

wish to participate will submit final bids. All such final bids will be due at the same time, and no bidder will be permitted to change its final bid once submitted. After the final bids are submitted, no bidder, including a Merrill Lynch Affiliate, will have access to any competing bids until after the Protection Agreement is entered into by the Fund. A Fund may not enter into an Affiliated Protection Arrangement unless two bona fide final bids have been received for Protection Agreements that would not constitute Affiliated Protection Arrangements.

2. If the Adviser recommends that the Board approve an Affiliated Protection Arrangement, the Adviser must provide the Board with an explanation of the basis for its recommendation and a summary of the material terms of any bids that were rejected.

3. The Fund's Board, including a majority of Independent Trustees, must approve the acceptance of a bid involving an Affiliated Protection Arrangement, as well as the general terms of the proposed Protection Agreement. In evaluating the final bids and the recommendations from the Adviser, the Board will consider, among other things: (i) The fee rate to be charged by a potential Protection Provider; (ii) the structure and potential limitations of the proposed Principal Protection arrangement and any legal, regulatory or tax implications of such arrangement; (iii) the credit rating (if any) and financial condition of the potential Protection Provider, including any ratings assigned by any NRSRO; and (iv) the experience of the potential Protection Provider in providing Principal Protection, including in particular to registered investment companies. If the Affiliated Protection Arrangement approved by the Board does not reflect the lowest fee submitted in a proposal to provide the Principal Protection, the Board will reflect in its minutes the reasons why the higher cost option was selected.

4. Upon the conclusion of the Adviser's negotiations of the Affiliated Protection Arrangement, including the Protection Agreement, the Fund's Board, including a majority of Independent Trustees, must approve the final Protection Agreement and determine that the terms of the final Affiliated Protection Arrangement, as so finalized, are not materially different from the terms of the accepted bid. The Board, including a majority of its Independent Trustees, will also determine that entering into the Affiliated Protection Arrangement will be in the best interests of the Fund and its shareholders and meets the standards

specified in section 17(b) of the Act. The Board will reflect these findings and their basis in its minutes.

5. If a Merrill Lynch Affiliate is chosen as the Protection Provider or Hedging Counterparty, it will not charge a higher fee for its Protection Agreement or Hedging Transaction than it would charge for similar agreements or transactions for unaffiliated parties that are similarly situated to the Fund. Any Merrill Lynch Affiliate acting as Hedging Counterparty will not be directly compensated by the Fund and the Fund will not be a party to any Hedging Transaction.

6. In the event the Fund enters into an Affiliated Protection Arrangement, the Board will establish a Committee, a majority of whose members will be Independent Trustees, to represent the Fund in any negotiations relating to a Protection Event. The Adviser will notify the Committee of any Protection Event as soon as practicable, and absent special circumstances, before a decision is reached by the Protection Provider and the Adviser as to how to effect any cure. All Protection Events will be brought to the attention of the full Board at the next regularly scheduled Board meeting.

7. The Adviser will present a report to the Board, at least quarterly, comparing the actual asset allocation of the Fund's portfolio with the allocation required under the Protection Agreement, describing any Protection Events, and summarizing any negotiations that were the subject of the previous condition.

8. At the conclusion of the Protection Period, the Adviser of a Fund will report to the Fund's Board any Shortfall potentially covered under an Affiliated Protection Arrangement (including, for this purpose, the amount of any required Adviser Payment). The Board, including a majority of Independent Trustees, will evaluate the Shortfall and will determine the amount of the claim (previously defined as the Approved Shortfall Amount) under the Protection Agreement to be submitted to the Protection Provider. The Fund will not settle any claim under the Protection Agreement for less than the full Approved Shortfall Amount determined by the Board without obtaining a further exemptive order from the Commission.

9. No less than a majority of a Fund's Board will consist of Independent Trustees.

10. The Independent Trustees will be represented by independent legal counsel within the meaning of Rule 0-1 under the Act.

