidiaries invest their surplus funds, and the Subsidiaries borrow funds, from the money pool. Unitil Service administers the money pool on an ''at cost'' basis. The purpose of the Money Pool is to provide the Subsidiaries with internal and external funds and to invest surplus funds of Unitil and the Subsidiaries in short-term money market instruments. The Applicants state that the Money Pool provides the Subsidiaries with lower short-term borrowing costs due to elimination of banking fees; a mechanism to earn a higher return on interest from surplus funds that are loaned to other Subsidiaries; and decreased reliance on external funding sources.

Cinergy Corp., et al. (70–9577)

Cinergy Corp., a registered holding company (''Cinergy''), and its direct wholly owned nonutility subsidiaries Cinergy Global Resources, Inc. and Cinergy Investments, Inc., all located at 139 East Fourth Street, Cincinnati, Ohio 45202, have filed an application-declaration (''Application'') with the Commission under sections 6(a), 7, 9(a), 10, 12, 32 and 33 of the Act and rules 45, 53 and 54 under the Act.

Background

Cinergy's Public Utility Subsidiaries

Through its six domestic retail public utility companies—PSI Energy, Inc., an Indiana electric utility (''PSI''), the Cincinnati Gas & Electric Company, an Ohio electric and gas utility (''CG&E''), the Union Light, Heat and Power Company, a Kentucky electric and gas utility (''Union Power''), Lawrenceburg Gas Company, an Indiana gas utility (''Lawrenceburg''), the West Harrison Gas and Electric Company, an Indiana electric utility (''West Harrison'') and Miami Power Corporation, an electric utility (''Miami Power'') [4]—Cinergy provides retail electric service in north central, central and southern Indiana and retail electric and gas service in the southwestern portion of Ohio and adjacent areas of Indiana and Kentucky.[5]

CG&E produces, transmits, distributes and sells electricity and sells and transports natural gas in the southwestern portion of Ohio, serving an estimated population of 1.6 million people in 10 of the state's 88 counties, including the cities of Cincinnati and Middletown.[6] At and for the twelve months ended December 31, 1999, CG&E had total consolidated assets of approximately $4.9 billion and operating revenues of approximately $2.6 billion.

PSI produces, transmits, distributes and sells electricity in north central, central and southern Indiana, serving as estimated population of 2.2 million people located in 69 of the state's 92 counties including the cities of Bloomington, Columbus, Kokomo, Lafayette, New Albany and Terre Haute. At and for the twelve months ended December 31, 1999, PSI had total consolidated assets of approximately $3.8 billion and operating revenues of approximately $2.1 billion.

[4] The Application states that Miami Power is an electric utility company solely by virtue of its ownership of certain transmission assets.

[5] CG&E and PSI are direct, wholly owned subsidiaries of Cinergy. Union Power, Lawrenceburg, West Harrison and Miami Power are direct, wholly owned subsidiaries of CG&E and indirect, wholly owned subsidiaries of Cinergy.

[6] Union Power transmits, distributes and sells electricity and sells and transports natural gas in northern Kentucky, serving an estimated population of 328,000 people in a 500 square mile area encompassing six counties, including the cities of Newport and Covington. Lawrenceburg sells and transports natural gas to approximately 20,000 people in a 60 square mile area in southeastern Indiana. West Harrison sells electricity over a three square mile area with a population of approximately 1,000 in West Harrison, Indiana, and bordering rural areas. Miami Power owns a 138 kilovolt transmission line running from the Miami Fort Power Station in Ohio to a point near Madison, Indiana.

Cinergy's Existing Financing Authority

By order dated March 23, 1998 (Holding Co. Act Release No. 26848) (''100% Order''), the Commission amended certain prior orders issued to Cinergy and authorized Cinergy to use the proceeds of certain financing transactions to invest in exempt wholesale generators (''EWGs'') and foreign utility companies (''FUCOs'' and, together with EWGs ''EWG/FUCO Projects''), provided that Cinergy's aggregate investment in EWG/FUCO Projects does not exceed 100% of Cinergy's consolidated retained earnings (''100% Limit''), subject to certain conditions.[7]

At December 31, 1999, Cinergy's aggregate investment in EWG/FUCO Projects was approximately $580 million and its consolidated retained earnings were approximately $1,023 million, leaving available investment capacity under the 100% Order of approximately $443 million at that date.

