

Personnel Management, 1900 E Street, NW., Room 3425, Washington, DC 20415-3660.

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

*For Information Regarding*

*Administrative Coordination—Contact:* Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services, (202) 606-0623.

U.S. Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04-13048 Filed 6-8-04; 8:45 am]

**BILLING CODE 6325-38-P**

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Comment Request for Review of a Revised Information Collection OPM 2809

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for the review of a revised information collection. OPM 2809, Health Benefits Registration Form, is used by annuitants and former spouses to elect, cancel or change health benefits enrollment during periods other than open season.

There are approximately 30,000 changes to health benefits coverage per year. Of these, 20,000 are submitted on form OPM 2809 and 10,000 verbally or in written correspondence. Each form takes approximately 45 minutes to complete; data collection by telephone or mail takes approximately 10 minutes. The annual burden for the form is 15,000 hours; the burden not using the form is 1,667 hours. The total burden is 16,667.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the

burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or e-mail to [mbtoomey@opm.gov](mailto:mbtoomey@opm.gov). Please be sure to include a mailing address with your request.

**DATES:** Comments on this proposal should be received by August 9, 2004.

**ADDRESSES:** Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Group, Retirement Services Program, Center for Retirement & Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415-3540.

*For Information Regarding Administrative Coordination—Contact:* Cyrus S. Benson, Team Leader, Publications Team, Administrative Services Branch, (202) 606-0623.

U.S. Office of Personnel Management.

**Kay Coles James,**

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[FR Doc. 04-13049 Filed 6-8-04; 8:45 am]

**BILLING CODE 6325-38-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27852]

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

June 2, 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 June 25, 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 June 25, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

### Northeast Utilities, et al. (70-9755)

Northeast Utilities ("NU"), a registered holding company; Western Massachusetts Electric Company ("WMECO"), a wholly owned, direct public-utility company subsidiary of NU, both located at 174 Brush Hill Ave., West Springfield, Massachusetts 01090-0010; Public Service Company of New Hampshire ("PSNH"), a wholly owned, direct public-utility company subsidiary of NU; and North Atlantic Energy Corporation ("NAEC"), a wholly owned, direct nonutility subsidiary of NU, both located at Energy Park, 780 North Commercial Street, Manchester, NH 03101; Yankee Energy System, Inc. ("YES"), a wholly owned, direct holding company subsidiary of NU that claims exemption under section 3(a)(1) by rule 2; Northeast Utilities Service Company ("NUSCO"), a direct, wholly owned service company subsidiary of NU; The Connecticut Light and Power Company ("CL&P"), a wholly owned, direct public-utility company subsidiary of NU; Northeast Nuclear Energy Company ("NNECO"), a wholly owned, direct nonutility company subsidiary of NU; Yankee Gas Services Company ("Yankee Gas"), a wholly owned, direct public-utility company subsidiary of YES; The Rocky River Realty Company ("RR"), a wholly owned, direct nonutility subsidiary of NU; The Quinnetuk Company ("Quinnetuk"), a wholly owned, direct nonutility subsidiary of NU, Properties, Inc. ("Properties"), a wholly owned, direct nonutility subsidiary of PSNH; Yankee Energy Financial Services Company ("Yankee Financial"), a wholly owned, direct nonutility subsidiary of YES; Yankee Energy Services Company ("YESCO"), a wholly owned, direct nonutility subsidiary of YES; NorConn Properties, Inc. ("NorConn"), a wholly owned, direct nonutility subsidiary of YES; NU Enterprises, Inc. ("NUEI"), a wholly owned, direct nonutility subsidiary of NU; Northeast Generation Company ("NGC"), a wholly owned, direct nonutility subsidiary of NUEI; Northeast Generation Services Company ("NGS") a wholly owned, direct nonutility subsidiary of NUEI; E.S. Boulos Company ("Boulos"), a wholly

owned, direct nonutility subsidiary of NGS; Woods Electrical Company, Inc. ("Woods"), a wholly owned, direct nonutility subsidiary of NGS; Woods Network Services, Inc. ("Woods Network"), a wholly owned, direct nonutility subsidiary of NUEI; Select Energy, Inc. ("Select Energy"), a wholly owned, direct nonutility subsidiary of NUEI; Mode 1 Communications, Inc. ("Mode 1"), a wholly owned, direct nonutility subsidiary of NUEI; and Select Energy New York, Inc. ("SENY"), a wholly owned, direct nonutility subsidiary of Select Energy, all located at 107 Selden Street, Berlin, Connecticut 06037; Holyoke Water Power Company ("HWP"), a public-utility subsidiary of NU, One Canal Street, Holyoke, Massachusetts 01040; and Select Energy Services, Inc. ("SESI"), a wholly owned, direct nonutility subsidiary of NUEI, 24 Prime Parkway, Natick, MA 01760, (collectively, "Applicants") have filed, under sections 6(a), 7, 9(a), 10 and 12 of the Act, and rules 43, 45 and 54 under the Act, a post-effective amendment to a previously filed application.

## I. Background

### A. The NU System

NU is the parent company of four electric utility companies and one gas utility company. For the twelve months ended December 31, 2003, NU's consolidated gross revenues and net income were approximately \$6.1 billion and \$116.4 million, respectively. As of December 31, 2003, NU's consolidated capitalization consisted of: 33.5% common equity, 1.7% preferred stock, 25.6% of rate reduction bonds, and 39.2% long-term and short-term debt.<sup>1</sup> Applicants state that the current corporate credit rating for NU is BBB+ by Standard and Poor's and Baa1 by Moody's, and that the ratings issued by Moody's and Standard and Poor's for NU's Senior Unsecured Debt were Baa1 and BBB, respectively.

CL&P, an electric utility company, provides retail electric service to approximately 1.2 million customers in Connecticut. As of December 31, 2003, CL&P's consolidated capitalization consisted of: 24.4% common equity, 4.1% preferred stock, 39.3% of rate reduction bonds, and 32.2% of long-term and short-term debt.<sup>2</sup> Applicants state that the corporate credit rating for

CL&P is BBB+ by Standard and Poor's and A3 by Moody's, and that the credit rating for its senior secured debt is A- by Standard and Poor's and Fitch and A2 by Moody's. Its senior unsecured debt has a rating of BBB from Standard and Poor's, A3 from Moody's and BBB+ from Fitch. CL&P's preferred stock has a rating of BBB—by Standard and Poor's and Baa2 by Fitch.

WMECO, an electric utility company, provides retail electric service to approximately 206,000 customers in Massachusetts. As of December 31, 2003, WMECO's consolidated capitalization consisted of: 31.4% common equity, 27.5% of rate reduction bonds, and 41.1% of long-term and short-term debt.<sup>3</sup> Applicants state that the corporate credit rating for WMECO is BBB+ by Standard and Poor's and A3 by Moody's, and that the credit rating for its senior unsecured debt is BBB+ by Standard and Poor's and Fitch and A3 by Moody's. WMECO has no preferred stock outstanding.

PSNH, an electric utility company, provides retail electric service to approximately 456,000 customers in New Hampshire. As of December 31, 2003, PSNH's consolidated capitalization consisted of: 28.8% common equity, 35.8% of rate reduction bonds, and 35.4% of long-term and short-term debt.<sup>4</sup> Applicants state that the corporate credit rating for PSNH is BBB+ by Standard and Poor's and Baa1 by Moody's, and that the credit rating for its senior secured debt is BBB+ by Standard and Poor's and Fitch and A3 by Moody's. PSNH has no preferred stock outstanding.

Yankee Gas, a gas utility company, is wholly owned by YES.<sup>5</sup> Yankee Gas provides natural gas distribution service to approximately 192,000 customers in Connecticut. As of December 31, 2003, Yankee Gas' consolidated capitalization consisted of: 67.5% common equity and 32.5% of long-term and short-term debt. Applicants state that the corporate credit rating for Yankee Gas is BBB+ by Standard and Poor's and Baa1 by Moody's. Yankee Gas has no preferred stock outstanding.

HWP, an electric utility company, currently sells all of the output of its electricity generating station to its affiliate, Select Energy. As of December

31, 2003, HWP's consolidated capitalization consisted of: 33.1% common equity and 66.9% long-term and short-term debt. HWP is not rated by any rating agency.

