rule was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. The Applicant states that the proposed Distribution Plan, including the fact that the distributions called for by the Distribution Plan will include returns of capital to the extent that the Applicant's net investment income and net realized capital gains are insufficient to meet the minimum percentage dividend, will be fully described in each of the Applicant's periodic reports to shareholders. The Applicant states that, in accordance with rule 19a–1 under the Act, a statement showing the source of the distribution would accompany each distribution (or the confirmation of the reinvestment thereof under the Applicant's dividend reinvestment plan). The Applicant states that the amount and source of each distribution received during the calendar year will be included with the Applicant's IRS Form 1099–DIV reports of distributions during the year, which will be sent to each shareholder who received distributions (including shareholders who have sold shares during the year). The Applicant states that this information also will be included in the Applicant's annual report to shareholders.

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution (''selling the dividend''), where the dividend results in an immediate corresponding reduction in NAV and would be, in effect, a return of the investor's capital. Applicant submits that this concern does not apply to closed-end investment companies, such as the Applicant, which do not continuously distribute their shares. In addition, the Applicant states that any rights offering will be timed so that shares issuable upon exercise of the rights will be issued only in the 15-day period immediately following the record date for the declaration of a monthly dividend, or in the six-week period immediately following the record date of a quarterly dividend. Thus, the Applicant states that, in a rights offering, the abuse of selling the dividend could not occur as a matter of timing. Any rights offering also will comply with all relevant Commission and staff guidelines. In determining compliance with these guidelines, the Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any offering by the Applicant of transferable rights will comply with any applicable National Association of Securities Dealers, Inc. rules regarding the fairness of compensation.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or class or classes of any persons, securities or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, the Applicant believes that the requested relief satisfies this standard.

Applicant's Condition

The Applicant agrees that any order granting the requested relief shall terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by the Applicant of its shares other than:

(i) a rights offering to holders of the Applicant's common stock, in which (a) shares are issued only within the 15-day period immediately following the record date of a monthly dividend, or within the six-week period following the record date of a quarterly dividend, (b) the prospectus for such rights offering makes it clear that shareholders exercising rights will not be entitled to receive such dividend, and (c) the Applicant has not engaged in more than one rights offering during any given calendar year; or

(ii) an offering in connection with a merger, consolidation, acquisition, spin-off or reorganization of the Applicant; unless the Applicant has received from the staff of the Commission written assurance that the order will remain in effect.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–29574 Filed 11–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27766]

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

November 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 December 15, 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 December 15, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

KeySpan Corporation, et al. (70–10129)

KeySpan Corporation (''KeySpan''), a registered holding company and KeySpan's directly owned public utility subsidiaries The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (''KEDNY''); KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (''KEDLI''); KeySpan Generation LLC (''KeySpan Generation''); and KeySpan's public utility subsidiaries indirectly owned through KeySpan New England LLC (''KeySpan New England''), Boston Gas Company d/b/a KeySpan Energy Delivery New England (''Boston Gas''), Essex Gas Company d/b/a KeySpan Energy Delivery New England (''Essex Gas''), Colonial Gas Company d/b/a KeySpan Energy Delivery New England (''Colonial Gas''), and EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England (''ENGI'' and the

direct and indirect utility subsidiaries, together, ''Utility Subsidiaries''); KeySpan's nonutility subsidiaries (''Nonutility Subsidiaries''): KeySpan Energy Corporation (''KEC'') and its subsidiaries; KeySpan Insurance Company; KeySpan Electric Services LLC; KeySpan Engineering and Survey, Inc.; KeySpan Exploration & Production LLC; KeySpan Corporate Services LLC (''KCS''); KeySpan Utility Services LLC; KSNE LLC; KeySpan-Ravenswood LLC (''Ravenswood''); KeySpan Services, Inc. and its nonutility subsidiaries; KeySpan Energy Trading Services LLC, and KeySpan Energy Development Corporation and its nonutility subsidiaries, all located at One MetroTech Center, Brooklyn, New York 11201, except for KeySpan New England, Boston Gas, Essex Gas, Colonial Gas and ENGI, which are located at 52 Second Avenue, Waltham, MA 02451, (KeySpan, the Utility Subsidiaries and the Nonutility Subsidiaries are collectively referred to as ''Applicants'') have filed with the Commission an application-declaration (''Application'') under sections 6(a), 7, 9(a), 10, 11, 12(b), 12(f), and 13(b) of the Act, and rules 42, 43, 44, 45, 46, 52, 53, 54, 58, 62, 90, and 91 under the Act.

I. Introduction

By order dated November 7, 2000 (HCAR No. 27269), as corrected by order issued on December 1, 2000 (HCAR No. 27281) (together, ''Merger Order''), KeySpan was authorized to acquire all of the issued and outstanding common stock of Eastern Enterprises (''Eastern'' now known as KeySpan New England)[1] and EnergyNorth Inc. (''Mergers''). KeySpan now directly or indirectly owns the following seven public utility companies: (i) KEDNY, which distributes natural gas at retail to residential, commercial and industrial customers in the New York City boroughs of Brooklyn, Staten Island and Queens; (ii) KEDLI, which distributes natural gas at retail to customers in New York State located in the counties of Nassau and Suffolk on Long Island and the Rockaway Peninsula in Queens County; (iii) KeySpan Generation, which owns and operates electric generation capacity located on Long Island all of which is sold at wholesale to the Long Island Power Authority (''LIPA'') for resale by LIPA to its approximately 1.1 million customers; (iv) Boston Gas, which distributes natural gas to customers located in Boston and other cities and towns in eastern and central Massachusetts; (v) Essex Gas, which distributes natural gas to customers in eastern Massachusetts to customers; (vi) Colonial Gas, which distributes natural gas to customers located in northeastern Massachusetts and on Cape Cod; and (vii) ENGI, which distributes natural gas to customers located in southern and central New Hampshire, and the City of Berlin located in northern New Hampshire. Together, KEDNY and KEDLI serve approximately 1.66 million customers. Together, Boston Gas, Colonial Gas and Essex Gas serve approximately 768,000 customers. ENGI serves approximately 75,000 customers.

II. General Request

Applicants request authorization to engage in the financing transactions set forth below through December 31, 2006 (''Authorization Period'').

