

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.⁶

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.

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 margin¹ 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

¹ Applicants state that operating margin represents operating revenues less cost of sales.

⁶ 17 CFR 200.30-3(a)(29).

LNG plant. As of and for the six months ended June 30, 2003, CGC had total assets of \$140.8 million, total operating revenues of \$51.4 million and net income of \$3.8 million. As of and for the twelve months ended December 31, 2002, CGC had total assets of \$142.7 million, total operating revenues of \$75.3 million and net income of \$7.0 million.

3. Virginia Natural Gas, Inc.

VNG is a natural gas local distribution utility with distribution systems and related facilities serving eight cities in the Hampton Roads region of southeastern Virginia. VNG owns and operates approximately 155 miles of a separate high-pressure pipeline that provides delivery of gas to customers under firm transportation agreements within the state of Virginia. VNG also has approximately 5.0 million gallons of propane storage capacity in its two propane facilities to supplement the supply of natural gas during peak usage periods. As of and for the six months ended June 30, 2003, VNG had total assets of \$648.3 million, total operating revenues of \$201.0 million and net income of \$17.7 million. As of and for the twelve months ended December 31, 2002, VNG had total assets of \$637.5 million, total operating revenues of \$283.2 million and net income of \$19.5 million.

C. Nonutility Subsidiaries

1. Georgia Natural Gas Company

GNG, a wholly owned subsidiary of AGL Resources, owns a non-controlling 70% financial interest in SouthStar. SouthStar, a joint venture formed in 1998, markets retail natural gas and related services to industrial, commercial and residential customers, principally in Georgia. SouthStar is the largest marketer in Georgia with a market share of 38% and operates under the trade name Georgia Natural Gas. At the formation of SouthStar, GNG owned a 50% interest; however, in March 2003, AGL Resources, through GNG, purchased an additional 20% ownership interest in SouthStar. Upon closing, GNG owned a non-controlling 70% financial interest in SouthStar and a subsidiary of Piedmont Natural Gas Company owned the remaining 30%. Although GNG owns 70% of SouthStar, GNG states that it does not have a controlling interest, as matters of significance require the unanimous vote of SouthStar's governing board. GNG and SouthStar are "gas-related companies" under rule 58 of the Act.

2. AGL Investments, Inc.

AGLI is an intermediate holding company for AGL Resources' investments in Sequent Energy Management, LP, AGL Networks, AGL Propane Services, AGL Energy, and other Nonutility Subsidiaries.

(i) Sequent, LLC is an intermediate holding company for Sequent Energy Management, LP; Sequent Energy Marketing, LP; and Sequent Holdings, LLC; collectively referred to as "Sequent." Sequent provides asset optimization, gas supply services, and wholesale marketing and risk management services for third parties and the Utility Subsidiaries. Asset optimization activities focus on capturing the value from idle or underutilized natural gas assets, typically by participating in transactions that balance the needs of varying markets and time horizons. These assets include rights to pipeline capacity, underground storage, and natural gas peaking services and facilities. Sequent related activities also include the aggregation of gas from other marketers and producers and its resale to third parties and the Utility Subsidiaries. In addition, Sequent may bundle this commodity with transportation and storage service and sell short-term and long-term gas supply on a delivered basis. The Sequent organization is a "gas-related company" under rule 58 of the Act.

(ii) AGL Networks is a carrier-neutral provider of last-mile infrastructure and dark fiber solutions to a variety of customers in Atlanta, Georgia, and Phoenix, Arizona. AGL Networks is an exempt telecommunications company under section 34 of the Act.

(iii) AGL Propane holds a 22.36% membership interest in US Propane L.P.; and AGL Energy Corporation holds a membership interest in US Propane, LLC, the general partner of US Propane L.P. US Propane L.P. owns all of the general partnership interests and approximately 25% of the limited partnership interests, in Heritage Propane Partners, L.P. ("Heritage"). Heritage, a publicly traded company, is a marketer of propane through a nationwide retail distribution network and is the fourth largest retail marketer of propane in the United States.

(iv) AGL Investments is also the sole shareholder of the following active companies: Trustees Investments, Inc., which owns a residential and retail development in Savannah, Georgia, located on or adjacent to manufactured gas plant sites; Customer Care Services; Pivotal Energy Services, and Southeastern LNG.

3. AGL Services Company

AGL Services Company is a service company established in accordance with section 13 of the Act. AGL Services Company provides business services to AGL Resources and its various Subsidiaries.