NU also owns, directly or indirectly, Properties, RR, Quinnehtuk and NorConn, which are real estate companies, NUSCO, the system's principal service company, NUEI, the system's nonutility holding company, NGC, an exempt wholesale generator, SESI, an energy services company acquired pursuant to Commission Order, Mode 1 and Woods Network, each exempt telecommunications companies, Yankee Financial, a financial services company and Select Energy, SENY, NGS, Woods, Boulos and YESCO, each companies formed or acquired pursuant to rule 58. HWP sells the output of its electricity generating station directly to its affiliate, Select Energy.

### B. Current Authority

By order dated December 28, 2000 (HCAR No. 27328) ("2000 Order"), the Commission authorized Applicants, through June 30, 2003 ("Prior Authorization Period") and subject to certain conditions, to: (1) Continue participating in the NU system money pool ("NU Money Pool"); and (2) to the extent not exempt under rules 45(b) and 52, enter into short-term debt transactions through the NU Money Pool, borrowing from and extending credit to (and acquiring promissory notes from) each other. Additionally, by the 2000 Order, the Commission authorized NU and its utility subsidiaries to issue notes or commercial paper to unaffiliated third parties to evidence short-term debt up to specified limits (identified below) through the Prior Authorization Period.

By order dated June 30, 2003 (HCAR No. 27693) ("2003 Order"), the Commission: (1) Extended the Prior Authorization Period for the issuance of short-term debt by NU, CL&P, WMECO, PSNH, YES, and Yankee Gas through June 30, 2006; (2) authorized companies to enter into interest rate hedging transactions related to short-term debt transactions through June 30, 2006; and (3) extended the authorization period for participation by the Applicants (other than Properties) in the NU Money Pool through June 30, 2004, pending the submission by the Applicants of a feasibility study concerning the creation of a separate money pool for nonutility subsidiaries of NU.

## II. Requests for Authority

Applicants request authority for NU, YES, CL&P, WMECO, and Yankee Gas to

<sup>1</sup> Excluding the rate reduction bonds, NU's consolidated capitalization consisted of: 45% common equity, 2.3% preferred stock and 52.7% debt.

<sup>2</sup> Excluding the rate reduction bonds, CL&P's consolidated capitalization consisted of: 40.2% common equity, 6.7% preferred stock and 53.1% debt.

<sup>3</sup> Excluding rate reduction bonds, WMECO's consolidated capitalization consisted of: 43.4% common equity and 56.6% debt.

<sup>4</sup> Excluding rate reduction bonds, PSNH's consolidated capitalization consisted of: 45% common equity and 55% debt.

<sup>5</sup> As of December 31, 2003, YES' consolidated capitalization consisted of: 67.8% common equity and 32.2% long-term and short-term debt. Applicants state that YES is not currently rated by Standard and Poor's, Moody's or Fitch.

issue and sell short-term debt securities to unaffiliated third parties through June 30, 2007 ("Authorization Period") up to the following aggregate outstanding principal amounts: NU, \$450 million; YES, \$50 million, CL&P, \$450 million; WMECO, \$200 million; and Yankee Gas, \$150 million (each limit, "Aggregate Short-Term Debt Limit").

Applicants also request authority for CL&P, WMECO, HWP and Yankee Gas to issue and sell short-term debt securities to affiliates through the NU Money Pool through the Authorization Period in the following aggregate outstanding principal amounts: CL&P, \$450 million; WMECO, \$200 million; HWP, \$10 million; and Yankee Gas, \$150 million. These Money Pool borrowings would be subject to the applicable Aggregate Short-Term Debt Limit, if any.

Authority is requested for Applicants other than Properties to continue participating in the NU Money Pool, and for Properties to participate in the NU Money Pool both as borrower and lender. They also request that the Commission release jurisdiction over the removal of limits on the NU Money Pool borrowings by Properties, RR, Quinnehtuk, Yankee Financial, YESCO, NorConn, NUEI, NGS, Boulos, Woods, Select Energy, SENY and SESI (collectively, "Nonutility Subsidiaries").

Further, Applicants request authority for NU and certain of its public-utility company subsidiaries—CL&P, WMECO, and Yankee Gas (collectively, "Utility Borrowers")—to enter into Interest Rate Hedges (described below) through the Authorization Period.

#### A. General Terms and Conditions

The proposed securities would be subject to the following financing parameters. Apart from the securities issued for the purpose of funding money pool operations, no securities would be issued in reliance upon the requested order, during the Authorization Period, unless: (1) The security to be issued, if rated, is rated investment grade; (2) all outstanding securities of the issuer that are rated are rated investment grade; and (3) all outstanding securities of NU and YES that are rated, are rated investment grade. For purposes of this condition, a security would be considered investment grade if it is so rated by at least one nationally recognized statistical rating organization, 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. NU and the Utility Borrowers request that the Commission reserve jurisdiction over the issuance by NU and the Utility

Borrowers of any securities that do not meet these conditions.

At all times during the Authorization Period, YES, NU and their utility subsidiaries (with the exception of CL&P and PSHH)<sup>6</sup> would maintain common equity of at least 30% of its consolidated capitalization (common equity, preferred stock, long-term debt and short-term debt) as reflected in the most recent form 10-K or form 10-Q filed with the Commission, adjusted to reflect changes in capitalization since the balance sheet date.

The proceeds from the short-term debt of NU, YES and the Utility Borrowers would be used for: (1) General corporate purposes, including investments by and capital expenditures of NU and its subsidiaries, including, without limitation, the funding of future investments in exempt wholesale generators ("EWG"), foreign utility companies ("FUCO") (each to the extent permitted under the Act or Commission order), rule 58 subsidiaries (to the extent permitted under the Act or Commission order), and exempt telecommunications companies ("ETCs"); (2) the repayment, redemption, refunding or purchase by NU or any subsidiary of any of its own securities from non-affiliates pursuant to rule 42; and (3) financing working capital requirements of NU and its subsidiaries. No financing proceeds would be used to acquire the securities of, or other interests in, any company unless the acquisition has been approved by the Commission in this or a separate proceeding or is in accordance with an available exemption under the Act or rules under the Act.

#### B. External Short-Term Debt of NU and YES

Applicants request authority for NU and YES to issue and sell during the Authorization Period unsecured short-term debt in an aggregate principal amount at any time outstanding not to exceed \$450 million and \$50 million. This short-term debt would take a variety of forms, including commercial paper issuances and/or unsecured notes with banks or other institutional lenders under credit facilities on terms that are generally available to borrowers with comparable credit ratings. All short-term debt securities issued and sold by NU and YES would have maturities of

less than one year from the date of issuance.

Commercial paper issued by NU and YES may be issued manually or through The Depository Trust Company in the form of book entry notes in denominations of not less than \$50,000 of varying maturities. Applicants state that, typically, the commercial paper would be sold to dealers at the discount rate 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 the commercial paper would re-offer it at a discount to corporate and institutional investors. No commercial paper would be issued by NU or YES unless the issuer believes that the effective interest cost would be equal to or less than the effective interest rate at which it could issue short-term notes in an amount at least equal to the principal amount of commercial paper. The commercial paper would be publicly issued and sold without registration under the Securities Exchange Act of 1933 in reliance upon one or more applicable exemptions from registration.

Applicants request authority through the Authorization Period for NU and YES to continue or establish and maintain back-up credit lines with banks or other institutional lenders to support their commercial paper program(s), and other credit arrangements and/or borrowing facilities generally available to borrowers with comparable credit ratings, providing for revolving credit or other loans. All amounts drawn and outstanding under these agreements and facilities would have maturities less than one year from the date of draw and would be counted against the applicable Aggregate Short-Term Debt Limit.

The effective cost of money on all external short-term debt of NU and YES would not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by companies of comparable credit quality, provided that in no event would the effective cost of capital exceed 500 basis points over the comparable term London Interbank Offered Rate ("LIBOR"). Issuance expenses in connection with any non-competitive offering of short-term debt would not exceed 5% of the principal amount. Specific terms of any short-term debt would be determined by NU at the time of issuance. A copy of any new note or loan agreement executed pursuant to this Authorization would be filed under cover of the next quarterly report under rule 24. Subject to the applicable

<sup>6</sup> By Commission order dated March 7, 2000 (HCAR No. 35-27147), the Commission allowed CL&P and PSNH to maintain their common equities below 30% of their consolidated capitalizations taking into account their respective rate reduction bonds through December 31, 2004. Applicants state that a separate application/declaration will be filed seeking extension of this authority.