Under the following Commission orders, Cinergy is authorized to issue common stock, debt securities and to provide for general corporate purposes including, among other things, investing in EWG/FUCO Projects up to the 100% Limit:

Short-Term Debt; $2 Billion Debt Limit; Common Stock. By order dated January 20, 1998 (Holding Co. Act Release No. 26819) (''January 1998 Order''), as subsequently modified by order dated March 1, 1999 (Holding Co. Act Release No. 26984) (''March 1999 Order''), the Commission authorized Cinergy to issue and sell, from time to time through December 31, 2002: (a) short-term notes and commercial paper and an aggregate principal amount not to exceed, together with the principal amount of long-term debentures referred to below, $2 billion at any time outstanding, and (b) up to 30,867,385 shares of Cinergy common stock.

Long-Term Debentures. By order dated August 21, 1998 (Holding Co. Act Release No. 26909) (''August 1998 Order''), the Commission authorized Cinergy to issue and sell, from time to time through December 31, 2002, unsecured debentures with maturities of two of 15 years in an aggregate principal amount at any time outstanding not to exceed $400 million, subject to the $2 billion debt cap described above.

Guarantees; $1 Billion Limit. The March 1999 Order (a) consolidated authority granted to Cinergy under prior orders to issue guarantees of obligations of system companies, and (b) imposed

[7] The terms ''aggregate investment'' and ''consolidated retained earnings'' are defined in rule 53(a)(1) under the Act.

any overall cap of $1 billion (separate from the $2 billion debt cap described above) on the amount of Cinergy guarantees issued and outstanding from time to time through December 31, 2003. Among other things, the March 1999 Order also expanded Cinergy's existing authority to create intermediate subsidiaries to hold interests in nonutility businesses, including EWG/FUCO Projects.[8]

Proposed Financing Authority

Cinergy asserts its investment capacity remaining under existing Commission orders is not sufficient to enable Cinergy to grow its business and adapt to industry-wide restructuring. Cinergy therefore requests greater authority to invest in EWG/FUCO Projects and general revisions to outstanding Commission orders granting Cinergy authority to issue debt and equity securities, issue guarantees, and engage in other financing transactions. Cinergy's proposed increased financing authority, discussed in more detail below (''Proposed Financing Transactions''), is intended to enable Cinergy to respond quickly and efficiently to its financing needs and available conditions in capital markets.

Proposed Limits on Investments in EWG/FUCO Projects and Restructuring Subsidiaries. Over a five-year period beginning with issuance of the requested order from the Commission (''Authorization Period''), Cinergy proposes to apply proceeds from the proposed financing transactions described below to make additional investments in EWG/FUCO Projects, subject to the following limitations:

EWG/FUCO Projects Limit. Cinergy's aggregate investment in EWG/FUCO Projects would not exceed the sum of (a) an amount equal to 100% of Cinergy's consolidated retained earnings, plus (b) $2 billion (together, ''EWG/FUCO Projects Limit''), excluding any investments subject to the Restructuring Limit (defined below).[9]

Restructuring Limit. With respect to solely to the transfer of CG&E's and PSI's generating assets to one or more EWG affiliates (''Restructuring Subsidiaries''), Cinergy's aggregate investment in Restructuring Subsidiaries would not exceed the net book value of the generating assets at the time of transfer (''Restructuring Limit''). The net book value of CG&E's and PSI's generating assets at December 31, 1999 was approximately $2.9 billion.[10]

Effect Upon Existing Financing Authority. Cinergy proposes to replace the January 1998 Order and the August 1998 Order, each in its entirety, and to supersede the March 1999 Order solely to the extent of the guarantee authority granted in that order, with new financing authority, the terms of which are described below. As with the existing authority, the new authority would be used for general corporate purposes, including to fund investments in EWG/FUCO Projects.

Aggregate Financing Limit; Guarantee Limit. Subject to the terms and conditions described below, from time to time through the Authorization Period, Cinergy proposes (a) to increase its total capitalization (excluding retained earnings and accumulated other comprehensive income[11]) by $7 billion through issuance and/or sale of any combination of debt or equity securities, whether directly or through one or more special purpose subsidiaries (''Aggregate Financing Limit''), and (b) to increase the level of its guarantees outstanding at any time to an aggregate of $2 billion (''Guarantee Limit''), all without further authorization from the Commission. At December 31, 1999, Cinergy's total capitalization (excluding retained earnings and accumulated other comprehensive loss) totaled approximately $2 billion, and Cinergy's subsidiaries and affiliates had debt or other obligations outstanding totaling approximately $515 million supported by Cinergy guarantees.

