

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49382; File No. SR-OPRA-2004-01]

### Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan Regarding Device-Based and Enterprise Rate Professional Subscriber Fees Charged by OPRA in Respect of Its Basic Service and Its FCO Service

March 9, 2004.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 11Aa3-2 thereunder,<sup>2</sup> notice is hereby given that on February 25, 2004, the Options Price Reporting Authority ("OPRA")<sup>3</sup> submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The proposed OPRA Plan amendment would revise device-based and Enterprise Rate professional subscriber fees charged by OPRA in respect of its Basic Service and FCO Service. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

#### I. Description and Purpose of the Amendment

The purpose of the proposed amendment to OPRA's national market system plan is to make incremental changes to the device-based and Enterprise Rate professional subscriber fees charged by OPRA in respect of its Basic Service and FCO Service over a four-year period commencing in 2004. By January 1, 2007, every professional subscriber would be subject to the same

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 240.11Aa3-2.

<sup>3</sup> OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3-2 thereunder. See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

Basic Service device-based fee and the same FCO Service device-based fee, or elect to pay the Basic Service Enterprise Rate fee as an alternative to the Basic Service device-based fee at a rate per registered representative that is more closely aligned to the uniform device-based rate. OPRA's Basic Service consists of market data and related information pertaining to equity and index options. OPRA's FCO Service consists of this same information pertaining to foreign currency options. As a result of these changes, by the beginning of 2007, OPRA would have eliminated all distinctions in the device fees paid by professional subscribers based on the subscriber's status as a member or nonmember of an exchange that is a party to the OPRA Plan, as well as distinctions in the per-device fee based on the total number of OPRA-enabled devices of each professional subscriber.

The annual incremental changes to OPRA's professional subscriber fees proposed to be made over a four year period, including the changes to be made at the beginning of the fourth year when all device-based fees would be the same for all professional subscribers, are estimated by OPRA to increase total OPRA revenues derived from these fees by approximately 5% each year. This would be at or below the rate at which OPRA has increased professional subscriber fees in the past. Since Professional Subscribers currently pay device-based fees at different rates depending on their status as members or nonmembers of exchanges and on the number of devices through which they access OPRA information, in one or more of the four years during which these distinctions are being phased out, some Professional Subscribers would see their fees increase by more than the 5% average, although a greater number of Professional Subscribers would actually see their OPRA fees decrease. Professional subscribers are persons who subscribe to OPRA Information and do not qualify for the reduced fees charged to nonprofessional subscribers.

The elimination from OPRA's device-based professional subscriber fees of both the member and nonmember distinction and the volume discount is intended to make OPRA's rate structure simpler and fairer in light of continuing changes in communications and

computer technology as well as in the structure of exchanges and in the nature of exchange membership. All of these combine to make these distinctions no longer useful. OPRA proposes to phase in the elimination of these fee distinctions over a four-year period in order to avoid making too great a change to the fees paid by any one professional subscriber in a single year.

The 5% annual increase in OPRA revenues estimated to result from these proposed fee changes is needed to defray the ever-increasing costs incurred by OPRA in collecting, processing, and disseminating options market data. These costs have increased over the past several years on account of the expansion of options trading and the introduction of new services, such as OPRA's BBO service that was introduced in 2003. OPRA's costs are expected to continue to increase over the next four years in light of anticipated continued growth in the number of messages that OPRA would be required to handle as a result of the entry of new options exchanges and the expansion of trading on existing exchanges, and changes in the trading and quoting methodologies used by OPRA's exchanges that are expected to increase significantly the number of individual quotes generated by each exchange.

The text of the proposed Professional Subscriber Fee Schedule is set forth below.

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#### OPTIONS PRICE REPORTING AUTHORITY

##### Professional Subscriber Fee Schedule

(Effective April 1, 2004)

##### Basic Service

Subscriber shall pay a monthly fee based upon the number of electronic display or interrogation devices maintained by Subscriber that are capable of displaying or reporting OPRA Information. OPRA's device-based professional subscriber fees are subject to written policies. These policies are available at [www.opradata.com](http://www.opradata.com). Copies of these policies have been furnished to all professional subscribers, and additional copies will be mailed to subscribers upon request. The monthly fee per device shall be as follows:

