

received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 04-12548 Filed 6-2-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27849]

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

May 27, 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 21, 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 21, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

### Georgia Power Company, et. al. (70-10223)

Georgia Power Company ("Georgia Power"), 241 Ralph McGill Boulevard, NE., Atlanta, Georgia 30308, a wholly-owned utility subsidiary of The Southern Company ("Southern"), a registered holding company; Gulf Power Company ("Gulf Power"), One Energy Place, Pensacola, Florida 32520, a wholly-owned utility subsidiary of Southern; Mississippi Power Company ("Mississippi Power"), 2992 West Beach, Gulfport, Mississippi 39501, a wholly-owned utility subsidiary of Southern; Savannah Electric and Power Company ("Savannah Power"), 600 Bay Street East, Savannah, Georgia 31401, a wholly-owned utility subsidiary of Southern; and Southern Company Funding Corporation ("Southern Funding"), 270 Peachtree Street, NW., Atlanta, Georgia 30303, a wholly-owned subsidiary of Southern (collectively, "Applicants"), have filed a declaration/application ("Declaration") under sections 6, 7, 9(a), 10, and 12(b) of the Act and rules 45 and 54 under the Act.

By order dated November 8, 2000 (Holding Company Act Release No. 27273), Southern Funding was authorized to issue commercial paper at the request and for the benefit of the Applicants and Alabama Power Company ("Alabama Power"), and Southern Electric Generating Company ("SEGCO") (collectively, "Operating Companies") in an amount not to exceed \$3.5 billion outstanding at any time prior to June 30, 2004. The Operating Companies were authorized to borrow the proceeds from the sale of the commercial paper issued for their benefit.

Applicants now seek authority for Southern Funding to issue and sell commercial paper at the request of the Operating Companies from time to time prior to June 30, 2007 ("Authorization Period") in an aggregate principal amount at any one time outstanding not to exceed \$8.4 billion. Applicants also seek authority for Georgia Power, Gulf Power, Mississippi Power and Savannah Power to borrow the proceeds of the sale of commercial paper in amounts that will not at any time during the Authorization Period exceed \$3.2 billion for Georgia Power, \$600 million for Gulf Power, \$500 million for Mississippi Power, and \$120 million for Savannah Power. The remaining amount of commercial paper authorized to be issued by Southern Funding will be issued at the request of, and borrowed by, Alabama Power and

SEGCO.<sup>1</sup> Finally, Applicants seek authority for Georgia Power to guarantee any loan by Southern Funding to SEGCO in an amount of up to \$150 million, or to re-lend any borrowing Georgia Power makes from Southern Funding to SEGCO. Alabama Power and Georgia Power each own 50% of the outstanding common stock of SEGCO and are entitled to one-half of SEGCO's capacity and energy.

Currently, Georgia Power, Mississippi Power and Savannah Power have authority to make short-term and term loan borrowings in amounts not to exceed \$3.2 billion, \$500 million, and \$120 million, respectively, prior to March 31, 2006,<sup>2</sup> and Gulf Power has authority to effect short-term and term loan borrowings in an amount not to exceed \$600 million prior to January 1, 2007<sup>3</sup> (collectively, "Short-Term Borrowing Orders"). Applicants propose to aggregate the authority requested in the Declaration with the existing authority in the Short-Term Borrowing Orders so that at all times when the order in connection with this Declaration is in effect, Georgia Power, Mississippi Power, Savannah Power and Gulf Power will have short-term borrowing authorizations in an amount not to exceed \$3.2 billion, \$600 million, \$500 million and \$120 million aggregate principal amount, respectively.

Southern Funding has entered into financial services agreements with each Operating Company under which Southern Funding has agreed to use its reasonable best efforts to issue commercial paper in amounts and at times as requested by each Operating Company. Each of Georgia Power, Gulf Power, Mississippi Power and Savannah Power proposes to borrow the cash proceeds of each issuance it requests. Each Operating Company's requested borrowing will be evidenced on a grid promissory note from the Operating Company to Southern Funding, on which each borrowing will be reflected until repaid. The terms of each borrowing will be identical to those of the related commercial paper issued for its benefit. In addition, Georgia Power also requests authority to guarantee any loan by Southern Funding to SEGCO, or to re-lend any borrowing Georgia Power

<sup>1</sup> Applicants state that the security issuances by Alabama Power and SEGCO are exempt from prior Commission review in accordance with rule 52(a) of the Act.