General Terms and Conditions Applicable to Proposed Financing Authority. The Proposed Financing Transactions are subject to the following terms and conditions:

Debt Securities

Short-Term Notes. From time to time over the Authorization Period, subject to the Aggregate Financing Limit and the other conditions specified below, Cinergy proposes to make short-term borrowings from banks or other financial institutions. These borrowings would be evidenced by (a) ''transactional'' promissory notes to mature not more than one year after the date of the related borrowing, or (b) ''grid'' promissory notes evidencing all outstanding borrowings from the respective lender, to be dated as of the date of the first borrowing evidenced by the notes, with each borrowing maturing not more than one year after that date. Any note may or may not be prepayable, in whole or in part, with or without a premium in the event of prepayment.

Commercial Paper. From time to time over the Authorization Period, subject to the Aggregate Financing Limit and the other conditions specified below, Cinergy also proposes to issue and sell commercial paper through one or more dealers or agents or directly to a limited number of purchasers if the resulting cost of money is equal to or less than that available from commercial paper placed through dealers or agents. Cinergy proposes to issue and sell the commercial paper at market rates with varying maturities not to exceed 270 days. The commercial paper would be in the form of book entry unsecured promissory notes with varying denominations of not less than $25,000 each. In commercial paper sales effected on a discount basis, no commission or fee would be payable; however, the purchasing dealer would re-offer the commercial paper at a rate less than the rate to Cinergy. The discount rate to dealers would not exceed the maximum annual discount rate prevailing at the date of issuance for commercial paper of comparable quality and the same maturity. The purchasing dealer would re-offer the commercial paper in a manner that would not constitute a ''public offering'' under the Securities Act of 1933, as amended (''Securities Act'').

Long-Term Notes. From time to time over the Authorization Period, subject to the Aggregate Financing Limit and the other conditions specified below, Cinergy also proposes to issue and sell

[8] The March 1999 Order also modified the January 1998 Order by removing Cinergy guarantees from the $2 billion debt cap and, instead, making the guarantees subject to the $1 billion cap.

[9] As noted above, based on Cinergy's aggregate investment and consolidated retained earnings of approximately $580 million and $1,023 million, respectively, at December 31, 1999, Cinergy had approximately $443 million of additional investment authority in EWG/FUCO Projects remaining under the 100% Order at that date. Assuming Cinergy's utilization of all the investment authority under the 100% Order and its utilization of all of the additional $2 billion of investment authority requested for EWG/FUCO Projects, these investments would represent approximately 296% of Cinergy's consolidated retained earnings at December 31, 1999.

[10] Together CG&E and PSI own all of or partial interests in 17 primarily coal-fired, electric generating stations located in Ohio, Indiana and Kentucky, having a total installed capacity allocable to these ownership interests of approximately 11,200 megawatts and a current net book value of approximately $2.9 billion ($1.75 billion of which represents CG&E's share).

[11] Under Statement of Financial Accounting Standards No. 130, Reporting Comprehensive Income, ''accumulated other comprehensive income'' includes all components of common stock equity that are not included as net income or the result of shareholder transactions (*e.g.,* stock issuances or dividends). At December 31, 1999, components of Cinergy's accumulated other comprehensive income consisted of foreign currency translations, minimum pension liability adjustments and unrealized gains and losses on grantor and rabbi trusts.

long-term debt securities (''Notes'') in one or more series

Notes of any series may be either senior or subordinated obligations of Cinergy. If issued on a secured basis, Notes would be secured solely by common stock, or other assets or properties, of one or more of Cinergy's nonutility subsidiaries (other than any nonutility subsidiary of CG&E or PSI). Notes of any series (a) would have maturities greater than one year, (b) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount, (c) may be entitled to mandatory or optional sinking fund provisions, and (d) may be convertible or exchangeable into common stock of Cinergy. Interest accruing on Notes of any series may be fixed or floating or ''multi-modal.'' [12] Notes would be issued under one or more indentures to be entered into between Cinergy and one or more financial institutions acting as trustee, supplemental indentures may be executed for separate offerings of one or more series of Notes.