Number of Devices	Basic Service							
	2004		2005		2006		2007	
	Member	Non-Member	Member	Non-Member	Member	Non-Member	Member	Non-Member
1–9 .....	\$20.50	\$32.25	\$20.50	\$32.25	\$20.50	\$32.25	\$20.00	\$20.00
10–29 .....	20.50	27.50	20.50	27.50	20.50	27.50	20.00	20.00
30–99 .....	18.00	27.50	19.00	27.50	20.00	27.50	20.00	20.00
100–749 .....	18.00	20.00	19.00	20.00	20.00	20.00	20.00	20.00
750+ .....	14.00	20.00	15.75	20.00	17.75	20.00	20.00	20.00

### Enterprise Rate Professional Subscriber Fee

As an alternative to the Device-based Professional Subscriber Fee, OPRA's Enterprise Rate Professional Subscriber Fee is available to those Subscribers that are members or associate members in good standing of one or more of the exchanges that are parties to the OPRA Plan, and that elect to pay Subscriber Fees at the Enterprise Rate by signing the Enterprise Rate Amendment to the Subscriber Agreement. The Enterprise Rate Subscriber Fee in effect commencing April 1, 2004 is a monthly fee of \$12.00 times the number of a Subscriber's registered representatives based in the United States, its territories and possessions as reported by the NASD, subject to a minimum monthly fee of \$2,400 per subscriber and subject to adjustment in accordance with the Enterprise Rate Amendment to the Subscriber Agreement. Effective January

1, 2005, the Enterprise Rate Subscriber Fee will be \$14.00 per registered representative subject to a minimum monthly fee of \$2,800, effective January 1, 2006, the Enterprise Rate Subscriber Fee will be \$16 per registered representative subject to a minimum monthly fee of \$3,200, and effective January 1, 2007, the Enterprise Rate Subscriber Fee will be \$20 per registered representative subject to a minimum monthly fee of \$4,000. Payment of the Enterprise Rate Professional Subscriber Fee entitles Subscriber to access OPRA's Basic Service at any of its locations in the United States, its territories and possessions, except that Subscribers who pay the Enterprise Rate Professional Subscriber Fee on the basis of more than 7,000 registered representatives (*i.e.*, a monthly fee in excess of \$84,000 in 2004, \$98,000 in 2005, \$112,000 in 2006, and \$140,000 in 2007) are entitled to access OPRA's

Basic Service at any of their locations worldwide. In addition, payment of the Enterprise Rate Professional Subscriber Fee by a Subscriber allows OPRA's Basic Service to be made available to independent investment advisers who are under contract with the Subscriber to provide investment advisory services to the Subscriber's customers. All such investment advisers will be deemed to be registered representatives of the Subscriber for purposes of calculating the Subscriber's Enterprise Rate Professional Subscriber Fee.

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### FCO Service

Subscriber shall pay a monthly fee based upon the number of electronic display or interrogation devices maintained by Subscriber that are capable of displaying or reporting OPRA's FCO Service. The monthly fee per device shall be as follows:

Number of devices	2004	2005	2006	2007
1 .....	\$3.75	\$4.25	\$4.75	\$5.00
2–9 .....	3.25	3.75	4.25	5.00
10–749 .....	3.00	3.50	4.25	5.00
750+ .....	2.25	3.00	4.00	5.00

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### II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3–2 under the Act,<sup>4</sup> OPRA designates this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, thereby qualifying for effectiveness upon filing. In order to provide persons subject to these fees advance notice of the changes, OPRA proposes that the revised fees go into effect on April 1, 2004. The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by

Commission order pursuant to Rule 11Aa3–2(c)(2) under the Act,<sup>5</sup> if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a national market system; or otherwise in furtherance of the purposes of the Act.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-OPRA-2004-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any

<sup>4</sup> 17 CFR 240.11Aa3–2(c)(3)(i).

<sup>5</sup> 17 CFR 240.11Aa3–2(c)(2).

person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR-OPRA-2004-01 and should be submitted by April 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27812]

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

March 10, 2004.

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 March 31, 2004, 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 March 31, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

<sup>6</sup> 17 CFR 200.30-3(a)(29).