Aggregate Short-Term Debt Limit, NU and YES intend to renew and extend outstanding short-term debt as it matures, to refund short-term debt with other similar short-term debt, to repay short-term debt or to increase the amount of their short-term debt from time to time.

#### *C. External Short-Term Debt of Utility Borrowers*

Applicants request authority for the Utility Borrowers to issue and sell short-term debt during the Authorization Period up to the following aggregate outstanding principal amounts: CL&P, \$450 million; WMECO, \$200 million; and Yankee Gas, \$150 million. The short-term debt for the Utility Borrowers would take a variety of forms, including commercial paper issuances and/or secured or unsecured notes with banks or other institutional lenders under credit facilities on terms that are generally available to borrowers with comparable credit ratings. All short-term debt would have maturities of less than one year from the date of issuance. Applicants request that the Commission reserve jurisdiction over the issuance and sale of secured short-term debt securities by Yankee Gas, pending completion of the record.

Commercial paper issued by a Utility Borrower hereunder may be issued manually or through The Depository Trust Company in the form of book entry notes in denominations of not less than \$50,000 of varying maturities. Typically, this commercial paper would be sold to dealers at the discount rate prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. Applicants expect that the dealers acquiring the commercial paper would re-offer it at a discount to corporate and institutional investors. No commercial paper would be issued unless the Utility Borrower issuing commercial paper believes that the effective interest cost would be equal to or less than the effective interest rate at which the company could issue short-term notes in an amount at least equal to the principal amount of commercial paper. The commercial paper would be publicly issued and sold without registration under the Securities Exchange Act of 1933 in reliance upon one or more applicable exemptions from registration.

The Utility Borrowers seek an extension through the Authorization Period of their authority to continue, or to establish and maintain back-up credit lines with banks or other institutional lenders to support their commercial paper program(s), and other credit

arrangements and/or borrowing facilities generally available to borrowers with comparable credit ratings, providing for revolving credit or other loans. All amounts drawn and outstanding under these agreements and facilities would have maturities less than one year from the date of draw and would be counted against the applicable Aggregate Short-Term Debt Limit.

The effective cost of money on all external short-term debt of the Utility Borrowers would be subject to the same financing parameters as NU (described above). The specific terms of a short-term debt issuance and sale would be determined by the respective Utility Borrower at the time of issuance. A copy of any new note or loan agreement executed pursuant to this authorization would be filed under cover of the next quarterly report under rule 24. Subject to the applicable short-term debt limit, the Utility Borrowers intend to renew and extend outstanding short-term debt as it matures, to refund short-term debt with other similar short-term debt, to repay short-term debt or to increase the amount of their short-term debt from time to time.

#### *D. Money Pool*

Applicants request authority to continue operating the NU Money Pool through June 30, 2007, subject to the terms and conditions previously authorized. Applicants request authority for: (1) All Applicants, with the exception of NU, YES, NGC, Mode 1, Woods Network and NUSCO, to participate in the NU Money Pool as both lenders and borrowers; and (2) NU, YES, NGC, Mode 1 and Woods Network to participate in the NU Money Pool as lenders only. They request that the Commission reserve jurisdiction over participation by additional companies in the NU Money Pool. Applicants request that the Commission release jurisdiction over Applicants' request that there be no NU Money Pool borrowing limit imposed on the Nonutility Subsidiaries,<sup>7</sup> and they request that no limits be placed on borrowings by NAEC and NNECO, which are now nonutility companies.

The NU Money Pool would continue to be administered on behalf of Applicants by NUSCO on an "at cost" basis,<sup>8</sup> under the direction of an officer

<sup>7</sup> By the 2003 Order, the Commission imposed the following borrowing limits: Quinnetuk: \$10 million; NUEI \$100 million; NGS \$25 million; Select \$200 million; SENEY \$10 million; RR: \$30 million; Yankee Financial: \$10 million; NorConn: \$10 million; YESCO: \$10 million; SESI \$35 million; Boulos \$10 million; Woods \$10 million.

<sup>8</sup> NUSCO would neither lend nor borrow through the NU Money Pool.

of NUSCO. The NU Money Pool would consist principally of surplus funds received from the Applicants. In addition to surplus funds, funds borrowed by NU through the issuance of short-term notes or other debt, or by the selling of commercial paper ("External Funds") may be a source of funds for making loans or advances to the other Applicants through the NU Money Pool.

Applicants do not propose any changes to the operation of the NU Money Pool as it was approved in the 2003 Order. Transactions under the NU Money Pool would be designed to match, on a daily basis, the surplus funds of the pool participants with the short-term borrowing requirements of the pool participants (other than the pool participants who are lenders only), thereby minimizing the need for short-term debt to be incurred by the pool participants from external sources. The pool participants in the NU Money Pool that are regulated utility subsidiaries of NU would have priority as borrowers from the NU Money Pool over those participants that are nonutility companies.

The funds available through the NU Money Pool would be loaned on a short-term basis to those pool participants that have short-term debt requirements. If no short-term requirements match the amount of funds that are available for the NU Money Pool for the period funds are available, NUSCO would invest the funds, directly or indirectly, in: (1) Interest-bearing accounts with banks; (2) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements; (3) obligations issued or guaranteed by any state or political subdivision thereof, provided that obligations are rated not less than "A" (or "A-1" or "P-1" or their equivalent for short term debt) by a nationally recognized rating agency; (4) commercial paper rated not less than "A-1" or "P-1" or their equivalent by a nationally recognized rating agency; (5) money market funds; (6) bank certificates of deposit; (7) Eurodollar funds; and (8) other investments as are permitted by section 9(c) of the Act and rule 40 under the Act and, with respect to contributions of WMECO, and other investments approved by the Massachusetts Department of Telecommunications and Energy ("MDTE") under Massachusetts law. NUSCO would allocate the interest earned on investments among the pool participants providing funds on a pro rata basis according to the amount of the funds provided.

All borrowings from and contributions to the NU Money Pool

would be documented and evidenced on the books of those participants. Any pool participant contributing funds to the NU Money Pool may withdraw those funds at any time without notice to satisfy its daily need for funds. All short-term debt through the NU Money Pool (other than from NU's External Funds) would be payable on demand, may be prepaid by any borrowing pool participant at any time without penalty and would bear interest for both the borrower and lender, payable monthly, at a rate equal to the daily Federal Funds Effective Rate ("Fed Funds Rate") as quoted by the Federal Reserve Bank of New York. Short-term debt of pool participants derived from the proceeds of External Funds of NU would bear interest at the same rate paid by NU on External Funds, and no short-term debt may be prepaid by the pool participant unless NU is made whole for any additional costs that it may incur because of prepayment. NU would be fully reimbursed for all costs that it incurs in relation to loans made through the NU Money Pool to the pool participants.

#### *E. Interest Rate Hedges*

NU, YES and the Utility Borrowers request authority, through the Authorization Period, to enter into interest rate hedging transactions with respect to its outstanding short-term indebtedness ("Interest Rate Hedges"). Interest Rate Hedges, designed to reduce or manage the effective interest rate cost, would be entered into only with counterparties ("Approved Counterparties") whose senior debt ratings, or the senior debt ratings of any credit support providers who have guaranteed the obligations of the Approved Counterparties, as published by S&P, are equal to or greater than BBB, or an equivalent rating from Moody's or Fitch, or through on-exchange transactions.