Notes may be issued in private or public transactions. With respect to private issuances, Notes of any series may 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 the Notes without registration under the Securities Act in reliance upon one or more applicable exemptions from registration. From time to time Cinergy may also issue and sell Notes of one or more series to the public either (a) through underwriters selected by negotiation or competitive bidding, or (b) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

The maturity dates, interest rates, redemption and sinking fund provisions, if any, with respect to the Notes of a particular series, as well as any associated placement, underwriting, structuring or selling agent fees, commissions and discounts, if any, would be established by negotiation or competitive bidding and reflected in the applicable indenture or supplement and purchase agreement or underwriting agreement.

Certain Conditions Applicable to Debt Securities. Cinergy represents that the interest rate on any series of debt security with a maturity of one year or less would not exceed the greater of (a) 300 basis points over the comparable term London interbank offered rate, or (b) a rate that is consistent with similar securities of comparable credit quality and maturities issues by other companies.

Cinergy also represents that the interest rate on any series of debt security with a maturity greater than one year would not exceed the greater of (a) 300 basis points over the comparable term U.S. Treasury securities or other market accepted benchmark securities, or (b) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

Cinergy further represents that, solely with respect to investments in EWG/FUCO projects under the EWG/FUCO Projects Limit, Cinergy would not issue any additional debt securities to finance these investments if upon original issuance Cinergy's senior debt obligations are not rated investment grade by at least two of the major ratings agencies (*i.e.,* Standard & Poor's Corporation (''S&P''), Fitch Investor Service (''Fitch''), Duff & Phelps Credit Rating Co. (''D&P'') and Moody's Investor Service (''Moody's'')).

Interest Rate Risk Management. In connection with the issuance and sale of the short- and long-term debt securities described above, Cinergy proposes to manage interest rate risk through the use of various interest rate management instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, options, forwards, futures and similar products designed to manage interest rate risks.

Cinergy would enter into agreements covering these derivative transactions with highly rated financial institutions (*i.e.,* whose senior secured debt, at the date of execution of the agreement with Cinergy, is rated at least ''A–'' by S&P, Fitch or D&P or ''A3'' by Moody's). The derivative transactions would be for fixed periods and in no case would the notional principal amount exceed the principal amount of the underlying debt security. Cinergy would not engage in ''leveraged'' or ''speculative'' derivative transactions.

Fees, commissions and annual margins in connection with any interest rate management agreements would be no more than 100 basis points above the principal or notional amount of the related debt securities or interest rate management agreement. In addition, with respect to options such as caps and collars, Cinergy may pay an option fee which, on a net basis (*i.e.,* when netted against any other option fee payable with respect to the same security), would not exceed 10% of the principal amount of the debt covered by the option.

Equity Securities

Common Stock; Stock Purchase Contracts; Stock Purchase Units. At December 31, 1999, Cinergy had 600 million shares of common stock authorized for issuance, 158,923,399 shares of which were issued and outstanding. Cinergy states that it has issued 771,258 shares of common stock under the January 1998 Order.

From time to time over the Authorization Period, subject to the Aggregate Financing Limit and the other conditions specified below, Cinergy proposes to issue and sell additional shares of its common stock (a) through solicitations of proposals from underwriters or dealers, (b) through negotiated transactions with underwriters or dealers, (c) directly to a limited number of purchasers or to a single purchaser, and/or (d) through agents. The price applicable to additional shares sold in any of these transactions would be based on several factors, including the current market price of the common stock and prevailing capital market conditions.

Cinergy also proposes to issue and sell from time to time stock purchase contracts (''Stock Purchase Contracts''), including contracts obligating holders to purchase from Cinergy, and/or Cinergy to sell to the holders, a specified number of shares or aggregate offering price of Cinergy common stock at a future date. The consideration per share of common stock may be fixed at the time the Stock Purchase Contracts are issued or may be determined by reference to a specific formula. The Stock Purchase Contracts may be issued separately or as part of units (''Stock Purchase Units'') consisting of a Stock Purchase Contract and debt and/or preferred securities of Cinergy and/or debt obligations of nonaffiliates, including U.S. Treasury securities, securing holders' obligations to purchase the common stock of Cinergy under the Stock Purchase Contracts. The Stock Purchase Contracts may require holders to secure their obligations.