4. AGL Capital Corporation

AGL Capital is a financing subsidiary that provides for the ongoing financing needs of AGL Resources through a commercial paper program, the issuance of various debt and hybrid securities and other financing arrangements.

5. AGL Capital Trust I, AGL Capital Trust II, and AGL Capital Trust III

AGL Capital Trust I, AGL Capital Trust II and AGL Capital Trust III are Delaware statutory business trusts established for the purpose of issuing trust preferred securities. AGL Resources owns 100% of AGL Capital Trust I common stock and AGL Capital Trust I owns AGL Resources' 8.17% junior subordinated deferrable interest debentures. AGL Capital owns 100% of AGL Capital Trust II's common stock and AGL Capital Trust II owns AGL Capital's 8% junior subordinated deferrable interest debentures. AGL Capital Trust III exists for the exclusive purposes of issuing and selling its trust preferred securities and common securities, using the proceeds from the sale of these securities to acquire unsecured debt obligations of AGL Capital, and making distributions to the holders of trust securities. As of the date hereof, no securities have been issued by AGL Capital Trust III.

6. Global Energy Resource Insurance Corporation

By order dated April 13, 2001 (HCAR No. 27378), the Commission authorized GERIC, a captive insurance company, to underwrite certain insurance for AGL Resources and its Subsidiaries.

III. Overview of the Requests

Applicants request authorization to engage in the following financing transactions during the period from the effective date of the order granted in this Application through March 31, 2007 ("Authorization Period").

Applicants state that the proceeds from the sale of securities in external financing transactions will be used for general corporate purposes, including the financing, in part, of the capital expenditures and working capital requirements of AGL Resources and its Subsidiaries, for the acquisition, retirement or redemption of securities previously issued by AGL Resources or the Subsidiaries, and for authorized

investments in companies organized in accordance with rule 58 under the Act ("Rule 58 Companies"), exempt wholesale generators ("EWGs"), as defined in section 32 of the Act, foreign utility companies ("FUCOs"), as defined in section 33 of the Act, exempt telecommunications companies ("ETCs"), as defined in section 34 of the Act, and for other lawful purposes.

Applicants request authorization for the following transactions through the Authorization Period:

(i) issuances and sales of securities or borrowings during the Authorization Period by AGL Resources of up to \$5 billion at any time outstanding ("AGL Resources External Limit");

(ii) issuances by AGL Resources of guarantees and other forms of credit support in an aggregate amount of \$1 billion at any time outstanding ("AGL Resources Guarantee Limit");

(iii) issuances by AGLC, CGC, and VNG of guarantees and other forms of credit support with respect to the obligations of their respective subsidiaries in an amount not to exceed and \$300 million, \$75 million, and \$150 million, respectively ("Utility Guarantees");

(iv) short-term borrowings by AGLC of \$750 million and CGC of \$250 million in short-term debt;

(v) hedging transactions by AGL Resources and the Utility Subsidiaries with respect to their indebtedness;

(vi) reorganization of the current combined system money pool into separate utility and non-utility money pools, and borrowings by the Subsidiaries under the new money pools;

(vii) changes in the terms of any wholly owned Subsidiary's authorized capital stock capitalization;

(viii) payment of dividends out of capital or unearned surplus by Nonutility Subsidiaries;

(ix) acquisition by AGL Resources and the Subsidiaries of the equity securities of one or more special purpose subsidiaries ("Financing Subsidiaries") organized solely to facilitate a financing

transaction and to guarantee the securities issued by Financing Subsidiaries;

(x) restructuring of AGL Resources' nonutility interests from time to time, including the establishment of one or more intermediate subsidiaries ("Intermediate Subsidiaries") organized exclusively for the purpose of acquiring, financing, and holding the securities of one or more existing or future Nonutility Subsidiaries; and

(xi) issuance of up to 22 million shares of common stock under dividend reinvestment and stock-based management incentive and employee benefit plans ("Common Stock Plan Limit").

IV. Financing Authorization

A. Parameters for Financing Transactions

Applicants state that financings will be subject to the following limitations ("Financing Limitations"):

(i) the cost of money on debt financings and the dividend rate on preferred stock or other types of preferred or equity-linked securities under the authorizations requested will be consistent with those of similar securities of comparable credit quality and maturities issued by other companies;

(ii) the maturity of long-term indebtedness will not exceed fifty years and short-term debt will mature within one year;

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

(iv) AGL Resources will maintain common stock equity² as a percentage of total capitalization,³ as shown in its most recent quarterly consolidated balance sheet, of at least 30% or above. Applicants state that each Utility Subsidiary on an individual basis will maintain common stock equity of at least 30% of total capitalization as shown in its most recent quarterly balance sheet; and