Interest Rate Hedges would involve the use of financial instruments commonly used in the capital markets, as options, interest rate swaps, locks, caps, collars, floors, exchange-traded futures and options, and other similar appropriate instruments. The transactions would be for fixed periods and stated notional amounts as are generally accepted as prudent in the capital markets. In no case would the notional principal amount of any Interest Rate Hedge exceed that of the underlying debt instrument. Neither NU nor the Utility Borrowers would engage in speculative transactions within the meaning of the term in the Statement of Financial Accounting Standard 133, as amended ("FAS 133"). Transaction fees,

commissions and other amounts payable to brokers in connection with an Interest Rate Hedge would not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Each Interest Rate Hedge would qualify for hedge accounting treatment on a continuing basis under generally acceptable accounting practices ("GAAP"). NU would comply with the then existing financial disclosure requirements of the Financial Accounting Standards Board associated with hedging transactions.<sup>9</sup>

#### **Entergy Corporation (70-10202)**

Entergy Corporation ("Entergy"), a registered holding company and Delaware corporation, 639 Loyola Avenue, New Orleans, Louisiana 70113, has filed an application-declaration ("Application-Declaration") under sections 6(a), 7, 9(a), 10 and 12(c) of the Act, and rules 46, 53, and 54 under the Act.

#### **I. Background**

Entergy is a registered holding company under the Act. Its public utility subsidiaries include Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, "Entergy Operating Companies"). The Entergy Operating Companies provide public utility service to approximately 2.6 million electric customers in portions of Arkansas, Louisiana, Mississippi, and Texas and 238,000 retail gas customers in Louisiana. Entergy also owns all of the voting stock of System Energy Resources, Inc. ("SERI") which owns and leases an aggregate 90% undivided interest in Grand Gulf Steam Electric Generating Station (nuclear) and sells all of the capacity and energy from that interest at wholesale to its only customers, Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. Entergy Power Inc. ("EPI"), a public utility company for purposes of the Act, but not for state regulatory purposes, is principally engaged in the business of marketing and selling bulk power at wholesale from its own generating resources.

Entergy also engages through other subsidiaries in various energy-related and nonutility businesses. Other subsidiaries include "exempt wholesale generators" ("EWGs"), "foreign utility companies" ("FUCOs"), "exempt telecommunication companies" ("ETCs") "energy-related companies"

<sup>9</sup>Currently, FAS 133 is the applicable standard.

within the meaning of rule 58 ("Rule 58 Companies"), and other nonregulated subsidiaries that Entergy is authorized by order of the Commission to acquire or own under the Act, (including certain subsidiary companies known as "O&M Subs" that provide operations and maintenance services for power projects to associate and non-associate power project, certain subsidiary companies known as "New Subsidiaries" that engage in service and project development activities and/or acquire or finance the acquisition of the securities of other subsidiary non-utility companies).

By order dated April 3, 2001 (HCAR No. 27371) ("April 2001 Order") and supplemented by order dated November 25, 2002 (HCAR No. 27608) ("November 2002 Order"), Entergy was authorized through June 30, 2004 to: (1) Issue and sell common stock ("Common Stock") (in addition to any separate authority relating to benefit and dividend reinvestment plans) and, issue directly or indirectly through one or more special purpose finance subsidiaries, unsecured long-term debt and preferred or equity-linked securities in an aggregate amount not exceeding \$2 billion; (2) issue and sell short-term debt in the form of notes to banks or commercial paper that in the aggregate, including then existing authority to issue short-term notes, would not exceed an outstanding principal amount of \$2.5 billion; (3) enter into hedging transactions regarding its own debt and that of its special purpose finance subsidiaries or the Nonutility Companies; (4) form one or more special purpose finance subsidiaries; and (5) guarantee the securities issued by the special purpose finance subsidiaries.

#### **II. Current Requests**

Entergy requests approval for a program of external financing and related proposals through June 30, 2007 (Authorization Period").

##### *A. Financing Parameters*

1. *Common Equity.* Entergy represents that at all times during the Authorization Period, Entergy and each of the public utility subsidiary companies will maintain common equity of at least 30% of total capitalization (based upon the financial statements filed with the most recent quarterly report on Form 10-Q or annual report on Form 10-K).

2. *Investment Grade.* Entergy represents that no guarantees or other securities will be issued in reliance upon the authorization to be granted by the Commission in this Application-Declaration, unless: (a) The security to

be issued, if rated, is rated investment grade; and (b) all outstanding securities of Entergy that are rated are rated investment grade (together, the "Investment Grade Ratings Criteria"). For purposes of this provision, a security will be deemed to be rated "investment grade" if it is rated investment grade by Moody's Investors Service, Standard & Poor's, Fitch Ratings or any one other 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. Entergy further requests that the Commission reserve jurisdiction over the issuance of any guarantee or other security at any time that one or more of the Investment Grade Ratings Criteria are not satisfied.

3. *Effective Cost of Money.* The interest rate on long-term debt will not exceed at the time of issuance the greater of (a) 500 basis points over U.S. Treasury securities having a remaining term comparable to the term of the series, if issued at a fixed rate, or 500 basis points over the London Interbank Offered Rate ("LIBOR") for the relevant interest rate period, if issued at a floating rate, and (b) a gross spread over U.S. Treasury securities that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The dividend rate on any series of equity-linked securities or preferred securities will not exceed at the time of issuance the greater of (a) 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term comparable to the term of the series, if issued at a fixed rate, or 500 basis points LIBOR for the relevant interest rate period, if issued at a floating rate, and (b) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The effective cost of money on short-term debt authorized in this proceeding will not exceed the greater of (a) 500 basis points over LIBOR for the relevant interest rate period, and (b) rates that are consistent with similar loans of comparable maturities to companies of comparable credit quality.

4. *Issuance Expenses.* The fees, commissions and expenses, including underwriting fees, arrangement fees and up-front fees, incurred or to be incurred in connection with the transactions proposed will not exceed 5% of the proceeds of the transactions in the case of Common Stock, Equity-linked Securities, Preferred Securities and Long-term Debt and will not exceed 5%

of the commitments of the lenders in the case of Short-term Debt.

5. *Use of Proceeds.* Entergy proposes to use the proceeds from the above financings for general corporate purposes, including: (a) Financing, in part, investments by and capital expenditures of Entergy and its subsidiaries; (b) the repayment, redemption, refunding or purchase by Entergy of any of its securities pursuant to rule 42; and (c) financing working capital requirements of Entergy and its subsidiaries. Entergy represents that no financing proceeds will be used to acquire the equity securities of any company unless the acquisition has been approved by the Commission in this proceeding or in a separate proceeding or is in accordance with an available exemption under the Act or rules, including sections 32 and 33 and rule 58. A portion of the proceeds of the financings authorized under this Application-Declaration may be used to make investments in: (a) certain energy-related non-utility assets, which are authorized pursuant to Commission Order, dated January 5, 2001 (HCAR No. 27334) ("Energy Asset Order") and (b) certain Energy Assets and/or Energy Asset Companies for which Entergy has filed a post-effective amendment to the Energy Asset Order. Further, Entergy represents that proceeds of financing to fund investments in rule 58 companies will be subject to the applicable limitations of that rule. Entergy states that, unless otherwise authorized by the Commission, the aggregate amount of proceeds of financing approved by the Commission in this proceeding which are used to fund investments in EWGs and FUCOs will not, when added to Entergy's "aggregate investment" (as defined in rule 53) in all the entities at any point in time, exceed 100% of Entergy's "consolidated retained earnings" (also as defined in rule 53). Lastly, Entergy represents that it will not seek to recover through higher rates of any of the Entergy Operating Companies losses attributable to any operations of its nonutility companies. Specifically, related to Long-term Debt, Equity-linked Securities and Preferred Securities, the proceeds from these financings would enable Entergy to replace Short-term Debt with more permanent capital and provide an important source of future financing for the operations of, and for investments in, non-utility businesses that are exempt under the Act.

#### B. Financing Requests

Entergy requests authority to issue and sell from time to time: (1) Common stock ("Common Stock") (in addition to

any separate authority relating to benefit and dividend reinvestment plans);<sup>10</sup> (2) indirectly through one or more finance subsidiaries ("Finance Subsidiaries"), unsecured long-term indebtedness ("Long-term Debt") and equity-linked securities ("Equity-linked Securities") having maturities of up to 50 years, including units consisting of a combination of incorporated options, warrants and/or forward equity purchase contracts with debt, preferred stock or preferred securities; (3) directly or indirectly through one or more Finance Subsidiaries, preferred securities, including specifically trust preferred securities or monthly income preferred securities ("Preferred Securities") having maturities of up to 50 years; and (4) unsecured short-term indebtedness having maturities of 364 days or less ("Short-term Debt") in an aggregate principal amount at any time outstanding (including the aggregate outstanding principal amount of any short-term notes and commercial paper issued under the November 2002 Order) not to exceed \$2.5 billion ("Short-term Debt Limit"). The aggregate amount of all other securities listed in 1 through 3 above not to exceed \$2 billion ("All Other Securities Limit"). In addition, Entergy requests authority to enter into various hedging transactions and for Finance Subsidiaries to pay dividends to Entergy.