Further, Cinergy requests authorization to issue common stock as consideration, in whole or part, for acquisitions by Cinergy or any nonutility subsidiary of securities of businesses, the acquisition of which (a) is exempt under the Act or the rules under the Act, or (b) has been authorized by effective Commission order issued to Cinergy or any of

[12] According to the Application, a ''multi-modal'' interest rate provides for periodic resetting of the interest rate, which alternates between fixed and floating interest rates for each reset period, with all accrued and unpaid interest together with interest becoming due and payable at the end of each reset period.

Cinergy's nonutility subsidiaries, subject in either case to applicable limitations on total investments in any of these businesses. The shares of Cinergy common stock issued in any of these transactions would be valued at market value based on the closing price on the day before closing of the sale, on average high and low prices for a period prior to the closing of the sale, or on some other method negotiated by the parties.

Cinergy represents that, except in the case of the transactions covered by the Restructuring Limit, common equity would comprise at least 30% of Cinergy's consolidated capitalization (based upon the financial statements included in Cinergy's most recent quarterly report on Form 10–Q or annual report on Form 10–K filed with the Commission under the Securities Exchange Act of 1934, as amended).

Preferred Securities. From time to time over the Authorization Period, subject to the Aggregate Financing Limit and the other conditions specified below, Cinergy also proposes to issue and sell preferred securities in one or more series. Preferred securities of any series (a) would have a specified par or stated value or liquidation value per security, (b) would carry a right to periodic cash dividends and/or other distributions, subject, among other things, to funds being legally available for that purpose, (c) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the par or stated or liquidation value, (d) may be convertible or exchangeable into common stock of Cinergy, and (e) may bear additional rights, including voting, preemptive or other rights, and other terms and conditions, contained in the applicable certificate of designation, purchase agreement and/or similar instruments governing the issuance and sale of that series of preferred securities.

Preferred securities may be issued in private or public transactions. With respect to private transaction, preferred securities of any series may 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 the preferred securities without registration under the Securities Act in reliance upon one or more applicable exemptions from registration. From time to time Cinergy may also issue and sell preferred securities of one or more series to the public either (a) through underwriters selected by negotiation or competitive bidding, or (b) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

The liquidation preference, dividend or distribution rates, redemption provisions, voting rights, conversion or exchange rights, and other terms and conditions of a particular series of preferred securities, as sell as any associated placement, underwriting, structuring or selling agent fees, commissions and discounts, if any, would be established by negotiation or competitive bidding and reflected in the applicable certificate of designation, purchase agreement or underwriting agreement, and other relevant instruments.

Cinergy represents that the distribution rate on any series of preferred security would not exceed the greater of (a) 400 basis points over the comparable term U.S. Treasury securities or other market accepted benchmark securities, or (b) a rate that is consistent with similar securities of comparable credit quality and structure issued by other companies.

Cinergy represents that the underwriting fees, commissions or similar remuneration paid in connection with the issue, sale or distribution of any authorized securities (excluding interest rate risk management instruments, as to which separate provisions governing fees and expenses are proposed below) would not exceed 700 basis points of the principal or face amount of the securities issued or gross proceeds of the financing.

Financing Conduits

Cinergy requests approval to form one or more subsidiaries for the sole purpose of issuing and selling any of the proposed securities, lending, paying dividends or otherwise transferring the proceeds to Cinergy or any entity designated by Cinergy, and engaging in incidental transactions, subject to the Aggregate Financing Limit and other terms and conditions described below.

The proposed subsidiaries would comprise one or more financing subsidiaries (each, a ''Financing Subsidiary'') and one or more special purpose entities (each, a ''Special Purpose Entity,'' and, together with Financing Subsidiaries, ''Financing Conduits''). In either case the subsidiaries' businesses would be limited to issuing and selling securities on behalf of Cinergy, the subsidiaries would have no substantial physical assets or properties. Any securities issued by the Financing Conduits would be fully guaranteed, directly or indirectly, by Cinergy.

Cinergy would acquire all of the outstanding shares of common stock or other equity interests of the Financing Subsidiary for an amount not less than the minimum required by applicable law. The business of the Financing Subsidiary would be limited to effecting financing transactions with third parties for the benefit to Cinergy and its subsidiaries. As an alternative to Cinergy directly issuing debt or equity securities, or through a Special Purpose Entity, Cinergy may determine to use a Financing Subsidiary as the nominal issuer of the particular debt or equity security. In that circumstances, Cinergy would provide a full guarantee or other credit support with respect to the securities issued by the Financing Subsidiary, the proceeds of which would be lent, paid by dividend or otherwise transferred to Cinergy or an entity designated by Cinergy. Cinergy explains that the primary reason for the use of a Financing Subsidiary would be to segregate financing for the different businesses conducted by Cinergy, distinguishing between securities issued by Cinergy to finance its investments in nonutility businesses from those issued to finance its investments in its core utility businesses. A separate Financing Subsidiary may be used by Cinergy with respect to different types of nonutility businesses.

