

company that has undertaken, in the event any such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons of any such investment company, as defined in the 1940 Act, formulate and approve any plan under Rule 12b-1 under the 1940 Act to finance distribution expenses. Applicants further represent that Account D undertakes, and any Future Account established as an open-end management company will undertake, in the event that it adopts a plan under Rule 12b-1 to finance distribution expenses, to have a majority of its board of directors who are not interested persons, formulate and approve any plan under Rule 12b-1 to finance distribution expenses.

Request for Exemptive Relief From Section 12(b) of the 1940 Act and Rule 12b-1

11. Section 12(b) of the 1940 Act makes it unlawful for a registered investment company from acting as a distributor of securities of which it is the issuer, except through an underwriter. Rule 12b-1 prohibits any such company from directly or indirectly financing distribution of the company's shares except in compliance with the Rule's requirements. Rule 12b-1 requires that a company financing distribution of its shares formulate a written plan describing all material aspects of the proposed arrangement, and that the plan be approved initially by the company's shareholders, directors and disinterested directors. The directors must vote annually to continue such a plan, and the directors must conclude that there is a reasonable likelihood that implementation or continuation of the plan will benefit the company and its shareholders.

12. Applicants expect to finance the expenses of distributing the Contracts through use of Golden American's general assets, which may be attributable in part to the surplus from mortality and expense risk charges. Golden American requests an order under Section 6(c) of the 1940 Act for exemptive relief from Section 12(b) of the 1940 Act and Rule 12b-1 thereunder, insofar as the proposed distribution financing arrangement might be deemed to involve the direct or indirect use of assets in Account D, or in any Future Account established as an open-end management company, for distribution. Applicants represent that this aspect of the requested relief is solely "defensive," i.e., to clarify that the current distribution financing is not subject to Section 12(b) or Rule 12b-1

thereunder. Applicants contend that the requested relief is not intended to cover the imposition of a separate charge for distribution expenses against the assets in Account D. Applicants represent that no separate charge for distribution expenses will be assessed on the assets of Account D or any Future Account organized as an open-end management company unless and until the charge complies with the requirements of Rule 12b-1.

13. Applicants assert that Rule 12b-1 was not intended to apply to managed accounts, that the Rule's provisions are directed only at traditional mutual funds and should not be applied to managed accounts, and that the protections of Rule 12b-1 are not necessary in the case of managed accounts. Applicants state that the Commission's review under Sections 26 and 27 of the 1940 Act of the reasonableness of asset charges of managed accounts, and explicit prospectus disclosure that the asset charge may be used for distribution expenses, provide sufficient protection for Contract owners and obviates the need for a managed account to comply with the requirements of Rule 12b-1.

14. Applicants assert that application of Rule 12b-1 to managed accounts would produce a burdensome and inequitable treatment of these accounts, would place them at an unfair disadvantage with respect to unit investment trusts offering similar annuity contracts, and would create an artificial distinction between managed accounts and unit investment trusts not justified by policy considerations.

Conclusion

Applicants assert that for the reasons and based upon the facts set forth above, the requested exemptions from sections 12(b), 26(a)(2)(C) and 27(c)(2) of the 1940 Act and Rule 12b-1 thereunder to deduct a mortality and expense risk charge under the Contracts and Future Contracts offered by the Separate Accounts or by Future Accounts are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

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

Margaret M. McFarland,

Deputy Secretary.

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[Release No. 35-26375]

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

September 15, 1995.

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 thereunder. 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 amendments thereto is/are available for public inspection through the Commission's Office 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 October 10, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, 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 case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact 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 said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Gas System, Inc., et al. (70-8471)

Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, seventeen wholly-owned subsidiary companies of Columbia,¹ all of which are engaged in

¹ Columbia Gas of Pennsylvania, Inc. ("Columbia Pennsylvania"), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Ohio, Inc. ("Columbia Ohio"), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Maryland, Inc. ("Columbia Maryland"), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Kentucky, Inc. ("Columbia Kentucky"), 200 Civic Center Drive, Columbus, Ohio 43215; Commonwealth Gas Services, Inc. ("Commonwealth Services"), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gulf Transmission Co. ("Columbia Gulf"), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314; Columbia Gas Development Corp. ("Columbia Development"), One Riverway, Houston, Texas 77058; Columbia Natural Resources, Inc. ("Columbia Resources"), 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Coal Gasification Corp.

Continued

the natural gas business, twelve subsidiary companies of TriStar Ventures ("TriStar Ventures Subsidiaries"),² Columbia Gas Transmission Corp. ("Gas Transmission", 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Columbia Energy Marketing Corp. ("Energy Marketing"), 2581 Washington Road, Pittsburgh, Pennsylvania 15241, have filed a post-effective amendment to the application-declaration, previously filed by all the applicants-declarants but for Gas Transmission and Energy Marketing, under Sections 6, 7, 9(a), 10, 12(b), 12(c), and 12(f) of the Act and Rules 42, 43, 45, and 46 thereunder.

By order dated December 22, 1994 (HCAR No. 26201) ("Order"), Columbia, and fourteen of the subsidiary companies ("Subsidiaries"),³ were authorized to recapitalize Columbia Gulf, Columbia Development, and Columbia Coal, to implement the 1995 and 1996 Long-Term and Short-Term Financing Programs of the Subsidiaries, and to continue the Intrasystem Money Pool ("Money Pool") through 1996.

By order dated March 15, 1995 (HCAR No. 26251), the TriStar Ventures Subsidiaries were authorized to invest in, but not to borrow from, the Money Pool.