1. *Common Stock.* Entergy requests authority to issue and sell Common Stock, or options, warrants or other stock purchase rights exercisable for Common Stock in accordance with the Financing Parameters set forth above. Public distributions may be pursuant to private negotiation with underwriters, dealers or agents, as discussed below, or effected 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. Entergy seeks authority to issue Common Stock or options, warrants or other stock purchase rights exercisable for Common

<sup>10</sup> By order of the Commission dated March 25, 1997 (HCAR No. 26693), as supplemented by order of the Commission dated December 15, 2000 (HCAR No. 27300), Entergy has authority to issue and sell up to 30 million shares of its common stock through June 30, 2006 under its Dividend Reinvestment and Stock Purchase Plan. Proceeds from the issuance and sale of shares under this plan are to be used for general corporate purposes, and subject to any requisite Commission approval, such purposes may include, but are not limited to, investments in subsidiaries, repayment of debt and payment of dividends and interest.

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 in a separate proceeding or is exempt under the Act or the rules, such as rule 58.

2. *Long-term Debt, Equity-linked and Preferred Securities.* In connection with the issuance of Long-term Debt, Equity-linked Securities or Preferred Securities by the Finance Subsidiaries, Entergy requests authority to issue unsecured subordinated debentures, unsecured promissory notes or other unsecured debt instruments ("Notes") to the extent of the related issuance of the Long-term Debt, Equity-linked Securities or Preferred Securities in an aggregate amount not to exceed during the Authorization Period the All Other Securities Limit and in accordance with the described Financing Parameters. Entergy also seeks to have the flexibility to issue Long-term Debt and/or Equity-linked Securities, indirectly through one or more special-purpose Finance Subsidiaries, and to issue Preferred Securities, indirectly through the Financing Subsidiaries.

The Long-term Debt proposed to be issued by Entergy: (a) May be convertible into any other securities of Entergy; (b) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at premiums above the principal amount; (c) may be entitled to mandatory or optional sinking fund provisions; (d) may provide for reset of the coupon pursuant to a remarketing arrangement; and (e) may be called from existing investors by a third party. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to Long-term Debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding.

The Equity-linked Securities and Preferred 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 Entergy's board of directors. Dividends or distributions on Equity-linked Securities and Preferred Securities will be made periodically and to the extent funds are legally available for the purpose, but may be made subject to terms which allow the issuer to defer dividend payments for specified periods. Equity-linked Securities will be exercisable or exchangeable for or

convertible, either mandatorily or at the option of the holder, into Entergy Common Stock or indebtedness or allow the holder to surrender to the issuer or apply the value of a security issued by Entergy as approved by the Commission to the holder's obligation to make a payment on another security of Entergy issued as permitted by the Commission. For example, Entergy may issue Common Stock or Common Stock warrants linked with debt securities. The holder will be obligated to pay to Entergy an additional amount of consideration at a specified date for the Common Stock but is authorized to surrender the linked debt security to or for the benefit of Entergy in lieu of the cash payment. Any convertible or Equity-linked Securities will be convertible into or linked to Common Stock, Preferred Securities or unsecured debt that Entergy is otherwise authorized to issue by Commission order directly, or indirectly, through Financing Subsidiaries on behalf of Entergy. Any Preferred Securities may be convertible or exchangeable into Common Stock or unsecured debt that Entergy is otherwise authorized to issue by Commission order and may be issued in the form of shares or units.

3. *Finance Subsidiaries.* Entergy requests authority to: (a) Acquire the equity securities of one or more special-purpose subsidiaries, organized solely to facilitate financing; (b) to guarantee the securities issued by the Finance Subsidiaries, to the extent not exempt pursuant to rule 45(b) and rule 52; and (c) to have the Finance Subsidiaries pay dividends out of capital to Entergy.

Entergy also requests continued authority to acquire, directly or indirectly, the equity securities of one or more Finance Subsidiaries, which may be organized as corporations, trusts, partnerships or other entities, created specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of Entergy through the issuance of Long-term Debt, Equity-linked Securities or Preferred Securities, and any other type of security authorized by rule or order, to third parties. Entergy requests authority for Finance Subsidiaries to dividend (including dividends out of capital), loan or otherwise transfer the proceeds of the financings to Entergy. In the event that the Finance Subsidiaries loan the proceeds of the financings to Entergy, Entergy will issue Notes to evidence the borrowings. If required, Entergy proposes to guarantee, provide support for or enter into expense agreements to the extent of the obligations of any

Finance Subsidiary that it organizes. Entergy states that the amount of any Long-term Debt, Equity-linked Securities or Preferred Securities issued by any Finance Subsidiary shall be counted against the All Other Securities Limit to the extent that Entergy guarantees the securities. Entergy further represents that the Finance Subsidiaries authorized under this Application-Declaration will not be merged or consolidated with any previously authorized finance subsidiary created by Entergy Louisiana, Inc., Entergy Mississippi, Inc., or Entergy Gulf States, Inc. under Commission orders dated December 29, 2003 (HCAR No. 27783) (as supplemented by order dated January 8, 2004 (HCAR No. 27783A), December 29, 2003 (HCAR No. 27787) and December 29, 2003 (HCAR No. 27786).

4. *Short-term Debt.* Entergy proposes to issue and sell unsecured Short term Debt in an aggregate principal amount at any time outstanding not to exceed \$2.5 billion in any combination of notes to banks and commercial paper (including the aggregate principal amount of any notes and/or commercial paper issued and outstanding under the November 2002 Order).

Entergy proposes to sell commercial paper, from time to time, in established domestic or European commercial paper markets. Commercial paper would typically be sold to dealers at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. Entergy expects that the dealers acquiring commercial paper from Entergy will reoffer the paper at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. It is anticipated that Entergy's commercial paper will be reoffered to investors as commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, finance companies and nonfinancial corporations. In connection with the sale of the commercial paper, Entergy may obtain letters of credit from one or more banks in support of the commercial paper obligations.

Entergy also proposes to increase its currently established bank lines and establish additional bank lines as necessary to have bank lines in an aggregate principal amount not to exceed the proposed aggregate Short-term Debt Limit. Loans under these lines (which terminate no later than five years from the establishment of the facility) will have maturities not more

than 364 days from the date of each borrowing. Entergy 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.

5. *Hedging.* Entergy requests authority to enter into hedging transactions (“Interest Rate Hedges”) with respect to indebtedness of Entergy, and the Finance Subsidiaries in order to manage and minimize interest rate costs. Entergy also requests authority to enter into hedging transactions (“Anticipatory Hedges”) with respect to anticipatory debt issuances of Entergy and the Finance Subsidiaries in order to lock-in current interest rates and/or manage interest rate risk exposure, with the Interest Rate Hedges and Anticipatory Hedges to be entered into with respect to debt issuances in aggregate principal amount not to exceed \$2 billion.

Entergy seeks to enter into Interest Rate Hedges with respect to indebtedness of Entergy and the Finance Subsidiaries, subject to certain limitations and restrictions, in order to reduce or manage interest rate cost or risk. Interest Rate Hedges would only be entered into with counterparties (“Approved Counterparties”) whose senior debt ratings, or whose parent companies’ senior debt ratings, as published by Standard and Poor’s Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody’s Investors’ Service, Fitch Investor Service, or Duff and Phelps.

Interest Rate Hedges will involve the use of financial instruments and derivatives commonly used in today’s capital markets, such as interest rate futures, swaps, caps, collars, floors, and 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.* FNMA) obligations or LIBOR-based swap instruments. The transactions would be for fixed periods and stated notional amounts. In no case will the notional principal amount of any Interest Rate Hedge exceed that of the underlying debt instrument and related interest rate exposure. Entergy will not engage in speculative transactions. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in

competitive markets for parties of comparable credit quality.