Cinergy would use Special Purpose Subsidiaries in connection with certain financing structures for issuing debt or equity securities, in order to achieve a lower cost of capital, or incrementally greater financial flexibility or other benefits, than would otherwise be the case.

Guarantees

Cinergy also proposes to supersede its existing guarantee authority, limited to $1 billion under the March 1999 Order, with greater authority intended to accommodate growth in its business.

Specifically, from time to time through the Authorization Period, Cinergy requests authority to guarantee, obtain letters of credit and otherwise provide credit support (each, a ''Guarantee'') in respect of the debt or other securities or obligations of any or all of Cinergy's subsidiary or associate companies (including any formed or acquired at any time over the Authorization Period), and otherwise to further the business of Cinergy, provided that the total amount of Guarantees at any time outstanding does not exceed the Guarantee Limit, and provided further, that (a) any Guarantees of EWG/FUCO Projects would also be subject to the EWG/FUCO Projects Limit or Restructuring Limit, as applicable, and (b) any Guarantees of energy-related companies within the

meaning of rule 58 under the Act (''Rule 58 Companies'') would also be subject to the aggregate investment limitation of rule 58.[13] The terms and conditions of any Guarantees would be established at arm's length based upon market conditions.

In the event that Cinergy issues any authorized debt or equity securities by means of any Financing Conduits, Cinergy would provide a full Guarantee in respect of the payment and other obligations of the Financing Conduit under the securities issued by it. As any securities nominally issued by a Financing Conduit are, in substance, securities issued by Cinergy itself, any securities issued by a Financing Conduit would count dollar-for-dollar against the Aggregate Financing Limit, but not against the Guarantee Limit.

Use of Proceeds

Cinergy proposed to issue the authorized debt and equity securities for general corporate purposes, including: (a) payments, redemptions, acquisitions and refinancing of outstanding securities issued by Cinergy; (b) acquisitions of and investments in EWG/FUCO Projects, provided that Cinergy's aggregate investment in these projects does not exceed the EWG/FUCO Projects Limit or Restructuring Limit, as applicable; (c) acquisitions of, and investments in, Rule 58 Companies, provided that Cinergy's aggregate investments in these companies does not exceed the aggregate investment limitation of rule 58; (d) loans to, and investments in, other system companies, including through the Cinergy system money pool [14]; and (e) other lawful corporate purposes.

As previously described, in the event Cinergy utilizes Financing Conduits to issue authorized securities, these entities would apply the proceeds of securities nominally issued by them to make loans, dividends or other transfers to Cinergy or an entity designated by Cinergy, which would then be applied for any of the purposes listed above.

Intrasystem Transfer of Generating Assets

Cinergy states that, as a result of state restructuring of the electric utility industry, it intends to transfer all or a substantial portion of the generating assets owned by CG&E and, eventually, PSI, to one or more newly formed Restructuring Subsidiaries and subject to the Restructuring Limit. Cinergy has requested authority over the Authorization Period to make investments in these Restructuring Subsidiaries in an amount not to exceed the net book value of the generation assets transferred by CG&E and PSI to these affiliates. Cinergy states that the net book value at December 31, 1999 of these assets was approximately $2.9 billion.

CG&E and PSI own significant electric generating facilities. The generating assets are either wholly owned by CG&E or PSI or jointly owned with other utilities, and are located in Ohio and Indiana, with the exception of one plant in Kentucky owned by CG&E. The installed capacity and net book value of the generation assets allocable to CG&E's and PSI's ownership interests are 11,221 megawatts and $2.892 billion, respectively, at December 31, 1999, with 5,245 megawatts of installed capacity having a net book value of $1.755 billion allocable to CG&E, and 5,976 megawatts of installed capacity having a net book value of $1.137 billion allocable to PSI. None of Cinergy's other utility subsidiaries own any electric generating facilities.