(v) Applicants further represent that, except for securities issued for the purpose of funding money pool ("Money Pool") operations, no guarantees or other securities, other than common stock, may be issued in reliance upon the authorization granted by the Commission under this Application, unless (a) the security to be issued, if rated, is rated investment grade; (b) all outstanding securities of the issuer that are rated, are rated investment grade; and (c) all outstanding securities of AGL Resources that are rated, are rated investment grade. For purposes of this provision, a security will be deemed to be rated "investment grade" if it is rated investment grade by at least one nationally recognized statistical rating organization ("NRSRO"), as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3-1 under the Securities Exchange Act of 1934, as amended ("1934 Act"). Applicants request that the Commission reserve jurisdiction over the issuance of any securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities in reliance upon the authorization granted by the Commission under this Application at any time that the conditions set forth in clauses (a) through (c) above are not satisfied.

B. Financial Condition

1. *Capital Structure:* AGL Resources' capital structure as of June 30, 2003, is shown in the following table:

	(\$ millions)	% of total capitalization
Short-term debt	\$306.4	13.4
Current portion of long-term debt	77.0	3.3
Senior and Medium-Term Notes (net of interest rate swaps of \$2.3 million)	730.8	32.0
Trust Preferred Securities (net of interest rate swaps of \$6.9 million)	225.3	9.9
Total debt	1,339.5	58.6
Common shareholders' equity (net of interest rate swaps of \$6.9)	945.3	41.4
Total capitalization	\$2,284.8	100.0

² Applicants state that common stock equity ("Common Stock Equity") includes common stock (i.e., amounts received equal to the par or stated

value of the common stock), additional paid in capital, retained earnings and minority interests.

³ Applicants would calculate the Common Stock Equity to total capitalization ratio as follows:

common stock equity (common stock equity + preferred stock + gross debt). Gross debt is the sum of long-term debt, short-term debt and current maturities.

2. Current Debt Ratings: The debt ratings of AGL Resources and certain of its Subsidiaries are set forth below:

Company/Type of facility	Moody's	S&P	Fitch
AGL Resources/AGL Capital Corporation Commercial Paper*	P-2	A-2 ...	F-2
AGL Resources/AGL Capital Corporation Senior Notes*	Baa1	BBB+	A-
AGL Resources/AGL Capital Trust I Trust Preferred Securities*	Baa2	BBB ..	BBB+
AGL Resources/AGL Capital Trust II Trust Preferred Securities*	Baa2	BBB ..	BBB+
Atlanta Gas Light Company Medium-Term Notes**	A3	A-	A

* AGL Resources guarantees payment of these securities subject to the terms and conditions of various Guarantee Agreements.

** CGC and VNG currently have no externally held securities and therefore are not rated by any NRSRO.

V. Description of Specific Types of Financing

A. AGL Resources External Financing

AGL Resources seeks authorization to issue equity and debt securities aggregating not more than the AGL Resources External Limit at any one time outstanding during the Authorization Period. These securities could include, but would not necessarily be limited to, common stock, preferred stock, preferred stock equivalent securities, options, warrants, purchase contracts, units (consisting of one or more purchase contracts, warrants, debt securities, shares of preferred stock, shares of common stock or any combination of such securities), long- and short-term debt (including commercial paper), convertible securities, subordinated debt, bank borrowings and securities with call or put options. In addition, AGL Resources also seeks authorization to issue shares of common stock or options to purchase shares under stock purchase/dividend reinvestment plans and stock-based management incentive and employee benefit plans up to the Common Stock Plan Limit. Securities issued under the Common Stock Plan Limit would not reduce the AGL Resources' capacity to issue securities under the AGL Resources External Limit.

B. Common Stock

AGL Resources seeks authority to issue common stock in an aggregate amount outstanding not to exceed the AGL Resources External Limit at any time during the Authorization Period. Specifically, AGL Resources proposes to issue and sell common stock, options, warrants, purchase contracts, units, other stock purchase rights exercisable for common stock and securities with some of the characteristics of AGL Resources common stock. AGL Resources may perform common stock financings through underwriting agreements of a type generally standard in the industry. Public distributions may be made by private negotiation

with underwriters, dealers or agents as discussed below or through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All common stock sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets. Underwriters may resell common stock from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. AGL Resources also may grant underwriters a "green shoe" option permitting common stock to be offered solely for the purpose of covering over-allotments.