(i) Issuance by KeySpan of common stock, long-term debt; Preferred Stock, Preferred or equity-linked securities (including units with incorporated options, warrants and/or forward equity purchase contracts or provisions that are exercisable or exchangeable for or convertible into common stock);

(ii) Issuance by KeySpan of short-term debt;

(iii) Issuance of up to 13 million shares of KeySpan common stock under KeySpan's direct stock purchase and dividend reinvestment plan, certain incentive compensation plans and certain other employee benefit plans;

(iv) The entering into by KeySpan and its Subsidiaries of hedging transactions;

(v) The issuance of intra-system advances and guarantees (''Guarantees''), and performance guarantees (''Performance Guarantees'') by KeySpan to or on behalf of Subsidiaries of KeySpan;

(vi) The issuance of intra-system advances, Guarantees, Performance Guarantees and, to the extent not exempt under rule 52, by the Nonutility Subsidiaries to or on behalf of other Nonutility Subsidiaries;

(vii) Issuances of short-term debt securities by the Utility Subsidiaries, to the extent not exempt under rule 52;

(viii) Issuances of debt securities in foreign jurisdictions;

(ix) The ability of the Nonutility Subsidiaries to pay dividends out of capital or unearned surplus;

(x) The right of KeySpan to acquire directly or through Subsidiaries the securities of one or more corporations, trust, partnerships, limited liability companies or other entities (''Intermediate Subsidiaries'') in order to, among other things, facilitate the acquisition, holding and/or financing of KeySpan's nonutility investments;

(xi) The authority for KeySpan to engage, directly or through Subsidiaries, in preliminary development activities (''Development Activities'') and administrative and management activities (''Administrative Activities'') in each case related to KeySpan's permitted nonutility investments;

(xii) The authority for KeySpan and its Nonutility Subsidiaries to undertake internal reorganizations of then existing and permitted Nonutility Subsidiaries and businesses;

(xiii) The authority for KeySpan and its Nonutility Subsidiaries to undertake internal reorganizations of then existing and permitted Nonutility Subsidiaries and businesses;

(xiv) The authority for KeySpan and the Subsidiaries to make investments in EWGs and FUCOs up to an aggregate amount not to exceed $3.0 billion;

(xv) The authority for KeySpan and the Subsidiaries to organize and/or acquire the equity securities of one or more additional corporations, trusts, partnerships or other entities organized to serve the purpose of facilitating financings (''Financing Subsidiaries'');

(xvi) The authority for the Nonutility Subsidiaries to provide services and sell goods to each other at fair market prices determined without regard to cost in exemption from section 13(b) and rules 90 and 91; and

(xvii) Issuances by KeySpan and its Subsidiaries of common stock, preferred stock, preferred and equity-linked securities, long-term debt and short-term debt to refund, replace, repurchase or refinance existing securities, to the extent not exempt under rule 52.

III. Financing Parameters

Applicants request authorization to engage in a variety of financing transactions, credit support arrangements and other related transactions, as more fully discussed below, during the Authorization Period for which the specific terms and conditions are not at this time known. Applicants state that the following general terms (''Financing Parameters'') would be applicable, where appropriate, to the financing transactions requested:

A. Effective Cost of Money on Financings

Applicants state that the effective cost of capital on debt and preferred or equity-linked financings will not exceed

[1] KeySpan New England has succeeded to Eastern's ownership interests in Boston Gas, Essex Gas, Colonial Gas and ENGI and the nonutility subsidiaries owned by Eastern, (i) is successor of Eastern with respect to its commitments and authorizations set forth by order dated November 8, 2000 (HCAR No. 27272) as corrected by order dated December 1, 2000 (HCAR No. 27286) (together, ''2000 Financing Order'') and (ii) is an exempt holding company under section 3(a)(1) of the Act as stated in the Merger Order.

competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that in no event will the effective cost of capital on (i) long-term debt borrowings exceed 500 basis points over the comparable term U.S. Treasury securities and on (ii) short-term debt borrowings exceed 500 basis points over the comparable term London Interbank Offered Rate (''LIBOR'').

B. Maturity

Applicants state that the maturity of indebtedness will not exceed 50 years and that preferred stock or preferred or equity-linked securities (other than perpetual preferred stock) will be redeemed no later than 50 years after its issuance, unless converted into common stock.

C. Issuance Expenses

Applicants state that the underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities would not exceed the greater of (i) 7% of the principal or total amount of the security being issued or (ii) issuance expenses that are generally paid at the time of the pricing for sales of the particular issuance, having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

D. Use of Proceeds

Applicants state that the proceeds from the sale of securities in external financing transactions will be used for general corporate purposes including (i) the financing of the capital expenditures of the KeySpan system; (ii) the financing of working capital requirements of the KeySpan system; (iii) the acquisition, retirement or redemption under rule 42 of securities previously issued by KeySpan or its Subsidiaries or as otherwise authorized by Commission; (iv) direct or indirect investment in companies authorized under the Act or Commission rule, or by Commission order (including EWGs or FUCOs) or in a separate proceeding; and (v) other lawful purposes. Applicants represent that no financing proceeds will be used to acquire a new subsidiary unless the financing is consummated in accordance with a Commission order or an available exemption under the Act.

E. Common Equity Ratio

Applicants state that KeySpan and each Utility Subsidiary will each maintain common equity (as reflected in the most recent annual or quarterly financial statement of each entity, as the case may be, adjusted to reflect changes in capitalization since the included balance sheet date) of at least 30% of its consolidated capitalization by considering common equity, preferred stock, long-term debt and short-term debt (''30% Test'') at all times during the Authorization Period.

As of June 30, 2003, the common equity of each Utility Subsidiary and of KeySpan on a consolidated basis is as follows:

	Percent
Essex Gas Company	37.44
Colonial Gas Company	42.85
Boston Gas Company	35.58
KeySpan Generation LLC	42.15
EnergyNorth Natural Gas, Inc	65.00
The Brooklyn Union Gas Company	58.61
KeySpan Gas East Corporation	46.89
Consolidated	39.78

F. Investment Grade Ratings

Applicants state that apart from securities issued for the purpose of funding money pool operations, KeySpan and the Utility Subsidiaries will not issue any other securities in reliance upon this Order, unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer, that are rated,[2] are rated investment grade; and (iii) all outstanding securities of KeySpan, the top-level registered holding company, that are rated, are rated investment grade (''Investment Grade Condition''). 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 that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934. Applicants request that the Commission reserve jurisdiction over the issuance by KeySpan and the Utility Subsidiaries of any securities that are not able to meet the Investment Grade Condition.

IV. Current Financial Condition

Applicants state that all outstanding long-term debt securities of KeySpan and each of the Utility Subsidiaries that are rated, are rated investment grade. For purposes of this provision, Applicants state that 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 that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934. The ratings are as follows:

	Moody's	Standard and Poor's
KeySpan	A3	A
KEDLI	A2	A+
KEDNY	A2	A+
KeySpan Generation.	A3	A
Boston Gas	A2	A
Colonial Gas	A2	A

V. Description of Specific Financings

A. KeySpan External Financing

Applicants request that KeySpan increase its total consolidated capitalization through sales of common stock, preferred stock, preferred and equity-linked securities, long-term debt and short-term debt securities. Applicants also request that KeySpan be authorized to issue common stock to third parties in consideration for the acquisition by KeySpan or a Nonutility Subsidiary of equity or debt securities of a company being acquired through a Commission order, applicable rule, or exemption under the Act. Applicants request that the aggregate amount of common stock, preferred stock, preferred and equity-linked securities, and/or long-term debt to be issued by KeySpan during the Authorization Period, other than for refinancing, refunding or replacement of outstanding securities, shall not exceed $3.0 billion (''Long-Term Financing Limit'').

In addition to the $3.0 billion authorization under the Long-Term Financing Limit, Applicants propose that KeySpan issue up to $1.3 billion of short-term debt during the Authorization Period (''Short-Term Financing Limit'').