In addition, Entergy requests authorization to enter into Anticipatory Hedges with respect to anticipated debt offerings of Entergy and the Finance Subsidiaries, subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through: (a) A forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (each a “Forward Sale”); (b) the purchase of put options on U.S. Treasury obligations (a “Put Options Purchase”); (c) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations (a “Zero Cost Collar”); (d) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (e) 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, options, caps and collars, appropriate for the Anticipatory Hedges.

Anticipatory Hedges 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 or the Chicago Mercantile Exchange, 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. Entergy will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. Entergy may decide to lock in interest rates and/or limit its exposure to interest rate increases.

Entergy will comply with Statement of Financial Accounting Standard (“SFAS”) 133 (Accounting for Derivative Instruments and Hedging Activities) and SFAS 138 (Accounting for Certain Derivative Instruments and Certain Hedging Activities) or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board (“FASB”). Entergy represents that each Interest Rate Hedge and each Anticipatory Hedge will qualify for hedge accounting treatment under the current FASB standards in effect and as determined as of the date such Interest Rate Hedge or Anticipatory Hedge is entered into. The Applicants will also comply with any future FASB financial disclosure

requirements associated with hedging transactions.

#### **American Transmission Company, LLC, et al. (70–10214)**

American Transmission Company, LLC (“ATC”), an electric transmission public utility company subsidiary of Alliant Energy Corporation (“Alliant”), a registered holding company, and ATC Management, Inc. (“ATCMI”), a public utility company, corporate manager of ATC, and holding company subsidiary of Alliant, claiming exemption from registration under section 3(a)(1) by rule 2 of the Act, both located at N19 W23993 Ridgeview Parkway, West Waukesha, Wisconsin 53188 (together, “Applicants”) have filed a declaration (“Declaration”) under sections 6(a), 7 and 12(b) of the Act and rule 54 under the Act.

#### **I. Background**

In 1999, the state of Wisconsin enacted legislation (“Transco Legislation”) that facilitated the formation of for-profit transmission companies (“Transcos”). ATC was created under the Transco Legislation and ATCMI was created to be the general manager of ATC. The legislation obligates these Transcos to construct, operate, maintain, and expand transmission facilities to provide adequate, reliable transmission services under an open-access transmission tariff.

By order dated December 29, 2000 (HCAR No. 27331) (“December Order”), the Commission authorized ATC to acquire the transmission assets of the subsidiaries of four investor owned public utility holding companies with service areas in Wisconsin and adjacent areas in Illinois and Michigan. The following utility companies transferred ownership and operation of their transmission assets to ATC in exchange for member interests (“Member Interests”) in ATC: Wisconsin Power and Light Company (“WPL”) and South Beloit Water, Gas and Electric Company (“South Beloit”);<sup>11</sup> Wisconsin Electric Power Company and Edison Sault Electric Company (“Edison Sault”);<sup>12</sup> Madison Gas and Electric Company;<sup>13</sup>

<sup>11</sup> See December Order. WPL and South Beloit (which are both subsidiary companies of Alliant) are together treated as a single member.

<sup>12</sup> See *Wisconsin Energy Corp.*, HCAR No. 27329 (Dec. 28, 2000). Wisconsin Electric Power Company and Edison Sault Electric Company (which are both subsidiaries of Wisconsin Energy Corp., *dba* We Energies, an exempt holding company) are together treated as a single member.

<sup>13</sup> See *Madison Gas and Electric Co.*, HCAR No. 27326 (Dec. 28, 2000). As a result of the acquisition, Madison Gas and Electric Company is both a

and Wisconsin Public Service Corp.<sup>14</sup> Wisconsin Public Power Inc. ("WPPI"), a Wisconsin municipal electric company, contributed cash in exchange for an equity interest in ATC proportional to WPPI's load ratio share in Wisconsin.<sup>15</sup> These entities together are referred to as the "Initial Members."

Applicants state that as a limited liability company, ATC may be formed to be "member managed" or "manager managed" according to Wisconsin law. Applicants state that it was decided that ATC would be "manager managed" by ATCMI. In the December Order, the Commission authorized ATCMI to acquire a nominal interest in ATC and operate as the sole manager of ATC. Due to the extent of the operational control ATCMI has over the utility assets of ATC, the Commission found that both ATC and ATCMI were jurisdictional public utilities under the Act. ATCMI is also an intermediate holding company by virtue of its ownership interest in ATC and claims exemption from registration by rule 2 under section 3(a)(1) of the Act.

In June 2001, eighteen more contributors, including twelve municipal utilities, four cooperatives, one public power entity and one investor-owned utility invested transmission assets and/or cash in ATC. Two new members joined ATC on December 31, 2002; and a third member joined ATC on December 31, 2003. These three members are Alger Delta Cooperative Electric Association; the Ontonagon County Rural Electrification Association and the Upper Peninsula Public Power Agency. These members are referred to collectively as the "Additional Members." Effective February 1, 2002, ATC transferred operational control of its facilities to the Midwest Independent Transmission System Operator, Inc. ("MISO").

The Initial Members contributed cash and/or transmission assets to ATC and they or their associate companies received in exchange Member Interests in ATC proportional to their contributions. They or their associate companies also purchased a proportionate amount of Class A shares in ATCMI and one Class B share each of ATCMI.

The Additional Members contributed cash and/or transmission assets to ATC and received in exchange Member

Interests in ATC proportional to their contributions. They also purchased a proportionate amount of Class A shares in ATCMI.

## II. Existing Authorization

By order dated May 15, 2003 (Holding Co. Act Release No. 27678), as modified by an order issued on June 23, 2003 (Holding Co. Act Release No. 27688) (collectively, "Prior Financing Order") the Commission authorized Applicants to issue debt securities in an aggregate amount not to exceed \$710 million at any one time outstanding, to issue member interests and ATCMI to issue Class A, Class B and preferred securities in an aggregate amount of \$500 million, and guarantees and other credit support in an aggregate amount not to exceed \$125 million, all at any one time outstanding through June 30, 2004.

## III. Current Request

Applicants now request financing authority from the date of the issuance of the order in this matter (the "Order") through June 30, 2005 ("Authorization Period") as follows:

A. Applicants seek authority for ATC to issue debt securities in an aggregate amount not to exceed \$710 million at any one time outstanding during the Authorization Period, provided that the aggregate amount of short-term debt issued pursuant to the requested authority will not exceed \$200 million at any one time outstanding during the Authorization Period;

B. ATC seeks authorization to issue Member Interests and ATCMI seeks authority to issue equity interests and preferred securities in an aggregate amount of \$500 million at any one time outstanding during the Authorization Period, provided that the aggregate amount of Member Interests and Class A and Class B Shares outstanding at any one time during the Authorization Period will not exceed \$393 million plus the value at that time of the Member Interests and Class A and Class B Shares outstanding as of the date of the order in this matter;

C. Applicants request authority to provide guarantees and other credit support as described below in an aggregate amount not to exceed \$125 million outstanding at any one time during the Authorization Period; and

D. Applicants request authority to enter into interest rate hedging transactions as described below.

## IV. Financing Conditions

All requested authorization is subject to the following terms and conditions: (i) The maturity of short-term debt will not exceed one year and the maturity of

long-term debt will not exceed fifty years; (ii) any short-term or long-term debt security or credit facility will have such designation, aggregate principal amount, interest rate(s) or methods of determining the same, terms of payment of interest, collateral, redemption provisions, non-refunding provisions, sinking fund terms, conversion or put terms and other terms and conditions as ATC and ATCMI might determine at the time of issuance, provided that, in no event, however, will the effective cost of money on short-term debt exceed 300 basis points over the London Interbank Offered Rate for maturities of one year or less in effect at the time; (iii) the interest rate on long-term debt will not exceed 500 basis points over the yield-to-maturity of a U.S. Treasury security having a remaining term approximately equal to the average life of the debt; and (iv) the underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities under this Application will not exceed 7% of the principal or total amount of the securities being issued.