AGL Resources also seeks authorization to issue common stock or options, warrants or other stock purchase rights exercisable for common stock in public or privately negotiated transactions as consideration for the equity securities or assets of other companies, provided that the acquisition of any equity securities or assets has been authorized by the Commission or is exempt under the Act or rules under the Act. The ability to offer stock as consideration may make a transaction more economical for AGL Resources as well as for the seller of the business. For purposes of calculating compliance with the AGL Resources External Limit, AGL Resources' common stock would be valued based upon the negotiated agreement between the buyer and the seller.

C. Equity Compensation Plans

AGL Resources proposes, from time to time, during the Authorization Period to issue and/or acquire in open market transactions or by some other method that complies with applicable law and Commission interpretations then in effect, up to 22 million shares of AGL Resources common stock under AGL Resources' dividend reinvestment plan, certain incentive compensation plans and other employee benefit plans

currently existing or that may be adopted in the future.

D. Preferred Stock

AGL Resources may issue preferred stock from time to time during the Authorization Period. Preferred stock or other types of preferred or equity-linked securities may be issued in one or more series with rights, preferences, and priorities as may be designated in the instrument creating each series, as determined by AGL Resources' board of directors. Dividends or distributions on preferred stock or other preferred securities will be made periodically and to the extent funds are legally available for that purpose, but may be made subject to terms that allow the issuer to defer dividend payments for specified periods. Preferred stock or other preferred securities may be convertible or exchangeable into shares of AGL Resources' common stock or unsecured indebtedness.

E. Long-Term Debt

AGL Resources proposes to issue long-term debt in accordance with the conditions described in Financing Limitations. Any long-term debt security would have the maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms and other terms and conditions as AGL Resources may determine at the time of issuance. Any long-term debt (i) may be convertible into any other authorized securities of AGL Resources; (ii) will have maturities ranging from one to fifty years; (iii) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount; (iv) may be entitled to mandatory or optional sinking-fund provisions; (v) may provide for reset of the coupon pursuant to a remarketing arrangement; (vi) may be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event; (vii) may be called from existing

investors by a third party; or (viii) may be entitled to the benefit of financial or other covenants.

F. Short-Term Debt

AGL Resources requests authorization to issue directly, or indirectly through Financing Subsidiaries existing or to be formed under the authorization requested herein, short-term debt including, but not limited to, institutional borrowings, commercial paper and bid notes. Issuance of short-term debt will be under terms determined by AGL Resources at the time of issuance and in accordance with the Financing Limitations. Short-term debt issued by AGL Resources will be unsecured. Proceeds of any short-term debt issuance may be used to refund short-term debt, to refund maturing long-term debt, and to provide financing for general corporate purposes, working capital requirements and Subsidiary capital expenditures until long-term financing can be obtained.

Applicants state that AGL Resources maintains committed lines of bank credit for \$500 million with various banks. Sequent maintains an unsecured line of credit in the current amount of \$15 million for the posting of margin deposits, which is guaranteed by AGL Resources.

AGL Resources may sell commercial paper, from time to time, in established domestic or European commercial paper markets. Commercial paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from AGL Resources will reoffer this paper at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities and finance companies.

AGL Resources proposes to engage in other types of short-term financing generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance. Applicants state that any additional short-term financing would be conducted in accordance with the Financing Limitations.

To the extent credit is extended under either commercial paper or short-term debt facilities during the Authorization Period, these amounts would be included within the AGL Resources

External Limit and would be subject to the Financing Limitations.

G. Hedges and Interest Rate Risk Management

AGL Resources requests authority to enter into, perform, purchase and sell financial instruments intended to manage the volatility of interest rates, including but not limited to interest rate swaps, caps, floors, collars and forward agreements or any other similar agreements ("Hedging Instruments"). Hedging Instruments, in addition to the foregoing sentence, may also include the issuance of structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or agency (*e.g.*, Federal National Mortgage Association) obligations or London Inter-Bank Offer Rate-based swap instruments. AGL Resources would employ Hedging Instruments as a means of prudently managing the risk associated with any of its outstanding debt by, in effect, synthetically (i) converting variable-rate debt to fixed-rate debt; (ii) converting fixed rate debt to variable rate debt; (iii) limiting the impact of changes in interest rates resulting from variable-rate debt; and (iv) providing an option to enter into interest rate swap transactions in future periods for planned issuances of debt securities. In no case will the notional principal amount of any Hedging Instrument exceed that of the underlying debt instrument and related interest rate exposure. Thus, AGL Resources will not engage in "leveraged" or "speculative" transactions. The underlying interest rate indices of such Hedging Instrument will closely correspond to the underlying interest rate indices of AGL Resources' debt to which such Hedging Instrument relates. Off-exchange Hedging Instruments would be entered into only with counterparties whose senior debt ratings are investment grade as determined by any one of Standard & Poor's, Moody's Investors Service, Inc. or Fitch IBCA, Inc. ("Approved Counterparties").