Comprehensive electric restructuring legislation was passed in Ohio in July 1999.[15] As discussed in the Application, under the new law, all retail customers in Ohio can choose their electric supplier commencing January 1, 2001.

The legislation deregulates electric generation and supply, with electric transmission and distribution continuing as regulated utility functions. According to Cinergy, although it does not require restructuring or divestiture of generating assets, the new Ohio legislation encourages that result in order to foster generation supplier diversity and curb potential market power of incumbent utilities. As an incumbent Ohio electric utility, CG&E is required to separate its existing functions pertaining to competitive retail sale of generation service from those pertaining to transmission and distribution service, and to transfer the generation services into a separate legal entity. The legislation requires that utilities devise incentives to induce 20% of their electric loads by customer class to switch providers by halfway through a ''market development period,'' but in no event later than December 31, 2003.

Other provisions of the law include: (a) A 5% reduction in the generation component of rates for every residential customer beginning January 1, 2001, (b) the establishment of a ''market development period'' (*i.e.,* the transition period to full competition) beginning January 1, 2001 and ending no later than December 31, 2005; (c) a ''freeze'' of utility rates for non-switching customers through the market development period: (d) an opportunity for incumbent utilities to recover transition costs approved by the Public Utilities Commission of Ohio (''PUCO'') over the market development period; (e) an opportunity for incumbent utilities to recover regulatory assets through December 31, 2010, if approved by the PUCO; (f) a requirement that incumbent utilities transfer either ownership or control of their transmission assets to an independent transmission entity before December 31, 2003; (g) a requirement that incumbent utilities provide retail electric service to native load customers who decline to switch to different suppliers or who desire to return to service from the incumbent utility; and (h) a requirement that incumbent utilities file a proposed transition plan by December 31, 1999.

As required by the legislation, CG&E filed its proposed transition plan with the PUCO on December 28, 1999. The transition plan is comprised of eight component plans—a rate unbundling plan, corporate separation plan, operational support plan, employee assistance plan, consumer education plan, application for receipt of transition revenues, independent transmission plan and shopping incentive plan. The PUCO is required to issue its order on the transition plan of all incumbent utilities no later than October 31, 2000.

In its transition plan, CG&E has proposed to meet its corporate separation obligations in part by legally separating the generation from the transmission and distribution businesses, transferring all of its generating assets to one or more affiliated EWGs. The generation assets would be moved as soon as practicable after PUCO approval. The asset transfer is contingent on various other factors, including receipt from the Ohio, Indiana and Kentucky utility regulatory commissions of the findings required under section 32(c) of the Act.[16] Concurrent with the transfer of the generation assets CG&E would enter into a power purchase agreement with the

[13] Rule 58(a)(1) limits the aggregate investment by a registered holding company in rule 58 subsidiaries to the greater of $50 million, or 15% of the consolidated capitalization of the registered holding company.

[14] *See* Holding Co. Act Release Nos. 26362 (Aug. 25, 1995) and 26723 (May 30, 1997).

[15] Ohio Rev. Code Ann. § 4928.01 *et seq.* (1999).

[16] Subject to certain conditions, section 32(c) provides that, in order for an existing rate-based facility to be deemed an ''eligible facility,'' the state commission responsible for ratemaking ''must make a specific determination that allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law.'' *See* 15 U.S.C. 79z–5a(c).

EWG approved by the Federal Energy Regulatory Commission. The power purchase agreement would grant CG&E a first call on all power produced by the EWG at embedded cost through the end of the market development period, ensuring CG&E sufficient power to meet its electric supply obligations to customers who do not switch or who return. Cinergy states that it has no current intention of establishing an affiliate of CG&E to market competitive generation services to retail customers in Ohio, as permitted by the new legislation.

As part of its proposed transition plan, CG&E filed a request to recover transition costs comprised of generation-related regulatory assets in the total amount of $364 million (excluding carrying charges) and above-market generation costs in the total amount of $563 million (excluding carrying charges), in each case beginning January 1, 2001. The total carrying costs, for which CG&E has also requested recovery, are estimated at $311 million.

Although comprehensive electric industry restructuring legislation has not yet been enacted in Indiana, Cinergy expects that this legislation will be enacted before expiration of the Authorization Period. Moreover, Cinergy asserts that existing statutory provisions in the Indiana Code for ''alternative'' regulation of utilities provide a basis for Cinergy to seek approval from the Indiana Utility Regulatory Commission to transfer PSI's generating facilities to Restructuring Subsidiaries prior to the adoption of state-wide restructuring.