11. The Adviser, under the supervision of the Board, will maintain

sufficient records to verify compliance with the conditions of the order. Such records will include, without limitation: (i) An explanation of the basis upon which the Adviser selected prospective bidders; (ii) a list of all bidders to whom a bid invitation letter was sent and copies of the bid invitation letters and accompanying materials; (iii) copies of all initial and final bids received, including the winning bid; (iv) records of the negotiations with bidders between their initial and final bids; (v) the materials provided to the Board in connection with the Adviser's recommendation regarding the Protection Agreement; (vi) the final price and terms of the Protection Agreement with an explanation of the reason the arrangement is considered an Affiliated Protection Arrangement; and (vii) records of any negotiations with the Protection Providers related to the occurrence of a Protection Event and the satisfaction of any obligations under a Protection Agreement. All such records will be maintained for a period ending not less than six years after the conclusion of the Protection Period, the first two years in an easily accessible place, and will be available for inspection by the staff of the Commission.

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

**J. Lynn Taylor,**  
*Assistant Secretary.*

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BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27715]

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

August 20, 2003.

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 September 12, 2003, 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 September 12, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### **AGL Resources Inc. et al. (70-9813)**

AGL Resources Inc. ("AGLR"), located at Ten Peachtree Place, NE., Atlanta, Georgia 30309, a registered holding company under the Act, and its wholly-owned subsidiary, Global Energy Resource Insurance Corp. ("GERIC") located at Romasco Place, Wickhams Cay 1, P.O. Box 3140, Road Town, Tortola, British Virgin Islands, (collectively, "Applicants") have filed a post-effective amendment under sections 9(a) and 10 of the Act to their application previously filed with the Commission under sections 6(a), 7, 9(a) and 10 and rule 43 of the Act.

Applicants are seeking authorization for GERIC (1) to provide finite insurance program services to AGLR and its subsidiaries ("AGLR System") as described in more detail below, and (2) to retain additional risk associated with the AGLR System's self-insured retention.

By an order dated April 13, 2001 (HCAR No. 27378) ("Captive Order"), the Commission authorized AGLR to organize a subsidiary to underwrite a certain portion of the insurance purchased by the AGLR System companies, which risks it would then transfer to third-party reinsurance companies. In particular, the subsidiary would underwrite coverage for the AGLR System companies over their self-insured retention and above a layer of traditional insurance. The subsidiary was also authorized to retain a small amount of risk, not to exceed \$1 million, for each type of insurance coverage ("GERIC Retained Risk Limit"). In accordance with the Captive Order, AGLR formed GERIC, which began to provide insurance services to the AGLR System on May 1, 2001.

Applicants state that the AGLR System maintains insurance for automobile and general liability exposures, directors and officers

liability, "all risk" property coverage, workers' compensation liability and other risks. In addition, the AGLR System companies may provide wrap-up construction insurance coverage to nonaffiliated construction contractors working for the AGLR System. The AGLR System currently maintains a self-insured retention with respect to its insured risks of up to \$1 million (except with respect to automobile liability and terrorism insurance, where the self-insured retentions are \$2 million and \$5 million, respectively) and purchases insurance to cover risks over and above that amount.

The Captive Order noted that GERIC was authorized to operate as an insurance company in the British Virgin Islands. Initially, GERIC would focus on providing insurance coverage for automobile, general liability, risk property, boiler and machinery, directors and officers, crime, fiduciary and workers compensation. The Captive Order noted that, in the future, GERIC might seek to underwrite additional types of insurance and retain a small amount of risk that for each additional type of insurance would not exceed \$1 million. GERIC may underwrite additional types of insurance only when: (1) A reinsurer is ceded 100% of the underwritten risk; (2) the insurance is related to an authorized or permitted AGLR System business activity; (3) direct placement of reinsurance by GERIC could be reasonably expected to save the AGLR System a portion of the risk premium it would otherwise have paid; and (4) normal deductible amounts are retained by the AGLR System companies and where GERIC can obtain, as appropriate, excess or stop-loss coverage.