In addition, AGL Resources requests authorization to enter into Hedging Instruments with respect to anticipated debt offerings ("Anticipatory Hedges"), subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be used to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded Hedging Instruments ("Forward

Sale"); (ii) the purchase of put options on Hedging Instruments ("Put Options Purchase"); (iii) a Put Options Purchase in combination with the sale of call options on Hedging Instruments ("Zero Cost Collar"); (iv) transactions involving the purchase or sale, including short sales, of Hedging Instruments; or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges.

Hedging Instruments may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. AGL Resources will determine the optimal structure of each Hedging Instrument transaction at the time of execution.

H. Guarantees

AGL Resources requests authorization to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support ("Guarantees") with respect to the obligations of its Subsidiaries as may be appropriate or necessary to enable the Subsidiaries to carry on in the ordinary course of their respective businesses in an aggregate principal amount not to exceed the \$1 billion AGL Resources Guarantee Limit outstanding at any one time. In addition, Applicants request authority for AGL, CGC, and VNG to issue Guarantees in an amount not to exceed \$300 million, \$75 million, and \$150 million, respectively with respect to the obligations of their Subsidiaries.⁴ All debt guaranteed will comply with the Financing Parameters. Applicants state that included in this amount are Guarantees entered into by AGL Resources that were previously issued in favor of its Subsidiaries to the extent that they remain outstanding during the Authorization Period. Applicants request that the limit on Guarantees be separate from the AGL Resources External Limit. Currently, AGL Resources guarantees credit exposures in Sequent's energy marketing and risk management business and certain obligations with respect to SouthStar.

⁴ Applicants state that AGL Capital is a financing subsidiary that relies on an AGL Resources Guarantee for its credit. Borrowings by AGL Capital are considered to be securities issued by AGL Resources. AGL Resources' guarantee of AGL Capital's liabilities is not included in the AGL Resources Guarantee Limit.

As of December 31, 2003, AGL Resources had issued and had outstanding Guarantees on behalf of Subsidiaries in an aggregate amount of approximately \$228.5 million; however, AGL Resources' issued and outstanding Guarantees on behalf of Subsidiaries for the 2003/2004 winter was in excess of \$425 million.

Applicants state that Guarantees may take the form of, among others, direct guarantees, reimbursement undertakings under letters of credit, "keep well" undertakings, agreements to indemnify, expense reimbursement agreements, and credit support with respect to the obligations of the subsidiary companies as may be appropriate to enable the system companies to carry on their respective authorized or permitted businesses. Any Guarantee that is outstanding at the end of the Authorization Period shall remain in force until it expires or terminates in accordance with its terms.

Applicants state that certain Guarantees may be in support of obligations that are not capable of exact quantification. In these cases, AGL Resources and the Utility Subsidiaries will determine the exposure under a Guarantee for purposes of measuring compliance with the appropriate Guarantee limit by appropriate means, including estimation of exposure based on potential payment amounts. Applicants request authority for each Subsidiary to be charged a fee for any Guarantee provided on its behalf that is not greater than the cost, if any, incurred by the guarantor in obtaining the liquidity necessary to perform the Guarantee for the period of time the Guarantee remains outstanding.

VI. Utility Subsidiary Short-Term Debt

The Utility Subsidiaries request authority to enter into, perform, purchase and sell Hedging Instruments in the same manner as requested by AGL Resources above.

AGLC and CGC propose to issue up to \$750 million and \$250 million, respectively, of short-term debt consisting of commercial paper, secured or unsecured bank loans and borrowings under the utility money pool ("Utility Money Pool"), at any one time outstanding during the Authorization Period ("Utility Short-Term Debt Limit"). These issuances of securities will comply with the Financing Limitations.

If a Utility Subsidiary elects to issue commercial paper, either under rule 52 of the Act or under an applicable Commission order, each Utility Subsidiary requests that it be authorized to be made party to any AGL Resources'

credit facility as back-up to the commercial paper.

VII. Authorization and Operation of the Money Pools

Applicants request authority for AGL Resources and the Utility Subsidiaries to operate a Utility Money Pool, and for the Utility Subsidiaries to make unsecured short-term borrowings from the Utility Money Pool, to contribute surplus funds to the Utility Money Pool, and to lend and extend credit to (and acquire promissory notes from) one another through the Utility Money Pool.