Cinergy maintains in the Application that it needs the flexibility to reposition the generation assets now held by CG&E and PSI to maximize the value of those assets in a competitive environment. Cinergy states that, like a number of other utilities in states undergoing restructuring, it is seeking to achieve asset flexibility and optimization by transferring the assets to Restructuring Subsidiaries, where they can be used for electric sales back to the affiliated transmission and distribution utility or marketed for sale to off-system buyers, either with respect to all or some of the particular assets. According to the Application, Cinergy's current intention is to convert all or a substantial number of CG&E's and PSI's power plants to EWG status, since Cinergy believes that corporate disaggregation will eventually be required for the entire portfolio of generating properties, not merely CG&E's plants. Therefore, Cinergy has requested a separate investment ceiling—the Restructuring Limit—with a view to restructuring both CG&E's and PSI's generating assets. Cinergy further states that, although it likely would not make permanent recourse investments equal to the full amount of the book value of the transferred assets, Cinergy could be required to make investments of that magnitude, on a short-term basis, if ''bridge'' financing becomes necessary. Cinergy asserts that the overriding purpose of the Restructuring Limit is to afford it sufficient financial flexibility under the Act to pursue a variety of alternatives in an uncertain and changing regulatory environment.

Cinergy states that the generating assets would be transferred in one or more transactions, as soon as practicable after receipt of necessary regulatory approvals and satisfaction of other conditions. Cinergy has engaged Donaldson, Lufkin & Jenrette (''DLJ'') to provide financial advice in connection with these transactions.

Cinergy proposes two basic transaction structures by which CG&E and PSI (each, a ''Generating Utility'') would transfer their generating assets to the Restructuring Subsidiaries. Under the ''Sale Scenario,'' the Generating Utility sells generating assets, for case and/or promissory notes or other consideration, directly to one or more newly created subsidiaries of Cinergy (''Genco''), held either directly by Cinergy or indirectly by one or more newly created, special purpose intermediate holding companies directly held by Cinergy (''Genco Holdco''). Under the ''Spin-Off Scenario,'' the Generating Utility contributes its generating assets to Genco for shares of stock or other equity securities of Genco. The Generating Utility then distributes its investment in Genco to Cinergy by dividend or otherwise, and Cinergy then contributes the stock or other equity to Genco Holdco. Genco may transfer its generating assets into one or more special purpose subsidiaries; for example, Cinergy may establish a separate subsidiary for each power plant.

Under both scenarios, the assets would likely be transferred at net book value. The decision to use a particular transaction structure would depend, among other factors, on whether the transaction can be structured on a tax-deferred basis and other transaction costs. Under either scenario, Genco would have an initial capitalization equal to the value of the transferred generating assets, approximately $2.9 billion (assuming transfer of all the generating assets at book value at December 31, 1999). Cinergy is considering both potential structures discussed above, as well as variations of each.

Cinergy asserts that, regardless of which particular structure is used, there should be no material increase in Cinergy's consolidated debt as a result of the restructuring. Any incremental debt at the Cinergy or EWG level would be largely offset by reduced debt at the Generating Utility level. This is because Cinergy currently owns the assets, and would merely transfer direct title of these assets from the utility to the nonutility side of Cinergy's business. Cinergy states that it and DLJ believe that the asset transfers and associated financings should not themselves have any material adverse impact on the credit ratings of Cinergy, CG&E or PSI; rather, according to Cinergy, any potential impact is a consequence of state deregulation generally and Cinergy's resulting loss of monopoly supplier status.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24381; 812–12056]

Pacific Asset Management LLC, et al. Notice of Application

April 7, 2000.

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

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(f)(1)(A) of the Act.

SUMMARY OF APPLICATION: The order would exempt the applicants from section 15(f)(1)(A) of the Investment Company Act of 1940 (the ''Act'') in connection with the proposed change in control of PIMCO Advisors L.P. (''PIMCO Advisors''). Without the requested exemption, certain investment companies advised by PIMCO Advisors or one of its subsidiary investment advisers. Oppenheimer Capital, OpCap Advisors, Parametric Portfolio Associates, and NFJ Investment Group (collectively, the ''PIMCO Investment Advisers'' and together with PIMCO Advisors, the ''Advisers''), would have to reconstitute their respective boards of directors