1. Common Stock

(a) General

Applicants request that KeySpan sell or otherwise issue [3] common stock in any one of the following ways: (i) Through underwriters or dealers; (ii) through agents; (iii) directly to a limited number of purchasers or a single

[2] Applicants state that ENGI and Essex Gas are not rated.

[3] Applicants request that the authority to issue common stock also includes authorization to contribute common stock to current or future employee benefit plans to satisfy current or future capital funding obligations.

purchaser; or (iv) directly to employees (or to trusts established for their benefit), and shareholders. Applicants request that issuances of common stock under KeySpan's employee benefit plans and stock purchase and dividend reinvestment plans not count towards the Long-Term Financing Limit, but that these securities be limited to 13 million shares as described below in V.A.1.(c).

Applicants state that if underwriters are used in the sale of the securities, the securities would be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by KeySpan) or directly by one or more underwriters acting alone. Applicants state that the securities may be sold directly by KeySpan or through agents designated by KeySpan from time to time and that if dealers are utilized in the sale of any of the securities, KeySpan would sell the securities to the dealers as principals. Any dealer may then resell these securities to the public at varying prices to be determined by the dealer at the time of resale. The aggregate price of the common stock being sold through any underwriter or dealer shall be calculated based on either the specified selling price to the public or the closing price of the common stock on the day the offering is announced. Applicants state that if common stock is being sold in an underwritten offering, KeySpan may grant the underwriters an over-allotment option permitting the purchase from KeySpan of additional shares at the same price then being offered solely for the purpose of covering over-allotments.

Applicants state that public distributions may be through private negotiation with underwriters, dealers or agents as discussed above or effected through competitive bidding among underwriters. In addition, Applicants request that sales be made through private placements or other non-public offerings to one or more persons. Applicants state that these common stock sales would be with terms and conditions, at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

(b) Acquisitions

Applicants also request that KeySpan be authorized to issue common stock to third parties in consideration for the acquisition by KeySpan or a Nonutility Subsidiary of equity or debt securities of a company being acquired through a Commission order, applicable rule, or exemption under the Act. Applicants state that the KeySpan common stock to be exchanged in this type of transaction may be purchased on the open market under rule 42, or may be original issue.[4]

(c) Direct Stock Purchase and Other Employee Benefit Plans

Applicants propose, from time to time during the Authorization Period, for KeySpan to issue and/or acquire in open market transactions, or by some other method which complies with applicable law and Commission interpretations then in effect, up to 13 million shares of KeySpan common stock (''Benefit Plan Limit'') under KeySpan's current or any future direct stock purchase and dividend reinvestment plan, certain incentive compensation plans, and certain other employee benefit plans. Applicants propose that any shares of common stock acquired by KeySpan on the open market during the Authorization Period under a rule 42 exemption, that were originally issued under the Benefit Plan Limit shall no longer count against the Benefit Plan Limit until the shares are reissued.

2. Preferred Stock and Preferred and Equity-Linked Securities

Applicants request that KeySpan issue preferred stock in addition to preferred securities and or equity-linked securities up to the Long-Term Security Limit. Applicants request authority for KeySpan to issue preferred stock, preferred securities including trust preferred securities, convertible preferred securities, such as, debt or preferred securities that are convertible or exchangeable, either mandatorily or at the option of the holder, into common stock of KeySpan, common stock of the Subsidiaries, KeySpan indebtedness, or forward purchase contracts for common stock.

Applicants state that preferred or equity-linked securities may be issued in one or more series with rights, preferences, and priorities as may be designated in the instrument creating each series. Dividends or distributions on preferred or equity-linked securities will be made periodically and to the extent funds are legally available for this purpose, but may be made subject to terms that allow the issuer to defer dividend payments or distributions for specified periods. Applicants state that preferred or equity-linked securities may be convertible or exchangeable into shares of common stock or other indebtedness and may be issued in the form of shares or units. Applicants request that the conversion of equity-linked securities and the subsequent issuance of other securities as a direct result of the conversion (or the performance of forward purchase contracts), to the extent that no additional financing proceeds are realized, would not be counted against the Long-Term Financing Limit.[5] Applicants state that preferred stock and preferred or equity linked securities may be sold directly or indirectly through underwriters or dealers in connection with an acquisition similar to that described for common stock, above.

3. Long-Term Debt

Applicants request that KeySpan issue unsecured, long-term debt securities subject to the Long-Term Financing Limit through the Authorization Period. At June 30, 2003, KeySpan had approximately $4.9 billion of long-term debt obligations outstanding. Long-term debt securities may be comprised of bonds, notes, medium-term notes, debentures, or similar unsecured securities under one or more indentures (''KeySpan Indenture'') or long-term indebtedness under agreements with banks or other institutional lenders. Any long-term debt security would have such designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms, terms for conversion into any other security of KeySpan or the Subsidiaries and other terms and conditions as KeySpan may determine at the time of issuance.

Applicants state that the maturity dates, interest rates, redemption and sinking fund provisions, tender or repurchase and conversion features, if

[4] Applicants state that this common stock may be registered under the Securities Act of 1933, as amended (''1933 Act''), or if the common stock is not registered, then it would be subject to resale restrictions under Rule 144 under the 1933 Act.

[5] Applicants state, for example, that in May 2002, KeySpan completed an offering of 9.2 million publicly traded equity-linked securities units. The aggregate offering price was $460 million. Each unit consists of a 6-year term, 8.75% senior unsecured note with a principal amount of $50, and a forward stock purchase contract to purchase $460 million of KeySpan common stock (based on a range of prices between $35.30 and $42.36) in May 2005. Applicants state that both the issuance of the note and the forward stock purchase contract portion (including the execution thereof) of the equity-linked units were issued and accounted for under KeySpan's Prior Financing Orders. Applicants state that because of the above, the conversion of the forward stock purchase contracts into KeySpan common stock in May 2005 shall not be counted against the $3.0 billion Long-Term Financing Limit.

any, with respect to the long-term securities 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, subject to the Financing Parameters. Applicants further state that borrowings from banks and other financial institutions will be *pari passu* with debt securities issued under the KeySpan Indenture and the short-term credit facilities. Specific terms of any borrowings will continue to be determined by KeySpan at the time of issuance and will comply in all regards with the Financing Parameters.

4. Short-Term Debt

Applicants request authority for KeySpan to have outstanding, at any one time during the Authorization Period, up to $1.3 billion of short-term debt (''Short-Term Financing Limit''), which may include institutional borrowings, commercial paper (''Commercial Paper'') or bid notes and short-term debt issued under the KeySpan Indenture or otherwise. Applicants state that the authorization for short-term debt is in addition to the Long-Term Financing Limit.

Short-term debt shall include any debt securities with a maturity term of one year or less. KeySpan may sell Commercial Paper, from time to time, in established domestic Commercial Paper markets. Applicants state that Commercial Paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for Commercial Paper of comparable quality and maturities sold to Commercial Paper dealers generally. Applicants expect that the dealers acquiring Commercial Paper from KeySpan will re-offer it at a discount to corporate and institutional investors. Applicants expect Institutional investors to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, and finance companies.