In addition, to the extent not exempt under rule 52(b), Applicants request authority for AGL Resources and the Nonutility Subsidiaries to operate a nonutility money pool ("Nonutility Money Pool"), and the Nonutility Subsidiaries to make unsecured short-term borrowings from the Nonutility Money Pool, to contribute surplus funds to the Nonutility Money Pool, and to lend and extend credit to (and acquire promissory notes from) one another through the Nonutility Money Pool.

AGL Resources requests authorization to contribute surplus funds and to lend and extend credit to (i) the Utility Subsidiaries through the Utility Money Pool and (ii) the Nonutility Subsidiaries through the Nonutility Money Pool. AGL Resources will not borrow from either the Utility Money Pool or the Nonutility Money Pool. AGL Services will serve as administrator for both the Utility Money Pool and the Nonutility Money Pool. Applicants request that the Commission reserve jurisdiction over the participation of any AGL Resources system company in either money pool as a borrower until the record in this matter has been supplemented with additional information regarding the proposed participant.

Applicants state that Utility Money Pool funds are available from the following sources for short-term loans to the participating companies from time to time (i) surplus funds in the treasuries of participants and (ii) proceeds received by the participants from the sale of commercial paper and borrowings from banks ("External Funds"). Funds are made available from sources in the order that AGL Services, as the administrator under the Utility Money Pool Agreement, determines would result in a lower cost of borrowing compared to the cost that would be incurred by the borrowing participants individually in connection with external short-term borrowings, consistent with the individual borrowing needs and financial standing of Utility Money Pool participants that invest funds in the Utility Money Pool.

Each company that is authorized to borrow from the Utility Money Pool ("Eligible Borrower") will borrow pro rata from each Utility Money Pool participant that invests surplus funds, in the proportion that the total amount invested by the investing participant bears to the total amount then invested in the Utility Money Pool. The interest rate charged to Eligible Borrowers on borrowings under the Utility Money Pool will be equal to AGL Resources' actual cost of external short-term borrowings and the interest rate paid on loans to the Utility Money Pool would be a weighted average of the interest rate earned on loans made by the Utility Money Pool and the return on excess funds earned from the investments described below. The interest income and investment income earned on loans and investments of surplus funds would be allocated among those Utility Money Pool participants that have invested funds in accordance with the proportion each participant's investment of funds bears to the total amount of funds invested in the Utility Money Pool.

Funds not required by the Utility Money Pool to make loans (with the exception of funds required to satisfy the Utility Money Pool's liquidity requirements) would ordinarily be invested in one or more short-term investments, including (i) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities; (ii) commercial paper; (iii) certificates of deposit; (iv) bankers' acceptances; (v) repurchase agreements; (vi) tax exempt notes; (vii) tax exempt bonds; (viii) tax exempt preferred stock; and (ix) other investments that are permitted by section 9(c) of the Act and rule 40 thereunder.

Each Eligible Borrower receiving a loan through the Utility Money Pool would be required to repay the principal amount of the loan, together with all interest accrued thereon, on demand and in any event within one year after the date of the loan. All loans made through the Utility Money Pool may be prepaid by the borrower without premium or penalty and without prior notice. Applicants state that the Nonutility Money Pool would be operated on the same terms as the Utility Money Pool.

VIII. Changes in Capital Stock of Wholly-Owned Subsidiaries

Applicants request authority to change the terms of any wholly owned subsidiary's authorized capital stock capitalization by an amount deemed appropriate by AGL Resources or other intermediate parent company. Applicants state that the portion of an

individual Subsidiary's aggregate financing to be effected through the sale of stock to AGL Resources or other immediate parent company during the Authorization Period under rule 52 and/or an order issued in this file is unknown at this time. The proposed sale of capital securities (*i.e.*, common stock or preferred stock) may in some cases exceed the then authorized capital stock of a Subsidiary. In addition, the Subsidiary may choose to use capital stock with no par value.

The requested authorization is limited to AGL Resources' wholly owned Subsidiaries and will not affect the aggregate limits or other conditions contained herein. A Subsidiary would be able to change the par value, or change between par value and no-par stock, without additional Commission approval. Any such action by a Utility Subsidiary would be subject to and would only be taken upon the receipt of any necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business. In addition, each of the Utility Subsidiaries will maintain, during the Authorization Period, a common equity capitalization of at least 30%.

