

to the time and costs associated with 1934 Act reporting obligations necessitated by applicant's status as a business development company, the investment limitations in section 55 of the Act make it difficult to achieve adequate diversification of investments by applicant in privately held companies or partnerships.

4. Applicant asserts that section 3(c)(1) evidences the intention of Congress to exclude "private" investment companies from the purview of the Act. Under section 6(c) of the Act the SEC may exempt private investment companies that have more than 100 beneficial owners.<sup>7</sup> Applicant contends that its request for a conditional order under section 6(c) is consistent with relief granted to other private investment companies substantially owned and controlled by a single family.<sup>8</sup> Applicant asserts that it is a private investment vehicle not intended to be within the scope of the Act and that the protections of the Act are not necessary for investors in family-sponsored enterprises such as applicant.

5. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that 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. Applicant believes that the requested exemption meets these standards.

#### Applicant's Conditions

Applicant agrees that the order granting the requested relief shall be subject to the following conditions:

1. Applicant will continue to provide each investor annual financial statements audited by an accounting firm of recognized national standing.

2. Applicant, through its managing general partner, shall neither admit as a new investor, nor permit the assignment or transfer of any interest therein to any individual or entity, if such admission, assignment or transfer would cause applicant to fail to be 90% owned by or for the benefit of Family members, trusts for their benefit, their estates, any entity wholly-owned by them, and Family-Related Organizations.

3. Applicant shall not have as a general partner a person or entity other than Pitco, a Family member, an entity controlled directly or indirectly by Family members, or an affiliated person of applicant.

4. Applicant shall not knowingly make available to any broker or dealer registered under the 1934 Act any financial information concerning applicant for the purpose of knowingly enabling such broker or dealer to initiate any regular trading market in any Units.

5. Pursuant to section 54(c) of the Act, applicant will file a notification of withdrawal of election to be subject to sections 55 through 65 of the Act, as soon as practical (but in no event later than 120 days) after receiving the order requested by this application.

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

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 35-26415; International Series Release No. 888]

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

November 21, 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 December 18, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 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.

Northeast Utilities (70-7883)

Northeast Utilities ("Nu"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090-0010, a registered holding company, has filed a post-effective amendment to its application-declaration under sections 6(a), 7, 9(a), and 10 of the Act and rule 54 thereunder.

By order dated November 18, 1991 (HCAR No. 25411) ("Order"), the Commission approved the issuance and sale of up to 11 million NU common shares, \$5.00 par value, to an employee stock ownership plan ("ESOP") trust to be added to a NU system 401(k) plan ("Plan").

In accordance with the terms of the Order, the Plan, and the ESOP trust agreement, the ESOP trustee votes allocated ESOP shares as directed by the employee participants who beneficially own the allocated shares, and abstains from voting allocated ESOP shares for which no direction from the beneficial owner is received. No change in the voting of allocated ESOP shares is contemplated.

However, under the Order the ESOP trustee votes the unallocated shares in the same proportion of yes and no votes and abstentions as it votes the allocated shares. This results in a large number of abstentions of unallocated ESOP shares. The nonvoted unallocated shares represented almost 3 percent of NU's shares outstanding at the time of its last annual meeting on May 23, 1995.

NU now proposes to amend the Plan and the ESOP trust agreement to modify the manner in which the ESOP trustee votes the unallocated shares held in the ESOP trust. Under the proposed change, allocated ESOP shares would still be voted in accordance with participant instructions, including abstaining from voting allocated ESOP shares for which no instructions are received. However, unallocated ESOP shares would be voted "yes" or "no" in the same proportions as allocated ESOP shares for which voting instructions are received.

In a "no-action" letter dated March 25, 1992, the Commission staff analyzed the trust holdings of NU common shares under the Plan, including the voting requirements for the ESOP shares, and concluded that it would not recommend any enforcement action under the Act that would result in the Plan or the bank trustee under the Plan being deemed to be a "holding company," as defined in section 2(a)(7)(A) of the Act, or an "affiliate," as defined in section 2(a)(11)(A) of the Act, on account of the

<sup>7</sup> See *Maritime Corporation*, 9 SEC 906, 909 (1941).