The applicants-declarants now seek Commission authorization for Gas Transmission and Energy Marketing to invest in, but not to borrow from, the

("Columbia Coal"), 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Energy Services Corp. ("Columbia Services"), 2581 Washington Road, Upper Saint Clair, Pennsylvania 15241; Columbia Gas System Service Corp. ("Service Corporation"), 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Propane Corp. ("Columbia Propane"), 800 Moorefield Park Drive, Richmond, Virginia 23236; Commonwealth Propane, Inc. ("Commonwealth Propane"), 800 Moorefield Park Drive, Richmond, Virginia 23236; TriStar Ventures Corp. ("TriStar Ventures"), 20 Montchanin Road, Wilmington, Delaware 19807; TriStar Capital Corp. ("TriStar Capital"), 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Atlantic Trading Corp. ("Columbia Atlantic"), 20 Montchanin Road, Wilmington, Delaware 19807; and Columbia LNG Corp. ("Columbia LNG"), 20 Montchanin Road, Wilmington, Delaware 19807.

² TriStar Pedrick Limited Corporation, TriStar Pedrick General Corporation, TriStar Binghamton Limited Corporation, TriStar Binghamton General Corporation, TriStar Vineland Limited Corporation, TriStar Vineland General Corporation, TriStar Rumford Limited Corporation, TriStar Georgetown General Corporation, TriStar Georgetown Limited Corporation, TriStar Fuel Cells Corporation, TVC Nine Corporation, and TVC Ten Corporation, all of 20 Montchanin Road, Wilmington, Delaware 19807.

³ Columbia Pennsylvania, Columbia Ohio, Columbia Maryland, Columbia Kentucky, Commonwealth Services, Columbia Gulf, Columbia Development, Columbia Resources, Columbia Coal, Service Corporation, Columbia Propane, Commonwealth Propane, TriStar Capital, and Columbia Atlantic.

Money Pool, which will continue to be operated in accordance with the terms of the Order.

Georgia Power Co. (70-8665)

Georgia Power Company ("GPC"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, a wholly owned public utility subsidiary company of The Southern Company ("Southern"), a registered holding company, has filed an application under sections 9(a) and 10 of the Act and rules 44 and 54 thereunder.

GPC proposes to purchase from Florida Power Corporation ("FPC"), a nonaffiliate of GPC or Southern, a one-third undivided ownership interest in the Intercession City Facility Combustion Turbine ("Facility") pursuant to the Intercession City Siemens Unit Purchase and Ownership Participation Agreement dated June 8, 1994 between GPC and FPC ("Ownership Agreement") and the Intercession City Siemens Unit Step-Up Transformer Purchase Agreement dated June 8, 1994 between GPC and FPC. The Facility includes one complete Siemens V84.3 combustion turbine-generating unit and a step-up transformer.

The purchase price for the assets to be acquired by GPC at the closing will be one-third of the costs of construction incurred with respect to the Facility, which are currently estimated to be \$13,137,680 ("Purchase Price"). To such amount shall be added an amount to compensate FPC for federal and state income taxes payable due to differences in book and tax basis of the equity component of the allowance for funds used during construction with respect to the sale by FPC of such undivided ownership interest in the Facility, which taxes are approximately \$40,000.

At the closing, which is currently scheduled to occur in January 1996, FPC will furnish to GPC a release from any and all mortgages, deeds to secure debt, or other security interests with respect to the undivided ownership interest in the Facility. In addition, GPC shall pay FPC for the use of common facilities during the construction and testing period, which is stipulated to be \$87,500, and carrying charges with respect to the fuel inventory maintained during the testing period, which is approximately \$9,491. FPC will adjust the Purchase Price within one hundred eighty (180) days after the closing to account for any necessary true-ups and inform GPC of any amounts to be reimbursed to GPC or any amounts owned by GPC with respect to the Purchase Price.

Pursuant to the Long Term Lease Agreement dated June 8, 1994, between

GPC and FPC, FPC shall lease to GPC an undivided one-third interest in the real property on which the Facility will be developed. The annual rent for the leasehold interests conveyed to GPC shall be \$300.00 per year plus all Florida sales taxes applicable thereto.

The Facility will be managed, controlled, operated and maintained by FPC on its own behalf and as agent for GPC in accordance with the terms and conditions set forth in the Ownership Agreement and the Intercession City Siemens Unit Operating Agreement dated June 8, 1994 between GPC and FPC ("Operating Agreement"). FPC and GPC shall pay all future costs of construction on a pro rata basis on their percentage undivided ownership interests in the Facility at the time such costs are incurred.

FPC and GPC will share operating costs and fuel costs. Fixed operation and maintenance costs and fixed fuel costs shall be allocated between FPC and GPC in proportion to their respective percentage undivided ownership interests in the Facility. Variable operation and maintenance costs and variable fuel costs incurred by FPC during the months of June, July, August and September ("Summer Period") shall allocated solely to GPC and variable operation and maintenance costs and variable fuel costs incurred by FPC during the months of October, November, December, January, February, March, April and May ("Winter Period") shall be allocated solely to FPC. In addition, GPC will pay a share of the monthly administrative and general costs of operating the Facility pursuant to the terms of the Operating Agreement.

GPC will be entitled to the net capacity and the net energy output of the Facility at all times during the Summer Period. FPC will be entitled to the net capacity and the net energy output of the Facility at all times during the Winter Period. The Facility is currently scheduled to go into commercial operation in January 1996.

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

Margaret H. McFarland,
Deputy Secretary.

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