The Applicants state that GERIC targets its underwriting activity on the portions of the AGLR System's liability program where the greatest cost savings are possible. Presently, GERIC provides excess coverage for the types of insurance listed above that is placed above the AGLR System's self-insured retention and above a layer of traditional coverage that is maintained by AGLR for the benefit of the AGLR System. GERIC reinsures all of the risks that it underwrites with reinsurance companies, except with respect to coverage for property crime where it also covers a \$500,000 AGLR System deductible. GERIC intends to begin providing construction wrap-up insurance in the near future.

Applicants now propose that GERIC offer the AGLR System a finite insurance program that would provide coverage for the layer of risk, currently covered by traditional retail insurance

carriers, that resides between the self-insured retention and the excess risk reinsured by GERIC with reinsurance companies. This intermediate layer of insurance coverage extends generally from the self-insured retention level to the \$10,000,000 level. Because this intermediate level of coverage is more likely to be accessed by a claim than the higher layer of excess coverage, it is responsible for a significant percentage of the AGLR System's premium costs.

Under the finite insurance program the AGLR System companies would use premium dollars presently used to acquire traditional insurance coverage for the intermediate risk layer to fund a reserve that would be used instead of traditional insurance coverage to cover losses related to the intermediate risk level (*i.e.*, the risk above the self-insured retention and below the reinsured risk). For example, the AGLR System's premiums for intermediate risk layer coverage are expected to be approximately \$2.5 million per year, including the construction wrap-up program that GERIC intends to initiate in October, 2003. After collecting the AGLR System's finite premium payments, GERIC would invest the payments in reserves consisting of U.S. Treasury securities and other securities permitted by section 9(c) of the Act and rule 40. The balance of the premium payments (less GERIC's at-cost administrative expenses) not invested in reserves would be used to purchase third-party coverage for any loss that could not be covered by the reserve maintained by GERIC. As the reserves accumulate over several years, the third party coverage would be expected to become less expensive. In addition, when the reserve reaches an amount adequate to cover anticipated losses, the reserve funding commitment from the AGLR System companies can be reduced with commensurate premium savings.

The finite program would not increase the risk of an uncovered loss since amounts held by GERIC in reserve would be invested in secure assets and available to fund claims. Uncovered losses also would be avoided because third party provided coverage would be in place to the extent GERIC's reserves were not fully funded at the time of a loss. Reinsurance would continue to be maintained to cover liabilities that would exceed the intermediate layer of liability coverage that would be provided by the combination of GERIC's reserves and the third party coverage. The finite program would provide the opportunity to further reduce the AGLR System's insurance costs because once GERIC's reserves have been fully

funded, subsequent contributions by the AGLR System companies can be substantially reduced to a level adequate to maintain the reserves at a fully funded level and to provide reinstatement coverage that would step in to provide protection if the reserves were exhausted.

The third-party coverage would be provided by a reinsurance company or through the acquisition of a capital markets product that is entered into on an exchange or with an investment-grade counterparty. Applicants request that the Commission reserve jurisdiction with respect to the use of capital markets products to provide third-party coverage until the record has been supplemented with additional detail about the nature of the product. GERIC will establish reserves consistent with the insurance regulations of the British Virgin Islands and sound actuarial practices.<sup>1</sup> As provided in the Captive Order, GERIC will not be operated to generate profits beyond what is necessary to maintain adequate reserves. To the extent that premiums and interest earned on the reserves exceed current claims and expenses, GERIC will accumulate reserves that will allow it to cover claims in years when claims and expenses exceed premiums. To the extent that losses are lower than projected, GERIC will correspondingly lower premiums and thus return excess capital to AGLR System companies.