Applicants represent that at all times during the Authorization Period, ATCMI and ATC will each maintain common equity of at least 30% of its consolidated capitalization (common equity, preferred stock, long-term and short-term debt). Applicants further represent that, other than Class A and Class B Shares and Member Interests, no security may be issued in reliance upon this Order, unless: (i) The security to be issued, if rated, is rated investment grade; (ii) all outstanding rated securities of the issuer are rated investment grade; and (iii) all outstanding rated securities of ATCMI are rated investment grade. For purposes of this condition, a security will be considered rated investment grade if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3-1 under the 1934 Act. Applicants request that the Commission reserve jurisdiction over the issuance by ATCMI or ATC 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 at any time that the conditions set forth in clauses (i) through (iii) above are not satisfied.

## V. Specific Financing Requests

### A. Short Term Debt

Short-term debt will be unsecured and may include institutional

public-utility company and an exempt holding company.

<sup>14</sup> See *WPS Resources Corporation*, HCAR No. 27330 (Dec. 28, 2000). Wisconsin Electric Power Company is a subsidiary of WPS Resources Corporation, an exempt holding company.

<sup>15</sup> WPPI is exempt from all provisions of the Act under section 2(c).

borrowings, commercial paper and privately-placed notes. ATC may sell commercial paper or privately placed notes from time to time, in established commercial paper markets. Commercial paper may be sold at a discount or bear interest at a rate per annum prevailing at the date of issuance for commercial paper of a similarly situated company. ATC may, without counting against the limit on financing set forth above, maintain back up lines of credit in connection with one or more commercial paper programs in an aggregate amount not to exceed the amount of authorized commercial paper.

Credit lines may also be set up for use by ATC for general corporate purposes. Credit lines, which will not be counted against the financing limit, may be utilized to obtain letters of credit or may be borrowed against, from time to time, as it is deemed appropriate or necessary.

#### B. Long-Term Debt

Long-term debt securities may include notes or debentures under one or more indentures or long-term indebtedness under agreements with banks or other institutional lenders directly or indirectly. Long-term debt may be secured or unsecured.<sup>16</sup> Long-term debt may be convertible or exchangeable into forms of equity or indebtedness authorized in this filing, or into other securities or assets the acquisition of which is either exempt or approved by Commission order. Specific terms of any borrowings will be determined by ATCMI at the time of issuance and will comply in all regards with the parameters on financing authorization set forth above.

#### C. Equity Interests

In the event Applicants determine to seek capital through equity or to acquire new facilities in exchange for equity interests, ATC seeks authorization to issue Member Interests and ATCMI seeks authority to issue Class A and B Shares in an aggregate amount at any one time outstanding during the Authorization Period of \$393 million plus the value at that time of any Member Interests and Class A and B Shares outstanding at the time of the Order.

Member Interests may be issued in the form of member interests, preferred member interests or convertible member interests.

Applicants contemplate that from time to time ATC may require an additional equity infusion. ATC could reduce the amount of distributions to

Members. Each Member's equity would be increased by the amount of undistributed earnings on a *pro rata* basis. In the alternative, there could be a capital call for Members to make additional cash contributions on a *pro rata* basis. If a Member opts not to make an additional contribution, any other Member could make the requested contribution. Members do not, however, have the obligation to make additional contributions. Another possibility, therefore, would be for ATC to issue preferred securities that are convertible into Member Interests and/or Class A Shares and/or Class B Shares. The convertible preferred securities could be issued and sold to Members or third parties. The securities would have a stated par value and dividend rate and would be convertible into Member Interests and/or Class A and/or Class B Shares based on a predetermined ratio or formula. The conversion rights and terms and conditions for exercise of those rights would be set forth at the time of purchase. At the end of 2003, ATC made a capital call for additional contributions in the amount of \$68 million to be paid in four quarterly installments in 2004.

ATC would issue Member Interests in exchange for cash or the transfer of transmission facilities to ATC by current or future members. The entities transferring transmission assets and their transferring asset values have not yet been determined. In order to maintain its 50/50 debt to equity ratio, ATC would reimburse the contributors for 50% of the net book value of the transmission assets contributed. In addition, ATCMI will issue to each new member of ATC Class A Shares in an amount that is proportional to that member's interest in ATC, with a par value of \$0.01 per share and a sales price of \$10 per share.

Additionally, it is anticipated that ATC will issue Member Interests and ATCMI will issue Class A Shares to Wisconsin Public Service Corporation or its affiliate in exchange for that company's contribution of 50% of the ongoing cash requirements of the Arrowhead to Weston Transmission Line Project. Current cost estimates are approximately \$400 million over the 2002–2008 period.<sup>17</sup>

<sup>17</sup> Arrowhead-Weston is a 220-mile transmission line connecting Duluth, Minnesota, with Wausau, Wisconsin. The line is needed to accommodate electric load growth in northern Wisconsin and to improve reliability of the electric transmission system in the region. The acquisition of utility assets has been approved by the Public Service Commission of Wisconsin and so is exempt from section 9(a)(1) pursuant to section 9(b)(1) of the Act.

#### D. Preferred Stock

ATCMI seeks authority to issue preferred stock or other types of preferred securities (including convertible preferred securities). It is contemplated that preferred stock or other types of preferred securities may be issued in one or more series with rights, preferences, and priorities as may be designated in the instrument creating series, as determined by ATCMI's board of directors, or a pricing committee or other committee of the board performing similar functions. Preferred securities may be redeemable or may be perpetual in duration. Dividends or distributions on preferred securities will be made periodically and to the extent funds are legally available for the purpose, but may be made subject to terms which allow Applicants to defer dividend payments for specified periods. Preferred securities may be convertible into forms of equity or indebtedness authorized in this filing, or into other securities or assets the acquisition of which is either exempt or approved by Commission order.

Preferred securities may be sold directly or through underwriters or dealers in any manner. The dividend rate on any series of preferred securities issued by ATCMI would not exceed 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of that series of preferred securities at the time of issuance.

#### E. Guarantees

Applicants request authorization to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the obligations of their affiliates or members in the ordinary course of Applicants' business, in an amount not to exceed \$125 million outstanding at any one time during the Authorization Period.

Applicants state that certain of the guarantees referred to above may be in support of obligations that are not capable of exact quantification. Applicants will determine the exposure under the guarantee by appropriate means including estimation of exposure based on loss experience or projected potential payment amounts. As appropriate, the estimates will be made in accordance with generally accepted accounting principles and/or sound financial practices.

#### F. Interest Rate Hedging Transactions

ATC seeks authority to enter into interest rate hedging transactions with respect to existing indebtedness

<sup>16</sup> Debt may be secured by the assets of ATC LLC.

("Interest Rate Hedges"), subject to certain limitations and restrictions, in order to reduce or manage interest rate cost. Interest Rate Hedges will only be entered into with counterparties ("Approved Counterparties") whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors Service, Fitch, or Duff and Phelps. Interest Rate Hedges will involve the use of financial instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, and 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 obligations. The transactions will be for fixed periods and stated notional amounts. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

ATC also seeks authority to enter into interest rate hedging transactions with respect to anticipated debt offerings (the "Anticipatory Hedges"), subject to certain limitations and restrictions. Anticipatory Hedges will only be entered into with Approved Counterparties, and will be utilized to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (each a "Forward Sale"), (ii) the purchase of put options on U.S. Treasury obligations (a "Put Options Purchase"), (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations (a "Zero Cost Collar"), (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations, 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.

Applicants state that they will comply with existing and future financial disclosure requirements of the Financial Accounting Standards Board associated with hedging transactions, and that these hedging transactions will qualify

for hedge accounting treatment under generally accepted accounting principles.

#### **Cinergy Corp. et al. (70-10224)**

The Cinergy Corporation ("Cinergy"), a Delaware corporation and a registered holding company under the Act, its subsidiary public-utility company Cincinnati Gas & Electric Company, ("CG&E"), an Ohio corporation, both at 139 East Fourth Street, Cincinnati, Ohio 45202, and INOH Gas, Inc., an Indiana corporation, 2569 Handyside Avenue, Cincinnati, Ohio 45208, ("INOH" and, together with Cinergy and CG&E, "Applicants"), have filed an application-declaration ("Application") with the Commission under sections 3(a)(1) and 12(d) of the Act and rules 44 and 54 under the Act.

Cinergy and CG&E request authority to sell to INOH all of the issued and outstanding common stock of CG&E's wholly-owned subsidiary Lawrenceburg Gas Company ("Lawrenceburg"), an Indiana corporation and gas utility company. INOH requests an order under section 3(a)(1) of the Act exempting it from all provisions of the Act, except section 9(a)(2).