KeySpan may, without counting against the Short-Term Financing Limit set forth above, maintain back-up lines of credit (regardless of the maturation term for such back-up credit) in connection with a Commercial Paper program in an aggregate amount not to exceed the amount of authorized short term debt. In no event will the amount of borrowings under such lines of credit plus the amount of Commercial Paper outstanding exceed $1.3 billion in the aggregate.

B. Utility Subsidiary and Nonutility Subsidiary Financing

1. Utility Subsidiaries

Applicants request authority for the Utility Subsidiaries to issue short-term debt, including Commercial Paper and credit lines, and to loan and borrow funds from the utility money pool [6] during the Authorization Period, in the following aggregate principal [7] amounts (''Utility Financing Limit''):

Utility subsidiary	Aggregate principal amount ($ million) [7]
KEDNY	350
KEDLI	450
KeySpan Generation	100
Boston Gas	500
Colonial Gas	225
Essex Gas	50
ENGI	125
	1,800

Applicants state that the Utility Financing Limit is in addition to the Long-Term Financing Limit and the Short-Term Financing Limit. Applicants also request authority for the Utility Subsidiaries to refund, refinance or replace outstanding securities; provided that in no event will the aggregate principal amount of outstanding securities for each Utility Subsidiary exceed the amounts requested above. Applicants request authority for the Utility Subsidiaries to sell Commercial Paper, from time to time, in established domestic commercial paper markets. Commercial Paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for Commercial Paper of comparable quality and maturities sold to Commercial Paper dealers generally. Applicants expect that the dealers acquiring commercial paper from Utility Subsidiaries will re-offer it at a discount to corporate and institutional investors. Applicants expect Institutional investors to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities and finance companies. Applicants request that the Utility Subsidiaries may, without counting against the limits set forth above, further maintain back up lines of credit in an aggregate amount not to exceed the amount of authorized Commercial Paper. Applicants request authority for the Utility Subsidiaries to set up credit lines for general corporate purposes in addition to credit lines to support Commercial Paper. The Utility Subsidiaries would borrow and repay under these lines of credit, from time to time, as it is deemed appropriate or necessary. Subject to the Financing Parameters, Applicants propose that each Utility Subsidiary may engage in other types of unsecured short-term financing as it may deem appropriate in light of its needs and market conditions at the time of issuance.

2. Nonutility Subsidiaries

Applicants request authority for Nonutility Subsidiaries to borrow and lend funds through the operation of the KeySpan nonutility money pool, approved by order dated August 7, 2003 (HCAR No. 27709). Applicants state that short-term financings undertaken by Nonutility Subsidiaries that are not exempt under rule 52, but are otherwise authorized, will be included in the aggregate Short-Term Financing Limit.

C. Guarantees and Intra-System Advances

KeySpan requests authorization to enter into Guarantees, Performance Guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the obligations of its Subsidiaries as may be appropriate or necessary to enable the Subsidiaries to carry on in the ordinary course of their respective businesses in an aggregate principal amount not to exceed $4.0 billion outstanding at any one time (excluding obligations exempt under rule 45) (''Guarantee Financing Limit''). For example, Applicants contemplate that during the Authorization Period, KeySpan will enter into Guarantees, performance Guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the obligations of its Subsidiaries in connection with transactions that are anticipated to involve generation expansion projects.

Applicants state that the Guarantee Limit is in addition to the Long-Term Financing Limit, the Short-Term Financing Limit and the Utility Financing Limit. Included in this amount are existing intra-system Guarantees and support provided by KeySpan as of June 30, 2003, which are expected to remain in place. Applicants request authority for KeySpan to charge

[6] The Commission authorized the Utility Money Pool in the 2000 Financing Order.

[7] Applicants state that the dollar limitations set forth do not include certain presently outstanding push-down debt resulting from the Merger in the following amounts: $700 million to Boston Gas, $100 million to Colonial Gas, $100 million to Essex Gas, and $150 million to ENGI.

each Subsidiary a fee for each Guarantee provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the Guarantee for the period of time the Guarantee remains outstanding. Any Guarantees or other credit support arrangements outstanding at the end of the Authorization Period will continue until expiration or termination in accordance with their terms.

Applicants request that KeySpan's guarantee authority include the ability to guarantee debt. Applicants state that the debt guaranteed will comply with the Financing Parameters or be exempt. To the extent that a Guarantee issued is of a security issued under the authority granted in this Application, Applicants request that the issuance will count only against the applicable limitation related to the underlying obligation in order to avoid a double count.

Applicants also request authorization for the Nonutility Subsidiaries to enter into Guarantees, Performance Guarantees, obtain letters of credit, enter into expense agreements and otherwise provide credit support with respect to other Nonutility Subsidiaries, in an aggregate principal amount not to exceed the Guarantee Financing Limit. The Nonutility Subsidiary providing any credit support may charge its associate company a fee for each Guarantee provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the Guarantee for the period of time the Guarantee remains outstanding.

Applicants state that certain of the Guarantees referred to above may be in support of the obligations of Subsidiaries which are not capable of exact quantification because they are subject to varying quantification. In these cases, KeySpan will determine the exposure under these Guarantee for purposes of measuring compliance with the Guarantee Financing Limit by appropriate means including estimation of exposure based on loss experience or projected potential payment amounts. Applicants state that estimates will be made in accordance with GAAP and that these estimations will be reevaluated periodically.

D. Refunding, Replacing, Repurchasing or Refinancing Outstanding Securities

Applicants request authorization to refund, repurchase (through open market purchases, tender offers, or private transactions), replace or refinance (together, ''Refinancing'') their respective debt or equity securities outstanding during the Authorization Period through the issuance of similar or any other types of securities authorized in this Application. Applicants state that in no case, will Refinancing cause any applicable financing limit to be exceeded.

Applicants request that the amount of a Refinancing that is equal to the then existing outstanding aggregate principal amount of securities to be refinanced not be counted against the securities' applicable financing limit. Only securities issued to finance the additional costs associated with the Refinancing will be counted against the applicable financing limit. The securities issued in the Refinancing may be issued to finance costs incurred due to redemption premiums, costs of acquisition or retirement of the securities, costs of issuance, or other similar costs including the costs expended to acquire securities on the open market under rule 42 and the subsequent costs to reissue the securities. Applicants state that any Refinancing of securities outstanding during the Authorization Period will be undertaken through the issuance of similar or any other securities of the types authorized in this Application and will be subject to the Financing Parameters.

E. Issuing Debt Securities in Foreign Jurisdictions

Applicants state that KeySpan engages in business operations outside of the United States, including Canada and Ireland. In connection with this business, and potential expansion outside of the United States, Applicants request authorization to make sales of KeySpan's long-term and short-term debt securities, of the type authorized in this Application, in foreign countries. Applicants state that opportunities in foreign jurisdictions may arise that allow KeySpan to enter into financing transactions at costs lower than that otherwise may be available within the United States. Applicants state that these issuances will not exceed an aggregate of $500 million at any time outstanding during the Authorization Period (''Foreign Issue Limit''). Applicants state that consideration for foreign securities sales may be in foreign currency. In addition, foreign securities sales shall be subject to the Financing Parameters, the Long-Term Financing Limit and Short-Term Financing Limit, as the case may be, based on its value in U.S. Dollars as calculated in accordance with the currency exchange rate for the currency used as reported at the time of the sale.

