

Progress Energy owns 50% of the issued and outstanding common stock of Eastern NCNG. The remaining 50% is owned by the Albermarle Pamlico Economic Development Corporation (“APEC”), a North Carolina nonprofit corporation created to encourage infrastructure and economic development in eastern North Carolina. Eastern NCNG is currently engaged in developing and constructing a “greenfield” natural gas transmission and distribution system in eastern North Carolina. Eastern NCNG is a newly-formed company that has been granted a certificate of convenience and necessity by the North Carolina Utilities Commission (“NCUC”) to provide natural gas service in 14 counties in eastern North Carolina that are not now being served with natural gas.<sup>2</sup> Eastern NCNG will become a “gas utility company” within the meaning of section 2(a)(4) of the Act at such time as it commences deliveries of natural gas.

The transmission and distribution system owned by Eastern NCNG is being designed and constructed and will be operated by CP&L. Gas supply commodity purchases for Eastern NCNG will be arranged and contracted in the gas market by CP&L’s Energy Trading Department. Upstream transportation capacity and any long-term supply arrangements will be arranged by CP&L’s Term Marketing Department.

Generally, Applicants request authorization for: (1) CP&L to provide intra-system services to Eastern NCNG; (2) Progress Energy to acquire and retain stock of Eastern NCNG as an additional public utility subsidiary;<sup>3</sup> and (3) Progress Energy to provide inter-company loans to Eastern NCNG as more specifically described below.

Specifically, Applicants request authorization for CP&L to provide services to Eastern NCNG under a Construction, Operation and Maintenance Agreement (“Construction Agreement”), under which CP&L would be responsible for the design, engineering and construction of the transmission and distribution facilities to be owned by Eastern NCNG. CP&L would also provide or cause to be provided both day-to-day operating and maintenance services associated with operation of the pipeline facilities and

<sup>2</sup> The 14 counties are Dare, Currituck, Camden, Pasquotank, Perquimans, Chowan, Gates, Washington, Hyde, Tyrrell, Pamlico, Jones, Carteret and Pender.

<sup>3</sup> As indicated in the Merger Order, Eastern NCNG was originally formed as a limited liability company, with CP&L holding a 50% membership interest. Since the merger, Eastern NCNG was converted into a stock corporation and CP&L’s 50% interest was transferred to Progress Energy.

administrative liaison and related services associated with the conduct of its business. Services to be provided by CP&L to Eastern NCNG under the Construction Agreement would be charged at cost in accordance with rules 90 and 91 under the Act and in accordance with the form of service agreement approved by the Commission as part of the Merger Order.

Eastern NCNG is obligated to reimburse CP&L for all costs and expenses that CP&L incurs in constructing and operating the Eastern NCNG gas system. All administrative and general expenses of CP&L would be charged as 3.1% of direct labor expenses under the Construction Agreement. It is estimated that the total cost of constructing the Eastern NCNG natural gas system will be approximately \$210.2 million and that when the completed system is fully operational, operating and maintenance expenses (not including the cost of natural gas) will be approximately \$3.2 million annually.

Progress Energy has committed to fund 100% of the economic portion of the transmission and distribution facilities of Eastern NCNG (i.e., the portion not funded by the state of North Carolina under a state bond package). Progress Energy proposes to provide the funding for construction of the economic portion of the project primarily through the purchase by Progress Energy of 500 shares of common stock of Eastern NCNG at a price \$1.00 per share and through the purchase of 500 shares of Series A Preferred Stock of Eastern NCNG at a price of \$44,200.00 per share in cash. The Articles of Incorporation of Eastern NCNG provide that the dividend of the Series A Preferred Stock shall be equal to 8.688% per year. Progress Energy requests authorization to acquire and retain such common stock and preferred stock of Eastern NCNG. Progress Energy’s equity investment would be made on a phase by phase basis after the state bond funds have been exhausted. Progress Energy is obligated to invest a total of \$7.676 million in the Series A Preferred Stock of Eastern NCNG in 2002. Under the original projections filed with the NCUC, Progress Energy’s equity investment would be fully funded in year sixteen.