<sup>8</sup> See, e.g., *Bessemer Securities Corporation*, Investment Company Act Release Nos. 18529 (Feb. 5, 1992) (notice) and 18594 (March 3, 1992) (order); *Richardson Corporation*, Investment Company Act Release Nos. 16566 (Sept. 22, 1988) (notice) and 16606 (Oct. 21, 1988) (order); and *5600, Inc.*, Investment Company Act Release Nos. 16004 (Sept. 25, 1987) (notice) and 16067 (Oct. 21, 1987) (Order).

trustee's holding and voting the NU common shares under the Plan. NU believes that following the change in the voting of unallocated shares described above, the ESOP trustee should still not be deemed to "own, control, or hold with power to vote" the shares held in the ESOP trust, and that such shares should still not be counted in determining whether the Plan or the ESOP trustee is a "holding company" or "affiliate" of NU under the Act, because the ESOP trustee will still have no discretion as to how ESOP shares are voted.

#### NorAm Energy Corp. (70-8673)

NorAm Energy Corporation ("NorAm"), 1600 Smith, 11th floor, Houston, Texas, 77002, has filed an application under Section 3(b) of the Act for an order of exemption in connection with its contemplated acquisition, for an aggregate investment of up to \$150 million over the next five-year period, of (i) An interest in concessions granted by the government of Colombia to establish natural gas distribution services to areas in Colombia, (ii) an interest in concessions granted by the government of Mexico to establish natural gas distribution services in Mexico, and (iii) a minority interest in one or more existing Mexican natural gas distribution businesses.

NorAm is engaged in the distribution and transmission of natural gas, with business and operations in Texas, Louisiana, Arkansas, Mississippi, Oklahoma, Missouri and Minnesota. NorAm is not a public utility holding company under the Act.

NorAm proposes to participate in the purchase of an interest in concessions granted by the government of Colombia. NorAm will acquire minority interests in each concession through ownership of a Colombian corporation ("Colombian Corporation").

NorAm also proposes to participate in the purchase of an interest in concessions granted by the government of Mexico and the purchase of minority interests in one or more existing Mexican natural gas distribution businesses. NorAm will participate in such acquisitions through a memorandum of understanding entered into with Grupo Gutsa and TransCanada Pipelines for the creation of a subsidiary in Mexico ("Mexican Corporation"). NorAm's interests in the Colombian concessions and the Mexican concessions and businesses will in each instance not exceed 49%.

The concessions and existing Mexican gas distribution businesses would be gas utility companies under the Act. Thus NorAm, the Colombian Corporation and

the Mexican Corporation would each be a holding company under the Act.

Section 3(b) of the Act authorizes the Commission to exempt any subsidiary company of a holding company from the Act if such subsidiary company derives no material part of its income, directly or indirectly, from sources within the United States, and neither it nor any of its subsidiary companies is a public utility company operating in the United States.

NorAm states that neither the concessions nor the existing businesses will derive any income, directly or indirectly, from sources in the United States, and will operate, or have any subsidiary operating, as a public utility company in the United States. NorAm further states that the proposed acquisitions will not affect or impair utility functions or the financial condition of NorAm. Under these circumstances, NorAm states that it is not necessary in the public interest or for the protection of investors to subject the concessions or the existing businesses to any provisions of the Act.

#### Entergy Corporation, et al. (70-8681)

Entergy Corporation ("Entergy"), 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered holding company, and its wholly-owned, nonutility subsidiary company, Entergy Enterprises, Inc. ("Enterprises"), Three Financial Centre, Little Rock, Arkansas 72211, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13 of the Act and rules 45 and 54 thereunder.

Entergy proposes to invest up to \$30 million through September 30, 1997, in one or more new direct or indirect subsidiaries of Entergy and/or Enterprises ("New Subsidiaries"). The investments would be in the form of acquisitions of stock and/or debt securities, capital contributions, open account advances, guarantees of indebtedness or other extensions of credit, whether directly in the New Subsidiary or through one or more New Subsidiary intermediate holding companies. As a percentage of consolidated assets of the Entergy System (\$22.5 billion at June 30, 1995), the proposed investments would amount, in the aggregate, to not more than 0.133%. Interest on the debt securities would be established at a rate not to exceed the prime rate in effect on the date of the issuance of the securities at a bank designated by Entergy, and the debt securities would have a maturity not later than December 31, 2005.