F. Financing Risk Management Devices

1. Interest Rate Risk

Applicants request authority to enter into, perform, purchase, and sell financial instruments intended to reduce or manage the volatility of interest rates, including but not limited to interest rate swaps, caps, floors, collars and forward agreements. Applicants state that hedges may also include issuance of structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or U.S. governmental agency obligations or LIBOR based swap instruments (''Hedge Instruments''). Applicants state that the transactions would be for fixed periods and stated notional amounts. Applicants state that they would employ interest rate derivatives as a means of prudently managing the risk associated with any of its outstanding debt issued under this authorization or an applicable exemption by, in effect, synthetically (i) converting variable rate debt to fixed rate debt, (ii) converting fixed rate debt to variable rate debt, and (iii) limiting the impact of changes in interest rates resulting from variable rate debt. Applicants assert that in no case will the notional principal amount of any interest rate swap exceed the face value of the underlying debt instrument and related interest rate exposure. Applicants state that transactions will be entered into for a fixed or determinable period and that they will not engage in speculative transactions. Applicants state that they will only enter into agreements with counterparties (''Approved Counterparties'') whose senior debt ratings, as published by a national recognized rating agency, are greater than or equal to ''BBB-,'' or an equivalent rating.

2. Anticipatory Hedges

In addition, Applicants request authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings (''Anticipatory Hedges''), subject to certain limitations and restrictions. Applicants state that 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 (i) a forward sale of exchange-traded Hedge Instruments (''Forward Sale''), (ii) the purchase of put options on Hedge Instruments (''Put

Options Purchase''), (iii) a Put Options Purchase in combination with the sale of call options Hedge Instruments (''Zero Cost Collar''), (iv) transactions involving the purchase or sale, including short sales, of Hedge Instruments, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to, structured notes, caps and collars, appropriate for the Anticipatory Hedges. 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 (''CBOT''), 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. Applicants state that they will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution and that they may decide to lock in interest rates and/or limit its exposure to interest rate increases.

3. Accounting Standards

Applicants state they will comply with Statement of Financial Accounting Standards (''SFAS'') 133 (''Accounting for Derivative Instruments and Hedging Activities''), SFAS 138 (''Accounting for Certain Derivative Instruments and Certain Hedging Activities'') or any other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board (''FASB''). The Hedge Instruments and Anticipatory Hedges will qualify for hedge accounting treatment under the current FASB standards in effect and as determined at the date the Hedge Instruments or Anticipatory Hedges are entered into.

G. Direct Stock Purchase and Dividend Reinvestment Plan, Incentive Compensation Plans and Other Employee Benefit Plans

Applicants propose that KeySpan, from time to time during the Authorization Period, issue and/or acquire in open market transactions, or by some other method which complies with applicable law and Commission interpretations then in effect, up to thirteen million shares of KeySpan common stock under KeySpan's current or any future direct stock purchase and dividend reinvestment plan, certain incentive compensation plans and certain other employee benefit plans. Applicants request that any shares of common stock acquired by KeySpan on the open market during the Authorization Period under rule 42 that were originally issued under this 13 million issuable shares limitation shall no longer count against the 13 million issuable shares limitation until the shares are reissued.

H. Payment of Dividends out of Capital or Unearned Surplus by Nonutility Subsidiaries

Applicants request authority for the Nonutility Subsidiaries to pay dividends from time to time, out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law. Applicants state that, without further approval of the Commission, no Nonutility Subsidiary will declare or pay any dividend out of capital or unearned surplus if that Nonutility Subsidiary derives any material part of its revenues from sales of goods, services, electricity or natural gas to any of the Utility Subsidiaries or if at the time of the declaration or payment such Nonutility Subsidiary has negative retained earnings.

I. Development and Administrative Activities

Applicants request authority for KeySpan and the Subsidiaries to engage in preliminary development activities (''Development Activities'') and administrative and management activities (''Administrative Activities'') in connection with future investments in exempt wholesale generators (''EWGs''), foreign utility companies (''FUCOs''), as those terms are defined in sections 32 and 33 of the Act, and in subsidiaries permitted under rule 58 (''Rule 58 Subsidiaries''). Applicants state that Development Activities will be limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including in connection, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal ''hosts,'' fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and any other preliminary activities as may be required in connection with the purchase, acquisition or construction of facilities or the securities of other companies.

Applicants further request authority to form new subsidiary companies organized for the sole purpose of engaging in Development Activities. Development Activities will be designed to eventually result in a permitted nonutility investment.

Applicants propose that to the extent a Subsidiary for which amounts were expended for Development Activities and Administrative Activities becomes an EWG, FUCO, or Rule 58 Subsidiary, the amount expended will cease to be Development Activities or Administrative Activities and then be considered as part of the ''aggregate investment'' allowed by Commission order and/or the applicable provisions under the Act. In the case of Rule 58 Subsidiaries, the aggregate investment will then count against the limitation on such aggregate investment under rule 58. In the case of EWGs and FUCOs, the aggregate investment will then be transferred from the investment limitation for Development Activities or Administrative Activities and instead count against the limitation on EWG and FUCO aggregate investment requested below. Applicants propose that, should the Development Activities or Administrative Activities fail to lead to a permitted nonutility investment, the expenditures will not be counted against the ''aggregate investment'' allowed by Commission order and/or the applicable provisions under the Act with respect to EWG, FUCO, or Rule 58 Subsidiaries. Additionally, in the event that the Development Activities or Administrative Activities fail to lead to a permitted nonutility investment, any new subsidiaries formed for the purposes of engaging in Development Activities or Administrative Activities shall be dissolved as soon as reasonably practicable.

J. Financing Subsidiaries

KeySpan and the Subsidiaries request authorization to organize and/or acquire the equity securities of one or more additional corporations, trusts, partnerships or other entities organized to serve the purpose of facilitating financings (''Financing Subsidiaries''). Applicants state that the formation and acquisition of a limited use subsidiary may allow KeySpan and the Subsidiaries to secure more favorable financing terms, at lower costs than may otherwise be available. In addition, Applicants state that the interposition of a Financing Subsidiary can serve to isolate the risks associated with debt securities issuances thereby providing further benefit to the KeySpan system.

Specifically, Financing Subsidiaries may be organized to issue to third parties, long-term debt, short-term debt, preferred securities (including but not

limited to trust preferred securities), equity-linked securities, and/or other securities that are authorized or exempt and then transfer the proceeds to KeySpan or the Subsidiaries. Applicants request authorization for KeySpan and, to the extent not exempt under rule 52, Subsidiaries to issue debentures and other evidence of indebtedness (''Financing Debt'') to any Financing Subsidiary to evidence the transfer of financing proceeds by a Financing Subsidiary to its parent company. The principal amount, maturity and interest rate on any Financing Debt will be designed to parallel the amount, maturity and interest or distribution rate on the securities issued by a Financing Subsidiary in respect of which the Financing Debt is issued. Each of the Subsidiaries also requests authorization to enter into an expense agreement with its respective Financing Subsidiary, under which it would agree to pay all expenses of the Financing Subsidiary. Applicants state that any affiliate transactions entered into by a Financing Subsidiary in connection with an expense agreement, or otherwise, would be conducted at fair market value without regard to cost, and therefore, Applicants request an exemption under section 13(b) from the at cost standards of rules 90 and 91 for KeySpan and the Subsidiaries to enter into these transactions.