Applicants assert that GERIC's current insurance program has been effective in managing the AGLR System's insurance costs. As shown in the certificate of notification under rule 24, filed on April 1, 2003, GERIC's operations for the period May 1, 2001, to May 31, 2002, resulted in first year premium savings for the AGLR System of \$386,751. For the period June 1, 2002, through May 31, 2003, GERIC contributed benefits to the AGLR System by making possible the avoidance of a portion of the increase in insurance premiums that followed the terrorist attack of September 11, 2001, and other events. Applicants assert that this experience demonstrates that by providing the AGLR System with the flexibility to access the insurance markets independent of traditional insurers, GERIC serves a valuable function that, although not readily quantifiable, can be

a significant factor in managing insurance costs.

Similarly, Applicants project that the proposed finite program would produce savings for the AGLR System companies. GERIC has compared the AGLR System premium costs for the intermediate risk layer (losses of \$1 million to \$10 million) over four years with the costs associated with funding the captive insurance program. Projected losses over this same period also were analyzed. GERIC's analysis concludes that the finite insurance program could provide savings of several million dollars.

A British Virgin Islands management company has been retained to provide administrative services to GERIC. AGL Services Company ("AGSC") employees are directors and principal officers of GERIC and they oversee the performance of the administrative activities by the management company. The administrative functions directed by AGSC through the management company include: (1) Accounting and reporting activities; (2) legal, actuarial, banking and audit services; (3) negotiating reinsurance contracts, policy terms and conditions; (4) invoicing and making payments, and; (5) managing regulatory affairs. The existing AGSC claim staff performs the claims adjusting function. It is not anticipated that managing the finite program would require additional staff or materially increase the administrative costs associated with GERIC's operations. All goods and services provided by AGSC to GERIC would be provided in accordance with section 13 of the Act and any applicable rules under that section, and costs incurred by GERIC would be recovered in premiums charged to the AGLR System companies.

Applicants propose that in addition to the authorization requested for the finite program, that the Commission increase the Self-Insurance Limit from \$1 million to \$5 million. In some lines of insurance the AGLR System has increased, or expects that it may increase, its self-insured retention. For example, in the automobile liability line of coverage the AGLR System's self-insured retention is now \$2 million. Increasing the self-insured retention helps the AGLR System to manage its insurance costs and to adjust limits in response to inflation. An increase in the Self-Insurance Limit would allow GERIC to retain the risk associated with the self-insured retention of the AGLR System beyond the current \$1 million limit. GERIC will maintain appropriate reserves to cover any risk of loss that it retains under an increased Self-Insurance Limit.

GERIC will continue to be bound by the condition in the Captive Order that it may underwrite additional types of insurance only when: (1) A reinsurer is ceded 100% of the underwritten risk; (2) the insurance is related to an authorized or permitted AGLR System business activity; (3) direct placement of reinsurance by GERIC would be reasonably expected to save the AGLR System a portion of the risk premium it would otherwise have paid; and (4) normal deductible amounts are retained by the AGLR System companies and where GERIC can obtain, as appropriate, excess or stop-loss coverage.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### In the Matter of Tamarak, Inc.; Order of Suspension of Trading

August 25, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tamarak, Inc. ("Tamarak") because of questions regarding the accuracy and adequacy of assertions in press releases by Tamarak, concerning, among other things: (1) Tamarak's plans and financial ability to produce and distribute a television mini-series and movie; (2) Tamarak's projected profits; (3) the purported support by the U.S. Air Force for Tamarak's film projects; and (4) purported discussions between Tamarak and major television and film studios.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in securities related to the above-listed company.

Therefore, *it is ordered*, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in all securities, as defined in Section 3(a)(10) of the Securities Exchange Act of 1934, issued by the above-listed company, is suspended for the period from 9:30 a.m. EDT on Monday, August 25, 2003 and terminating at 11:59 p.m. EDT on Monday, September 8, 2003.

<sup>1</sup> Applicants expect that premium payments would be sufficient to establish and maintain the necessary reserves. If, however, additional capital is required, AGLR may provide capital to GERIC through equity and or debt purchases exempt under Rule 52, or guarantees, letters of credit or other forms of credit support authorized by Commission order. AGL Resources Inc., Holding Co. Act Release No. 27243 (October 5, 2000).