The New Subsidiaries either directly or indirectly would acquire interests in nonutility businesses including, among

others, network-based businesses, telecommunications, energy and security management services businesses or environmental technology businesses. Network-based businesses or telecommunications would involve wired or wireless networks or systems, including, among others, cable or personal communications or other data communications services, which could be interactive and developed to permit utility applications, including remote meter reading and reporting of power outages. Such businesses could operate inside and outside the Entergy System's service territory, or both. The proceeds from the investments will not be used to invest directly or indirectly in an exempt wholesale generator or foreign utility company.

The proposed investments would be made nonrecourse as to other Entergy System companies and assets, and be isolated in one or more New Subsidiaries. Enterprises would provide services to the New Subsidiaries of the types and at the prices specified pursuant to the Commission's order dated June 30, 1995 (HCAR No. 26322). To the extent that additional affiliate transactions between the New Subsidiaries and other Entergy System companies, except for the investments and the provision of services by Enterprises, become necessary, the applicants will seek any requisite regulatory approval at the time.

#### Cinergy Corp., et al. (70-8717)

Cinergy Corp., a registered holding company, and Cincinnati Gas & Electric Company ("CG&E"), its wholly-owned public-utility subsidiary company (collectively, "Applicants"), both located at 139 East Fourth Street, Cincinnati, Ohio 45202, have filed a declaration under section 12(d) of the Act and rules 42, 44 and 54 thereunder. Applicants request authorization for CG&E to sell certain moveable property of its Woodsdale Generating Station, Units 1 and 7, including gas combustion turbines, transformers, boilers and water pumps ("Equipment"), to a non-affiliated third-party finance lessor which would concurrently lease back the Equipment to CG&E.<sup>1</sup>

Applicants expect the Equipment to be sold for an amount not to exceed \$40

<sup>1</sup> Applicants are not seeking authorization from this Commission for the leaseback of the Equipment. CG&E has applied to the Public Utilities Commission of Ohio ("PUCO"), the state commission with jurisdiction over CG&E, for approval of the leaseback transaction. Upon receipt of a PUCO order approving the leaseback (a copy of which will be filed with this Commission by amendment to applicant's declaration), applicants will rely on the exemption provided by section 9(b)(1) of the Act.

million and not less than its net book value (estimated to be not less than \$20 million), depending on its aggregate appraised value, as determined by an independent appraiser to be selected by the buyer. CG&E would use the net proceeds from the sale of the Equipment to redeem, prior to maturity, all or some of one or more series of its outstanding first mortgage bonds and repay short-term debt incurred in connection with such redemption.<sup>2</sup> The balance, if any, of such net proceeds would be used for other general corporate purposes. CG&E is currently considering the redemption, in whole or in part of its First Mortgage Bonds, 10.20% Series due December 1, 2020, which are callable December 1, 1995 at a redemption price of 107.44% plus accrued interest to the redemption date.<sup>3</sup>

Applicants state that the proposed redemption of high cost first mortgage bonds using the Equipment sale proceeds is expected to produce greater cost savings than might otherwise be achieved if CG&E were to issue and sell other securities to fund the redemption.

National Fuel Gas Company, et al. (70-8729)

National Fuel Gas Company ("National"), a registered holding company, 10 Lafayette Square, Buffalo, New York 14203, and its wholly-owned subsidiary companies: National Fuel Gas Distribution Corporation ("Distribution"), National Fuel Gas Supply Corporation ("Supply"), Seneca Resources Corporation ("Seneca"), Highland Land & Minerals, Inc. ("Highland"), Leidy Hub, Inc. ("Leidy"), Horizon Energy Development, Inc. ("Horizon"), Data-Track Account Services, Inc. ("Data-Track"), all located at 10 Lafayette Square, Buffalo, New York 14203, National Fuel Resources, Inc. ("NFR"), 478 Main Street, Buffalo, New York 14202 and Utility Constructors, Inc. ("UCI"), East Erie Extension, Linesville, Pennsylvania 16424 (collectively, "Subsidiary Companies"), have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12 (b) and 12(f) of the Act and rules 43, 45 and 54 thereunder.