The amount of securities issued by any Financing Subsidiary to third parties will be included in the applicable overall external financing limitation, authorized for the immediate parent company of such Financing Subsidiary. However, to avoid double counting, the amount of Financing Debt issued by a parent company to its Financing Subsidiary will not be counted against the applicable external financing limitation. Applicants request that securities issued by any Financing Subsidiary to third parties be exempt under rule 52 (and therefore reportable on Form U–6B–2) only if the securities, if issued directly by the parent company of such the Financing Subsidiary, would be exempt under rule 52. Applicants propose that KeySpan or a Subsidiary may, if required, guarantee or enter into support or expense agreements in respect of the obligations of Financing Subsidiaries.

VI. EWG/FUCO Investment Authority

Applicants request authorization for KeySpan to increase its ''aggregate investment'', as that term is defined in rule 53, in EWG and FUCOs to $3.0 billion (''EWG/FUCO Limit'') outstanding at any one time during the Authorization Period. Applicants state that the EWG/FUCO Limit represents approximately 528% of KeySpan's average consolidated retained earnings for the four quarters ended June 30, 2003.

At March 31, 2003, applicants state that the consolidated amount of KeySpan's current aggregate investment in existing EWGs and FUCOs was as follows:

Entity≤	Investment ($ millions)
KeySpan-Ravenswood LLC (EWG)	[8] $776.6
Phoenix Natural Gas Limited and Finsa Energeticos (FUCOs)	58.9
KeySpan-Glenwood Energy Center LLC (EWG)	95.3
KeySpan-Port Jefferson Energy Center LLC (EWG)	104.1
Total	$1,034

Applicants state that this total amount, represents approximately 182% of KeySpan's average consolidated retained earnings, as defined in rule 53, of $586.3[8] million for the four quarters ending at June 30, 2003.

By order dated December 6, 2002, (HCAR No. 27612), Applicants were authorized to make investments in an aggregate amount of up to $2.2 billion in EWGs and FUCOs. Applicants state that $2.2 billion represented approximately 440% of KeySpan's average consolidated retained earnings for the four quarters ended September 30, 2002. Applicants now request authority for KeySpan and the Subsidiaries, directly or indirectly, to invest up to $3.0 billion in EWGs and FUCOs during the Authorization Period.

VII. Intermediate Subsidiaries

Applicants propose that KeySpan create and/or acquire, directly or indirectly, the securities of one or more Intermediate Subsidiaries including corporations, trusts, partnerships, limited liability companies or other entities. Applicants state that Intermediate Subsidiaries will be organized exclusively for the purpose of acquiring and holding the securities of, or financing or facilitating KeySpan's investments in, other direct or indirect nonutility investments. Applicants also request authority for Intermediate Subsidiaries to engage in Development Activities and Administrative Activities.

Applicants state that an Intermediate Subsidiary may be organized, among other things,: (i) To facilitate the making of bids or proposals to develop or acquire an interest in any EWG, FUCO, exempt telecommunications company (''ETC''), or other Nonutility which, upon acquisition, would qualify as a Rule 58 Subsidiary; (ii) to facilitate closing on the purchase or financing of an acquired company; (iii) to effect an adjustment in the respective ownership interests in a business held by the KeySpan system and non-affiliated investors; (iv) to facilitate the sale of ownership interests in one or more acquired Rule 58 Subsidiary, ETC, EWG or FUCO; (v) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (vi) to limit KeySpan's exposure to U.S. and foreign taxes; (vii) to further insulate KeySpan and the Utility Subsidiaries from operational or other business risks that may be associated with investments in nonutility companies; or (viii) for other lawful business purposes.

Applicants state that investments in Intermediate Subsidiaries may take the form of any combination of the following: (i) Purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of voting or non-voting equity interests; (ii) capital contributions; (iii) open account advances without interest; (iv) loans; and (v) Guarantees issued, provided or arranged in respect of, the securities or other obligations of any Intermediate Subsidiaries.

Applicants state that funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from KeySpan's available funds. No additional financing authority is sought under this heading. Applicants request that to the extent that KeySpan provides funds directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any EWG, FUCO, or a Rule 58 Subsidiary, and to the extent these funds are not expenditures in Development Activities, the amount of the funds will be included in KeySpan's ''aggregate investment'' in EWGs, FUCOs and Rule 58 Subsidiaries.[9]

[8] Applicants state that this amount represents existing investment in KeySpan Ravenswood.

[9] Applicants request that if the Intermediate Subsidiary is merely a conduit, the aggregate investment will not ''double count'' both the conduit investment and the investment in the EWG, FUCO, Rule 58 subsidiary or other approved investment.

VIII. Internal Reorganization of Existing Investments

A. Nonutility Subsidiaries

Applicants request authority for KeySpan to engage in internal corporate reorganizations to better organize Nonutility Subsidiaries and investments. Applicants request authority to sell or to cause any Subsidiary to sell or otherwise transfer (i) Nonutility Subsidiaries businesses, (ii) the securities of Nonutility Subsidiaries engaged in some or all of these businesses or (iii) nonutility investments which do not involve a Nonutility Subsidiary (*i.e.* less than 10% voting interest) to a different Subsidiary. Applicants also request authority to acquire the assets of nonutility businesses, Nonutility Subsidiaries or other then existing investment interests. Alternatively, transfers of these securities or assets may be effected by share exchanges, share distributions or dividends followed by contribution of these securities or assets to the receiving entity.

IX. Exemption From Section 13(b)

Applicants request authority for Nonutility Subsidiaries to provide other Nonutility Subsidiaries with (i) operations and management services (''O&M Services''); (ii) administrative services (''Administrative Services''); and (iii) consulting services (''Consulting Services''). These services are referred to collectively as ''Affiliate Services.''

Applicants state that O&M Services would include, for example, development, engineering, design, construction and construction management, pre-operational start-up, testing and commissioning, long-term operations and maintenance, fuel procurement, management and supervision, technical and training, administrative support, market analysis, consulting, coordination and any other managerial, technical, administrative or consulting required in connection with the business of owning or operating facilities used for the generation, transmission or distribution of electric energy and/or natural gas (including related facilities for the production, conversion, sale or distribution of thermal energy) or coordinating their operations in the power market.

Applicants state that Administrative Services would include, for example, corporate and project development and planning, management, administrative, employment, tax, legal, accounting, engineering, consulting, marketing, utility performance and electric data processing services, and intellectual property development, marketing and other support services.

Applicants state that Consulting Services would include, for example, providing the Nonutility Subsidiary with technical capabilities and expertise primarily in the areas of electric power generation, transmission and distribution and ancillary operations.