### AGL Resources Inc. (70-10175)

AGL Resources Inc. ("AGL Resources"), a registered public utility holding company, Ten Peachtree Place, Suite 1000, Atlanta, Georgia 30309, AGL Resources' electric and gas public utility subsidiaries, Atlanta Gas Light Company ("AGLC"), Ten Peachtree Place, Suite 1000, Atlanta, Georgia 30309; Chattanooga Gas Company ("CGC") 2207 Olan Mills Drive, Chattanooga, Tennessee 37421; Virginia Natural Gas, Inc. ("VNG"), 5100 East Virginia Beach Boulevard, Norfolk, Virginia 23502, (AGLC, CGC, and VNG collectively "Utility Subsidiaries"); and AGL Resources' direct and indirect nonutility subsidiaries ("Nonutility Subsidiaries" and collectively with the Utility Subsidiaries, "Subsidiaries") Georgia Natural Gas Company ("GNG"); AGL Investments, Inc. ("AGLI"); AGL Services Company ("AGL Services"); AGL Capital Corporation ("AGL Capital"); Global Energy Resource Insurance Corporation ("GERIC"); Pivotal Energy Services, Inc. ("Pivotal Energy Services"); AGL Rome Holdings, Inc.; Pivotal Propane of Virginia, Inc.; Southeastern LNG, Inc. ("Southeastern LNG"); AGL Capital Trust I; AGL Capital Trust II; AGL Capital Trust III; Trustees Investments, Inc.; Customer Care Services, Inc. ("Customer Care Services"); AGL Networks, LLC ("AGL Networks"); AGL Energy Corporation ("AGL Energy"); and AGL Propane Services, Inc. ("AGL Propane"); Ten Peachtree Place, Suite 1000, Atlanta, Georgia 30309, SouthStar Energy Services, LLC ("SouthStar"), 817 West Peachtree Street, Atlanta, Georgia 30308, Sequent Energy Management, LP; Sequent Holdings, LLC; Sequent, LLC; Sequent Energy Marketing, LP, 1200 Smith Street Suite 900, Houston, Texas 77002 (collectively, "Applicants") have filed an application ("Application") under to sections 6(a), 7, 9(a), 10, and 12 of the Act and rules 43, 45, 46, and 54 under the Act.

### I. Background

By order dated October 5, 2000 (HCAR No. 27243) ("Merger Order"), AGL Resources was authorized to acquire all of the issued and outstanding common stock of VNG. AGL Resources registered as a holding company under the Act on October 10, 2000. AGL Resources owns directly all of the issued and outstanding common stock of three public utility companies, AGLC, CGC, and VNG.

### II. Description of the Parties

#### A. AGL Resources

AGL Resources directly owns AGLC, CGC, VNG, GNG, AGL Services, AGL Capital, GERIC, AGLI. AGL Resources' common stock has a five-dollar (\$5.00) par value and is listed and traded on the New York Stock Exchange under the symbol "ATG." As of June 30, 2003 AGL Resources had 63,731,156 shares of common stock issued and outstanding. As of and for the six months ended June 30, 2003, AGL Resources had total assets of \$3.66 billion, net utility plant assets of \$2.07 billion, total operating revenues of \$539.1 million, operating margin<sup>1</sup> of \$345.1 million and net income of \$70.7 million. As of and for the twelve months ended December 31, 2002, AGL Resources had total assets of \$3.74 billion, net utility plant assets of \$2.06 billion, total operating revenues of \$877.2 million, operating margin of \$609.0 million and net income of \$103.0 million.

#### Utility Subsidiaries

##### B. Utility Subsidiaries

###### 1. Atlanta Gas Light Company

Applicants state that AGLC is a natural gas local distribution utility with distribution systems and related facilities serving 237 cities throughout Georgia, including Atlanta, Athens, Augusta, Brunswick, Macon, Rome, Savannah, and Valdosta. AGLC also has approximately 6.0 billion cubic feet, or Bcf, of liquefied natural gas ("LNG") storage capacity in three LNG plants to supplement the supply of natural gas during peak usage periods. As of and for the six months ended June 30, 2003, AGLC had total assets of \$2.34 billion, total operating revenues of \$249.9 million and net income of \$40.1 million. As of and for the twelve months ended December 31, 2002, AGLC had total assets of \$2.37 billion, total operating revenues of \$538.9 million and net income of \$80.0 million. AGLC owns all of the outstanding stock of AGL Rome Holdings, Inc. AGL Rome Holdings, Inc. owns property associated with a former manufactured gas plant in Rome, Georgia.

###### 2. Chattanooga Gas Company

CGC is a natural gas local distribution utility with distribution systems and related facilities serving 12 cities and surrounding areas, including the Chattanooga and Cleveland areas of Tennessee. CGC also has approximately 1.2 Bcf of LNG storage capacity in its

<sup>1</sup> Applicants state that operating margin represents operating revenues less cost of sales.