Additional funding for the construction of the Eastern NCNG transmission and distribution system, if needed, may be provided through unsecured loans from its shareholders, including Progress Energy. Progress Energy and Eastern NCNG request authorization for Progress Energy to make loans to Eastern NCNG from time to time through September 30, 2003

with the total principal amount outstanding at any time not to exceed \$30 million. The loans would be made under the terms of a 364-Day Revolving Credit Facility (“Credit Facility”) dated June 1, 2001. Interest on any loans by Progress Energy under the Credit Facility would equal the then-current thirty day London Interbank Offered Rate plus 0.30%.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-13621 Filed 5-29-02; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45975; File No. SR-Amex-2002-31]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Requesting Permanent Approval of Pilot Program Eliminating Position and Exercise Limits for XMI and XII Index Options and Related Flex Options

May 23, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 12, 2002, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Amex seeks permanent approval of the pilot program that provides for the elimination of position and exercise limits for the Major Market (“XMI”) and Institutional (“XII”) broad-based index options, as well as FLEX Options on these indexes. On January 3, 2002, the Commission granted a six-month extension of the pilot program until July 3, 2002.<sup>3</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 45234 (January 3, 2002), 67 FR 1377 (January 10, 2002).

## **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### **1. Purpose**

On February 1, 1999, the Commission approved the elimination of position and exercise limits for the XMI and XII index options, as well as FLEX options on these indexes on a two-year basis (the "Pilot Program").<sup>4</sup> The Pilot Program originally ended on February 1, 2001, with extensions for an additional six-month period approved on July 3, 2001<sup>5</sup> and January 3, 2002,<sup>6</sup> respectively. The purpose of this proposed rule change is to request approval of the Pilot Program on a permanent basis.

The Original Approval Order required the Exchange to submit a report to the Commission regarding the status of the Pilot Program so that the Commission could use this information to evaluate any effects of the program.<sup>7</sup> The Exchange submitted the required report to the Commission on May 22, 2001 in connection with the first six-month

<sup>4</sup> See Securities Exchange Act Release No. 41011 (February 1, 1999), 64 FR 6405 (February 9, 1999) ("Original Approval Order").

<sup>5</sup> See Securities Exchange Act Release No. 44507 (July 3, 2001), 66 FR 36348 (July 11, 2001).

<sup>6</sup> See Securities Exchange Act Release No. 45234 (January 3, 2002), 67 FR 1377 (January 10, 2002).

<sup>7</sup> In the Original Approval Order, the Commission stated:

Furthermore, three months prior to the end of the pilot program, Amex will provide the Commission with a report detailing the size and different types of strategies employed with respect to positions established in those classes not subject to position limits. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program. The Commission expects that Amex will take prompt action, including timely communications with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop.

Securities Exchange Act Release No. 41011 (February 1, 1999), 64 FR 6405 (February 9, 1999).

extension of the Pilot Program (Amex File No. 2001-31). The report indicated that from February 1, 1999 through March 30, 2001, no customer and/or firm accounts reached a level of 100,000 or more options contracts in XMI or XII options. The Amex during this review period did not discover any instances where an account maintained an unusually large unhedged position. In addition, during the period from April 2, 2001 through February 28, 2002, the Amex did not experience accounts establishing positions in excess of the standard limit applicable to each index at the time the Pilot Program was approved.<sup>8</sup> Accordingly, the Amex seeks Commission approval to eliminate position and exercise limits for XMI and XII options, as well as related FLEX options, on a permanent basis based on the Amex's experience administering the Pilot Program.

#### **2. Statutory Basis**

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>10</sup> 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 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.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Amex does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

<sup>8</sup> Telephone call between Jeffrey P. Burns, Assistant General Counsel, Amex, and Susie Cho, Special Counsel, Division of Market Regulation, Commission, May 21, 2002. At the time the Commission approved the Pilot Program, the position limits for XMI and XII were 34,000 and 200,000, respectively.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

## **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR-Amex-2002-31 and should be submitted by June 20, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**  
*Secretary.*

[FR Doc. 02-13480 Filed 5-29-02; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>11</sup> 17 CFR 200.30-3(a)(12).