Applicants state that Affiliate Services would generally be performed by Nonutility Subsidiaries for associate Nonutility Subsidiaries at cost. However, the Nonutility Subsidiaries request an exemption pursuant to section 13(b) from the at-cost standards of rules 90 and 91, for the Affiliate Services in any case in which the Nonutility Subsidiary purchasing services is:

(i) A FUCO or foreign EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(ii) An EWG that sells electricity at market-based rates that have been approved by the Federal Energy Regulatory Commission (''FERC''), provided that the purchaser is not one of the Utility Subsidiaries;

(iii) A ''qualifying facility'' (''QF'') within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA'') that sells electricity exclusively (a) at rates negotiated at arms-length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, and/or (b) to an electric utility company (other than a Utility Subsidiary) at the purchaser's ''avoided cost'' as determined in accordance with the regulations under PURPA;

(iv) A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser thereof is not one of the Utility Subsidiaries; or

(v) A Rule 58 Subsidiary or any other Nonutility Subsidiary that (a) is partially or wholly-owned, directly or indirectly, by KeySpan, provided that the ultimate purchaser of such goods or services is not a Utility Subsidiary (or any other entity within the KeySpan system whose activities and operations are primarily related to the provision of goods and services to the Utility Subsidiaries), (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries described in clauses (i) through (iv) immediately above; or (c) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States.

Cinergy Corp. et al. (70–10172)

Cinergy Corp. (''Cinergy''), a registered holding company, Cinergy's direct nonutility subsidiaries, Cinergy Investments, Inc. (''Cinergy Investments'') and Cinergy Global Resources, Inc. (''Global Resources''), CinTec LLC (''CinTec''), Cinergy Technologies, Inc. (''Cinergy Technologies''), and Cinergy Wholesale Energy, Inc. (''Cinergy Wholesale Energy'' and together, ''Applicants'') have filed an application-declaration with the Commission under sections 6(a), 7, 9(a), 10, 12(c), 12(f), 13, 32, 33 and 34 of the Act and rules 43, 45, 46, 54, 83, 87, 90 and 91.

I. Background

By order dated March 1, 1999 (HCAR No. 26984) (''1999 Order''), Cinergy [10] and its nonutility subsidiaries, Cinergy Investments and Cinergy Global Resources were authorized to establish one or more special-purpose subsidiaries (''Intermediate Parents'') [11] through December 31, 2003, to hold Cinergy's direct or indirect interests in existing and future nonutility subsidiaries (''Nonutilty Subsidiaries'').[12]

Cinergy states that it now owns numerous Nonutility Subsidiaries, which it holds through, Cinergy

[10] Applicants state that Cinergy also directly or indirectly owns all the outstanding common stock of five public utility companies, PSI Energy, Inc. (''PSI''), The Cincinnati Gas & Electric Company (''CG&E''), The Union Light, Heat and Power Company, Lawrenceburg Gas Company, and Miami Power Corporation (''Utility Subsidiaries'').

[11] Applicants state that certain of these ''Intermediate Parents'' were formed prior to the 1999 Order under express authorization of the Commission as noted in the 1999 Order.

[12] Applicants state that PSI and CG&E hold three businesses under a reservation of jurisdiction which are not included in the definition of ''Nonutility Subsidiaries'': KO Transmission Company (''KO''), South Construction Company, Inc. (''South Construction'') and Tri-State Company (''Tri-State''). Applicants state that the retainability of these companies is subject to a Commission reservation of jurisdiction, originally by order dated October 21, 1994 (HCAR No. 26146) (''Merger Order''), the order authorizing the merger that created the Cinergy. The Commission extended this reservation of jurisdiction by order dated November 2, 1998 (HCAR No. 26934). Applicants assert that KO is an energy-related company under rule 58, which was enacted after the Merger Order. Applicants state that South Construction and Tri-State acquire and hold real estate in connection with the utility businesses of PSI and CG&E, respectively. South Construction and Tri-State are excluded from the scope of the proposed transactions in this application, except with respect to dividend authority as described fully below.

Investments, Cinergy Global Resources, CinTec, Cinergy Technologies and Cinergy Wholesale Energy, each of which is a direct, wholly owned Nonutility Subsidiary of Cinergy formed to act as an Intermediate Parent. Applicants state that through authority granted in previous orders,[13] applicable provisions of the Act and rules under the Act, Applicants have authority to invest in a variety of nonutility businesses, including:

(1) Exempt wholesale generator (''EWG''), as that term is defined in section 32 of the Act;

(2) Foreign utility company (''FUCO''), as that term is defined in section 33 of the Act;

(3) Exempt telecommunications company (''ETC''), as that term is defined in section 34 of the Act;

(4) Nonutility company, which, upon acquisition, would qualify for exemption from the Act under rule 58 (''Rule 58 Company'');

(5) Companies providing certain infrastructure services (''IS Company'');

(6) Companies providing energy management services and energy-related consulting services outside the United States;

(7) Companies brokering and marketing energy commodities in Canada and Mexico; and

(8) Certain nonutility energy-related assets (''Energy-Related Asset'').

Applicants state that, (i) an ''Authorized Nonutility Business'' means any nonutility business in which Cinergy is currently authorized or may hereafter become authorized under the Act to invest, and includes, without limitation, the types of nonutility businesses enumerated in (1) through (8) above; (ii) a ''Nonutility Subsidiary'' means any existing or future associate company of Cinergy (including any Intermediate Subsidiary) formed for the purpose of engaging in an Authorized Nonutility Business; and (iii) a ''Nonutility Investment'' means any existing or future Authorized Nonutility Business in which Cinergy invests, but which investment does not cause such Authorized Nonutility Business to become an associate company of Cinergy.

II. Current Request

A. Overview

Applicants request authorization for Authorized Nonutility Businesses to engage in the following activities through March 31, 2007 (''Authorization Period):

(i) Acquire the securities of corporations, limited liability companies, partnerships, trusts or other entities that would be formed exclusively to acquire, hold, finance or facilitate the acquisition of, and/or sell goods, services or construction to Nonutility Subsidiaries and/or Nonutility Investments, whether directly or indirectly through one or more subsidiaries thereof formed exclusively for the same purpose (''Intermediate Subsidiaries'');[14]

(ii) Undertake internal corporate reorganizations or restructurings of Nonutility Subsidiaries and Nonutility Investments;

(iii) Declaration and payment by Nonutility Subsidiaries and KO, South Construction, and Tri-State dividends out of capital or unearned surplus, subject to certain conditions; and

(iv) Enter into agreements to perform certain services for certain specified categories of Nonutility Subsidiaries at other than cost under an exemption from section 13(b) under the cost standards of rules 90 and 91.