IX. Payment of Dividends Out of Capital or Unearned Surplus

Applicants request authority for the Nonutility Subsidiaries to pay dividends from time to time through the Authorization Period, out of capital and unearned surplus, to the extent permitted under applicable corporate law and state or national law applicable in the jurisdiction where each company is organized, and any applicable financing covenants.

AGL Resources anticipates that there will be situations in which a Nonutility Subsidiary will have unrestricted cash available for distribution in excess of the company's current and retained earnings. In these situations, the declaration and payment of a dividend would have to be charged, in whole or in part, to capital or unearned surplus. The sale of an asset, for example, may provide cash in excess of the selling company's retained earnings. In addition, distributions out of capital may be necessary in connection with winding down a subsidiary. Further, there may be periods during which unrestricted cash available for distribution by a Nonutility Subsidiary exceeds current and retained earnings due to the difference between accelerated depreciation allowed for tax purposes, which may generate significant amounts of distributable cash, and depreciation methods

required to be used in determining book income. Finally, even under circumstances in which a Nonutility Subsidiary has sufficient earnings, and therefore may declare and pay a dividend to its immediate parent, the immediate parent may have negative retained earnings, even after receipt of the dividend, due to losses from other operations. In this instance, cash would be trapped at a subsidiary level where there is no current need for it.

X. Financing Entities

AGL Resources and the Subsidiaries seek authorization to organize new corporations, trusts, partnerships or other entities, or to use existing Financing Entities, such as AGL Capital, that will facilitate financings by issuing short-term debt, long-term debt, preferred securities, equity securities, or other securities to third parties and transfer the proceeds of these financings to AGL Resources or their respective parent Subsidiaries. To the extent not exempt under rule 52, the Financing Entities also request authorization to issue these securities to third parties. In connection with this method of financing, AGL Resources and the Subsidiaries may (i) issue debentures or other evidences of indebtedness to Financing Entities in return for the proceeds of the financing; (ii) acquire voting interests or equity securities issued by the Financing Entities to establish ownership of the Financing Entities (the equity portion of the entity generally being created through a capital contribution or the purchase of equity securities, ranging from one to three percent of the capitalization of the Financing Entities); and (iii) guarantee a Financing Entity's obligations in connection with a financing transaction. Any amounts issued by Financing Entities to a third party under this authorization will be included in the overall external financing limitation authorized herein for the immediate parent of the Financing Entity. However, the underlying intra-system mirror debt and parent guarantee shall not be so included. AGL Resources and the Subsidiaries also request authorization to enter into support or expense agreements ("Expense Agreement") with Financing Entities to pay the expenses of any such entity. Any affiliate transactions entered into by a Financing Entity in connection with an Expense Agreement would be conducted at fair market value without regard to cost, and therefore, Applicants request an exemption under section 13(b) from the at cost standards of rules 90 and 91 for AGL Resources and the

Subsidiaries to enter into these transactions.

XI. Restructuring and Reorganization

Applicants propose to restructure AGL Resources' nonutility holdings from time to time as may be necessary or appropriate in the furtherance of AGL Resources and the Subsidiaries' authorized nonutility activities. Restructuring could involve the acquisition of one or more new subsidiaries to acquire and hold direct or indirect interests in any or all of AGL Resources and the Subsidiaries' existing or future authorized nonutility businesses. Restructuring could also involve the merger or transfer of existing subsidiaries, or portions of existing businesses, among the AGL Resources associates and/or the reincorporation of existing subsidiaries in a different state. This would enable AGL Resources and the Subsidiaries to consolidate similar businesses and to participate effectively in authorized nonutility activities, without the need to apply for or receive additional Commission approval.

These direct or indirect subsidiaries might be corporations, partnerships, limited liability companies or other entities in which AGL Resources, directly or indirectly, might have a 100% interest, a majority equity or debt position, or a minority debt or equity position. These subsidiaries would engage only in businesses to the extent AGL Resources and the Subsidiaries are authorized, whether by statute, rule, regulation or order, to engage in those businesses. AGL Resources does not seek authorization to acquire an interest in any nonassociate company as part of the authority requested in this Application and states that the reorganization will not result in the entry by AGL Resources and the Subsidiaries into a new, unauthorized line of business.

XII. Intermediate Subsidiaries

AGL Resources proposes to acquire, directly or indirectly, the securities of one or more entities ("Intermediate Subsidiaries"), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more EWGs, FUCOs, Rule 58 Companies, ETCs, or other non-exempt Nonutility Subsidiaries (as authorized in this proceeding or in a separate proceeding), provided that Intermediate Subsidiaries may also engage in administrative activities ("Administrative Activities") and development activities ("Development Activities"), defined below, relating to these subsidiaries.