<sup>2</sup> See Holding Company Act Release No. 27617 (December 16, 2002) (Georgia Power); Holding Company Act Release No. 27616 (December 16, 2002) (Mississippi Power); and Holding Company Act Release No. 27618 (December 16, 2002) (Savannah Power).

<sup>3</sup> See Holding Company Act Release No. 27773 (December 18, 2003) (Gulf Power).

<sup>5</sup> 17 CFR 200.30-3(a)(1).

makes from Southern Funding to SEGCO. The amount of any guarantee by Georgia Power will not exceed \$150 million at any one time outstanding, and may be made by Georgia Power individually to SEGCO, or jointly and severally by Georgia Power and Alabama Power to SEGCO.

The commercial paper that may be issued by Southern Funding will be in the form of promissory notes with varying maturities not to exceed one year, which maturities may be subject to extension to a final maturity not to exceed 390 days. Actual maturities will be determined by market conditions, the effective interest costs and the anticipated cash flows of the respective Operating Companies, including the proceeds of other borrowings, at the time of issuance. The commercial paper notes will be issued in denominations of not less than \$50,000 and will not by their terms be payable prior to maturity.

The commercial paper will be sold by Southern Funding directly to or through a dealer or dealers (the "dealer"). The discount rate (or the interest rate in the case of interest-bearing notes), including any commissions, will not be in excess of the discount rate per annum (or the equivalent interest rate) prevailing at the date of issuance for commercial paper of comparable quality with the same maturity sold by other issuers to commercial paper dealers.

No commission or fee will be payable in connection with the issuance and sale of commercial paper, except for a commission not to exceed 1/8th of 1% per annum payable to the dealer in respect of commercial paper sold through the dealer as principal. The dealer will re-offer such commercial paper at a discount rate of up to 1/8th of 1% per annum less than the prevailing interest rate to Southern Funding or at an equivalent cost if sold on an interest-bearing basis.

Each Applicant (other than Southern Funding) represents that through the Authorization Period it will maintain its common equity as a percentage of capitalization (inclusive of short-term debt) at no less than thirty percent. Southern Funding will not issue any securities on behalf of an Applicant (other than commercial paper with a maturity of one year or less) under this Declaration unless upon original issuance: (i) The securities, if rated, are rated at least investment grade, (ii) all outstanding securities of the Applicant on whose behalf the borrowing will be made that are rated as rated investment grade, and (iii) all outstanding securities of Southern that are rated as rated investment grade. For purposes of this provision, a security will be deemed to

be rated "investment grade" if it is rated investment grade by at least one nationally recognized statistical rating organization, as defined in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3-1 under the Securities Exchange Act of 1934, as amended. Gulf Power requests that Southern Funding be permitted to issue a security on Gulf Power's behalf that does not satisfy the foregoing condition if the requirements of rule 52(a)(1) and rule 52(a)(3) are met and the issue and sale of the security have been expressly authorized by the Florida Public Service Commission. Applicants request that the Commission reserve jurisdiction over the issuance of any securities at any time that the conditions set forth above are not satisfied.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49775; File No. SR-Amex-2004-32]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Amend Article II, Section 3 of the Exchange Constitution

May 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 12, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Article II, section 3 of the Exchange Constitution. The text of the proposed rule change is below. Proposed new language is italicized.

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

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

## Article II Government and Administration

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### Section 3 Powers, Duties and Procedures

"Powers and Duties"—"Group Hospitalization Plan." No change.

#### Regulatory Services Agreements

*The Board may authorize any officer, on behalf of the Exchange, subject to the approval of the Board, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Securities Exchange Act of 1934. Any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision shall affect the oversight of such other self-regulatory organization by the Securities and Exchange Commission. Notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide.*

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

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

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

###### 1. Purpose

The proposed rule change would create a mechanism that would allow the Exchange to contract with another self-regulatory organization for the performance of certain of Amex's regulatory functions. The purpose of the proposed rule change is to enhance the