B. Acquisition of Intermediate Subsidiaries

Applicants request authority to acquire Intermediate Subsidiaries. Applicants propose that an Intermediate Subsidiary may be organized, among other things: (i) In order to facilitate the making of bids or proposals to develop or acquire an interest in any exempt wholesale generator (''EWG''), as that term is defined in section 32 of the Act, foreign utility company (''FUCO''), as that term is defined in section 33 of the Act, exempt telecommunications company (''ETC''), as that term is defined in section 34 of the Act, or other nonutility company which, upon acquisition, would qualify for exemption from the Act under rule 58 (''Rule 58 Company'') or other Authorized Nonutility Business; (ii) after the award of a bid proposal, in order to facilitate closing on the purchase or financing of the acquired company; (iii) at any time subsequent to the consummation of an acquisition of an interest in any of these companies in order, among other things, to effect an adjustment in the respective ownership interests in the business held by Cinergy and non-affiliated investors; (iv) to facilitate the sale of ownership interests in one or more acquired Authorized Nonutility Business; (v) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (vi) as a part of tax planning in order to limit Cinergy's exposure to U.S. and foreign taxes; (vii) to insulate Cinergy and its utility subsidiaries from operational or other business risks that may be associated with investments in Authorized Nonutility Business; or (viii) for other lawful business purposes.

Applicants state that investments in Intermediate Subsidiaries may take the form of (i) purchases of capital shares, partnership interests, membership interests in limited liability companies, trust certificates or other forms of voting or non-voting equity interests; (ii) capital contributions; (iii) loans; or (iv) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries. Applicants state that Cinergy will obtain funds for initial and subsequent investments in Intermediate Subsidiaries from available internal sources or external sources involving issuances of its securities under the June 2000 Order (or any future order supplementing or superseding that order in whole or in part). The other Applicants will obtain funds for initial and subsequent investments in Intermediate Subsidiaries from available cash, capital contributions or loans from Cinergy, or external borrowings or sales of capital stock under the exemption afforded by rule 52(b). To the extent that Cinergy provides funds directly or indirectly to an Intermediate Subsidiary that are used for an investment in an EWG or FUCO, a Rule 58 Company, an IS Company or an Energy-Related Asset, the amount of the funds will be included in Cinergy's ''aggregate investment'' in the appropriate entity, as calculated in accordance with rule 53 or rule 58, as applicable, or the terms of the Commission order authorizing Cinergy's investment in an IS Company or Energy-Related Asset, as applicable.

C. Nonutility Reorganizations

Applicants seek authority to effect corporate reorganizations or restructurings of Nonutility Subsidiaries and Nonutility Investments. Specifically Applicants request authority (i) for each Nonutility Subsidiary to sell or otherwise transfer the securities or assets (in whole or in part) of any Nonutility Subsidiary or Nonutility Investment to any other Nonutility Subsidiary or Nonutility Investment, and (ii) for each Nonutility Subsidiary to acquire these securities or assets.

[13] *See* HCAR No. 27400 (May 18, 2001), HCAR No. 27581 (October 23, 2002), HCAR No. 27393 (May 4, 2001), HCAR No. 27506 (May 21, 2002), HCAR No. 27717 (August 29, 2003).

[14] Applicants state that the term Intermediate Subsidiary also includes any Intermediate Parents formed under authority from the 1999 Order and any other Nonutility Subsidiaries performing a corresponding function formed by Cinergy under prior Commission orders.

Alternatively, transfers of these securities or assets may be effected by share exchanges, share distributions or dividends followed by contribution of these securities or assets to the receiving entity, or by mergers or liquidations, or otherwise, and Applicants request approval for these forms of restructuring transactions as well.

Applicants state that the corporate reorganizations or restructurings of Nonutility Subsidiaries and Nonutility Investments would be undertaken in order to eliminate corporate complexities, to combine related business segments for staffing and management purposes, to eliminate administrative costs, to achieve tax savings, or for other ordinary and necessary business purposes. Applicants state that none of these reorganizations or restructurings will involve the sale or other disposition of any utility assets of the Utility Subsidiaries or any corporate reorganization involving the Utility Subsidiaries, nor does the approval sought in this subsection extend to the acquisitions of any new businesses or activities not constituting an Authorized Nonutility Business.

D. Payment of Dividends by Nonutility Subsidiaries

To the extent not otherwise exempt under the Act, Applicants request authority for each Nonutility Subsidiary and KO, South Construction, and Tri-State to declare and pay dividends out of capital or unearned surplus to its respective parent company, where permitted under applicable corporate law, and where the dividend will not be detrimental to the financial integrity or working capital of any company in the Cinergy holding company system. Additionally, Applicants state that, without further approval of the Commission, no Nonutility Subsidiary will declare or pay any dividend out of capital or unearned surplus if that Nonutility Subsidiary derives any material part of its revenues from sales of goods, services, electricity or natural gas to any of the Utility Subsidiaries or if at the time of the declaration or payment such Nonutility Subsidiary has negative retained earnings.

E. Exemptions from Section 13(b)

Applicants request authority for Nonutility Subsidiaries to enter into agreements to perform services Applicants request authority for Nonutility Subsidiaries to perform certain services (namely, project development services and administrative services and other support services) [15] for any Nonutility Subsidiary within any of the five categories enumerated immediately below at fair market prices determined without regard to cost, and therefore request an exemption from section 13(b) and the cost standards of rules 90 and 91.

(i) A FUCO or an EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(ii) An EWG that sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission (''FERC'') or an appropriate state public utility commission, provided that the purchaser of the EWG's electricity is not an affiliated public utility or an affiliate that re-sells such power to an affiliated public utility;

(iii) A ''qualifying facility'' (''QF''), as defined under the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), that sells electricity exclusively at rates negotiated at arm's length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, or to an electric utility company other than an affiliated electric utility at the purchaser's ''avoided cost'' determined under PURPA;

(iv) An EWG or a QF that sells electricity at rates based upon its costs of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser of the electricity is not an affiliated public utility; or

(v) A Nonutility Subsidiary that is a Rule 58 Company or any other Nonutility Subsidiary that (a) is partially owned, provided that the ultimate purchaser of goods or services is not an affiliated public utility, (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries described in (i) through (iv) above or (c) does not derive, directly or indirectly, any part of its income from sources within the United States and is not a public utility company operating within the United States.

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

Margaret H. McFarland,

Deputy Secretary.

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[15] Applicants state that project developmental services are anticipated to include such services as research and due diligence with respect to potential projects and transactions, preparation of bid documents, investment proposals, customer proposals and the like, preliminary engineering, construction, licensing and operational studies and analyses, acquisitions of options, and other legal, accounting, marketing, engineering, financial and similar services relating to acquisitions of project investments and consummating transactions with customers. Applicants state that administrative and other support services include without limitation overall strategic planning, operations and maintenance, environmental, information systems, engineering and construction, risk management, marketing, finance, legal, accounting, employment and tax.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48807; File No. SR–CBOE–2003–40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Options on Certain CBOE Volatility Indices

November 19, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 12, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 CBOE. On November 18, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange hereby proposes to amend certain of its rules to provide for the listing and trading of options on several volatility indexes; specifically: the CBOE Volatility Index (''VIX''); the CBOE Nasdaq 100'' Volatility Index (''VXN''); and the CBOE Dow Jones Industrial Average'' Volatility Index (''VXD''). Options on each index would

[1] U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jim Flynn, Attorney, CBOE, to Florence Harmond, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated November 18, 2003 (''Amendment No. 1''). Amendment No. 1 revises the original rule filing by defining the reporting authority and terms of these index option contracts, including that the interval between strike prices shall be no less than $2.50, and accordingly replaces CBOE's original Exhibit A.