CG&E is a public utility company all of whose outstanding common stock is owned by Cinergy. In addition to CG&E, Cinergy directly holds all the outstanding common stock of another public utility company, PSI Energy, Inc., a vertically integrated electric utility that provides service in north central, central and southern Indiana. Through various other subsidiaries, Cinergy engages in a variety of energy-related and other authorized non-utility businesses.

CG&E is a combination electric and gas public utility and holding company that provides service in the southwestern portion of Ohio and, through subsidiaries, in nearby areas of Kentucky and Indiana. CG&E's principal subsidiary is The Union Light, Heat and Power Company, which provides electric and gas service in northern Kentucky. CG&E's other utility subsidiaries, Lawrenceburg and Miami Power Corporation, are insignificant to its results of operations. As of and for the year ended December 31, 2003, CG&E reported consolidated total operating revenues of approximately \$2.4 billion and consolidated total assets of approximately \$5.8 billion.

Lawrenceburg distributes and sells natural gas to approximately 6,100 residential, commercial, industrial and municipal customers over a 60-square mile area in southeastern Indiana. Lawrenceburg owns a gas distribution system located within Indiana

consisting of 161 miles of mains and 26 miles of service lines. Lawrenceburg is connected with and sells gas at wholesale to the City of Aurora, Indiana, and is also connected with interstate gas pipeline systems owned by Texas Gas Transmission Corporation and Texas Eastern Transmission Corporation. As of and for the year ended December 31, 2003, Lawrenceburg had total operating revenues of approximately \$10.9 million and total assets of approximately \$19.4 million, including net property, plant and equipment of approximately \$16.2 million. As a "public utility" under the laws of Indiana, Lawrenceburg is subject to regulation by the Indiana Utility Regulatory Commission ("IURC") with respect to such matters as retail rates, service and safety standards, accounts, acquisitions and sales of utility properties and issuance of securities.

INOH is a privately held Indiana corporation formed to acquire the common stock of Lawrenceburg. Upon consummation of the proposed transaction, Lawrenceburg will be a wholly-owned subsidiary of INOH. INOH owns, and upon consummation of the proposed transaction will own, no other public utility companies.

CG&E and INOH have entered into a Stock Purchase Agreement, dated as of February 27, 2004 ("Purchase Agreement"), in accordance with which CG&E has agreed to sell to INOH, and INOH has agreed to purchase, all of the outstanding shares ("Shares") of common stock, \$50 par value per share, of Lawrenceburg. Subject to the terms and conditions of the Purchase Agreement, at the closing of the proposed transaction ("Closing"), INOH has agreed to pay CG&E a purchase price of \$16,700,000 in cash for the Shares ("Purchase Price"), subject to potential increase or decrease to the extent that the working capital of Lawrenceburg at the Closing exceeds or is less than the adjusted working capital of Lawrenceburg as of a date shortly before signing of the Purchase Agreement. CG&E will use the net proceeds from the sale of Lawrenceburg to reduce outstanding short-term indebtedness and for general corporate purposes.

Upon consummation of the proposed transaction, INOH, by virtue of its ownership of all of the outstanding common stock of Lawrenceburg, will be deemed a "holding company" under the Act. INOH asserts that it will be entitled to the exemption afforded by section 3(a)(1) of the Act, and accordingly requests that the Commission issue an order under that section of the Act exempting INOH from all provisions of the Act except section 9(a)(2). In

support of that request, INOH states that upon consummation of the Transaction, Lawrenceburg will constitute its only public utility subsidiary. Both INOH and Lawrenceburg are incorporated under the laws of Indiana, the same State in which all of Lawrenceburg's public utility operations are conducted. All of Lawrenceburg's gas distribution facilities, which compose substantially all of its physical assets, are likewise located in Indiana. Following the consummation of the Transaction, Lawrenceburg, as a "public utility" under Indiana law, will remain subject to extensive regulation by the IURC, with respect to such matters as rates, service and safety standards, accounting, securities issuances, and acquisitions and sales of utility property.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-12995 Filed 6-8-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27853]

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

June 3, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission under 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 June 28, 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 June 28, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### The Southern Company (70-10186)

The Southern Company ("Southern"), 270 Peachtree Street, NW., Atlanta, Georgia, 30303, a registered holding company under the Act; Georgia Power Company ("Georgia Power"), Southern Company Services, Inc. ("SCS"), and Southern Company Energy Solutions, Inc., each located at 241 Ralph McGill Boulevard, NE., Atlanta, Georgia, 30308 and each a wholly-owned subsidiary of Southern; Gulf Power Company ("Gulf Power"), One Energy Place, Pensacola, Florida, 32520 and a wholly-owned utility subsidiary of Southern; Mississippi Power Company ("Mississippi Power"), 2992 West Beach, Gulfport, Mississippi, 39501 and a wholly-owned utility subsidiary of Southern; Savannah Electric and Power Company ("Savannah Power"), 600 Bay Street East, Savannah, Georgia, 31401 and a wholly-owned utility subsidiary of Southern; Alabama Power Company ("Alabama Power"), 600 North 18th Street, Birmingham, Alabama, 35291 and a wholly-owned utility subsidiary of Southern; Southern Company Capital Funding, Inc. ("Capital Funding"), 1403 Foulk Road, Suite 102, Wilmington, Delaware, 19803 and a wholly-owned subsidiary of Southern; Southern Communications Services, Inc., 555 Glenridge Connector, Suite 500, Atlanta, Georgia, 30342 and a wholly-owned subsidiary of Southern; and Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, Alabama, 35242 and a wholly-owned subsidiary of Southern (collectively, "Applicants"), have filed a declaration/application ("Declaration") under sections 6(a), 7, 9(a), 10, and 12(b), 12(c), and 12(f) of the Act and rules 42, 45, 53, and 54 under the Act.

Southern owns the following public utilities: Alabama Power, Georgia Power, Gulf Power, Mississippi Power, Savannah Power, Southern Power Company and Southern Electric Generating Company.

#### I. Current Authority

Southern currently has authority to issue the following securities:

1. Up to 35 million shares of common stock (Holding Company Act Release No. 27323) (December 27, 2000);
2. Up to \$2 billion aggregate principal amount of short-term notes, term loan notes and commercial paper (Holding

Company Act Release No. 27367) (March 28, 2001);

3. Up to 88 million shares of common stock under its dividend reinvestment plan, employee savings plan and employee stock ownership plan (Holding Company Act Release No. 27118) (December 22, 1999). All of the Applicants, except Capital Funding, may purchase Southern common stock to contribute to the employee stock ownership plan for the benefit of their employees;

4. Up to \$160 million aggregate amount of guarantees of the debt or other obligations of SCS (Holding Company Act Release No. 27082) (October 8, 1999); and

5. Up to \$1.5 billion aggregate principal amount of preferred securities, notes, stock purchase contracts and stock purchase units (Holding Company Act Release No. 27134) (February 9, 2000). These securities may also be issued on Southern's behalf by Capital Funding. In connection with these financing transactions, Southern may enter into one or more guarantees or credit support agreements in favor of Capital Funding.

Upon the effectiveness of the order in this filing, Applicants will relinquish their authority to issue securities and engage in the transactions authorized in the orders listed above.

#### II. Overview of Request

Applicants request authorization to engage in the following financing transactions during the period from the effective date of the order in this filing through June 30, 2007 ("Authorization Period"):

1. Southern requests authority to issue and sell from time-to-time up to 35 million shares of its common stock;

2. Southern requests authority to issue and sell from time-to-time unsecured notes to effect short-term, term loan and commercial paper borrowings (collectively, "Institutional Debt") in an aggregate principal amount not to exceed \$3 billion at any time outstanding;

3. Southern requests authority to issue and sell from time-to-time up to 85 million shares of its common stock to its dividend reinvestment plan, employee savings plan, employee stock ownership plan or other similar stock based plans adopted in the future. These shares will be in addition to the common stock proposed to be issued by Southern in paragraph II.1, above.<sup>1</sup> In addition, all of

<sup>1</sup> Under an order dated October 11, 2000 (Holding Company Act Release No. 27246), Southern has existing authority to issue up to 40 million shares