Administrative Activities include ongoing personnel, accounting, engineering, legal, financial, and other support activities necessary to manage AGL Resources' investments in Nonutility Subsidiaries. Development Activities will be limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and other preliminary activities that may be required in connection with the purchase, acquisition, financing or construction of facilities, or the acquisition of securities of or interests in new businesses.

Administrative Activities will include ongoing personnel, accounting, engineering, legal, financial, and other support activities necessary to manage AGL Resources' investments in Nonutility Subsidiaries.

An Intermediate Subsidiary may be organized, among other things, (i) to facilitate the making of bids or proposals to develop or acquire an interest in any EWG, FUCO, Rule 58 Company, ETC or other Nonutility Subsidiary; (ii) after the award of such a bid proposal, to facilitate closing on the purchase or financing of an acquired company; (iii) at any time subsequent to the consummation of an acquisition of an interest in any such company to, among other things, effect an adjustment in the respective ownership interests in such business held by AGL Resources and non-affiliated investors; (iv) to facilitate the sale of ownership interests in one or more acquired non-utility companies; (v) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (vi) as a part of tax planning in order to limit AGL Resources' exposure to taxes; (vii) to further insulate AGL Resources and the Utility Subsidiaries from operational or other business risks that may be associated with investments in non-utility companies; or (viii) for other lawful business purposes.

Investments in Intermediate Subsidiaries may take the form of any combination of the following (i) purchases of capital shares, partnership

interests, member interests in limited liability companies, trust certificates or other forms of equity interests; (ii) capital contributions; (iii) open account advances with or without interest; (iv) loans; and (v) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries. Funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from (i) financings authorized in this proceeding; (ii) any appropriate future debt or equity securities issuance authorization obtained by AGL Resources from the Commission; and (iii) other available cash resources, including proceeds of securities sales by Nonutility Subsidiaries under rule 52. To the extent that AGL Resources provides funds or Guarantees directly or indirectly to an Intermediate Subsidiary that are used for the purpose of making an investment in any EWG, FUCO, or Rule 58 Company, the amount of the funds or Guarantees will be included in AGL Resources' "aggregate investment" in these entities, as calculated in accordance with rule 53 or rule 58, as applicable.

AGL Resources requests authorization to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in Nonutility Subsidiaries, and the activities and functions related to these investments. To effect any consolidation or other reorganization, AGL Resources may wish to merge or contribute the equity securities of one Nonutility Subsidiary to another Nonutility Subsidiary (including a newly formed Intermediate Subsidiary) or sell (or cause a Nonutility Subsidiary to sell) the equity securities or all or part of the assets of one Nonutility Subsidiary to another one. To the extent that these transactions are not otherwise exempt under the Act or rules thereunder, AGL Resources requests authorization to consolidate or otherwise reorganize under one or more direct or indirect Intermediate Subsidiaries, AGL Resources' ownership interests in existing and future Nonutility Subsidiaries. These transactions may take the form of a Nonutility Subsidiary selling, contributing, or transferring the equity securities of a subsidiary or all or part of a subsidiary's assets as a dividend to an Intermediate Subsidiary or to another Nonutility Subsidiary, and the acquisition, directly or indirectly, of the equity securities or assets of the subsidiary, either by purchase or by receipt of a dividend. The purchasing Nonutility Subsidiary in any transaction structured as an intrasystem sale of

equity securities or assets may execute and deliver its promissory note evidencing all or a portion of the consideration given. Each transaction would be carried out in compliance with all applicable laws and accounting requirements.

AGL Resources requests authorization to make expenditures on Development Activities, as defined above, in an aggregate amount of up to \$600 million. AGL Resources proposes a "revolving fund" concept for permitted expenditures on Development Activities. Thus, to the extent a Nonutility Subsidiary in respect of which expenditures for Development Activities were made subsequently becomes an EWG, FUCO, or Rule 58 Company, the amount so expended will cease to be considered an expenditure for Development Activities, but will instead be considered as part of the "aggregate investment" in the entity under rule 53 or 58, as applicable.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04-5887 Filed 3-15-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49380; File No. SR-NASD-2003-110]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Uniform Hearing Procedures for and Consolidation of Rules Applicable to Expedited Proceedings

March 9, 2004.

I. Introduction

On July 15, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to create a new rule series, the proposed NASD Rule 9550 Series, to consolidate, clarify and streamline those existing procedural rules that have an expedited proceeding

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.