By prior Commission order, National and its Subsidiary Companies were authorized to participate in the National system money pool ("Money Pool") through December 31, 1995. National

and its Subsidiary Companies now propose to continue to participate in, and incur short-term borrowings from the Money Pool, through December 31, 2000. Total outstanding short-term borrowings from the Money Pool by Distribution will not exceed a principal amount of \$315 million. National will not borrow funds from any Subsidiary Company through the Money Pool.

In addition, in the event that intra-system sources of funds are insufficient to meet short-term needs of the Subsidiary Companies, National proposes, from time-to-time through December 31, 2000, to: (1) Issue and sell, up to \$300 million aggregate principal amount at any one time outstanding of commercial paper ("Commercial Paper") directly or through dealers and placement agents; and/or (2) issue an aggregate principal amount of up to \$600 million of short-term unsecured notes ("Notes") under credit facilities with banks and financial institutions. The aggregate principal amount of such Commercial Paper and Notes shall not exceed \$600 million outstanding at any one time. The proceeds of such external borrowings by National shall be made available to its Subsidiary Companies through the Money Pool. In addition, National proposes that up to \$75 million of its external borrowing be made available for its own corporate purposes.

If only surplus funds of National and its Subsidiary Companies make up the funds available in the Money Pool, the interest rate applicable and payable to or by the Subsidiary Companies for all loans of such surplus funds will be the rates for high grade unsecured 30-day commercial paper sold through dealers by major corporations as quoted in The Wall Street Journal.

If external funds make up all of the funds available in the Money Pool, or when surplus funds from National and other participating Subsidiary Companies and external funds are concurrently borrowed through the Money Pool, the interest rate applicable to all such borrowings and payable by borrowing Subsidiary Companies will be equal to National's net cost for such external borrowings.

The borrowing arrangements with banks or financial institutions may require compensating balances and/or commitment fees or similar fees. National requests authority to incur, if necessary, commitment or similar fees not to exceed one-half (1/2) of one percent (1%) of average daily credit facilities available, and/or compensating balances not to exceed twenty percent (20%) of the credit facility established. National, at all times, will attempt to

negotiate the most favorable effective borrowing rate taking into account any compensating balances and/or fees.

National has, and from time to time through December 31, 2000, will continue to enter into interest rate and currency exchange agreements ("Swap Agreement(s)") with one or more parties ("Counterparty"), covering a total principal amount of up to \$300 million for terms of one month to five years. In no event will the effective fixed rate of interest paid by National inclusive of any fees, exceed by more than 2.0% per annum the yield, at the time of entering into any such Swap Agreement, on direct obligations of the U.S. Government with maturities comparable to that of the applicable Swap Agreement. From time to time, National may be obligated to pay arrangement fees and/or legal fees and other expenses in connection with these Swap Agreements. National requests authority to allocate all such fees and expenses together with the payments made to a Counterparty or received from a Counterparty among National and the Subsidiary Companies based upon their weighted average amount of borrowings outstanding during the period when such amounts are paid or received.

Consolidated Natural Gas Company (70-8739)

Consolidated Natural Gas Company ("Consolidated"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a declaration under sections 6(a), 7, 9(a), 10, and 12(c) of the Act and rules 42 and 54 thereunder.

Consolidated seeks authorization to implement a stockholder rights plan ("Plan") and to enter into a related Rights Agreement ("Agreement") with Society National Bank, as agent. To implement the Plan, the board of directors of Consolidated would declare a dividend distribution of one right ("Right") for each outstanding share of common stock, \$2.75 par value, of Consolidated ("Common Stock") to stockholders of record at the close of business on a specified record date. Each Right would entitle the holder to purchase from Consolidated one-half of a share of Common Stock at a price of \$175 per share (\$87.50 per half-share), subject to adjustment ("Purchase Price"). Initially, the Rights will be evidenced by the certificates for shares of Common Stock to which they relate, and will be transferable only with the Common Stock. Until a Right is exercised or exchanged for Common Stock, as described below, the holder, as

<sup>2</sup>If short-term debt is used to redeem bonds prior to receiving regulatory authority for the sale of the Equipment, CG&E will use net Equipment sale proceeds to repay all or a portion of such short-term debt.

<sup>3</sup>As of September 30, 1995, these bonds had an aggregate principal amount of \$150 million outstanding.

such, will have no rights as a stockholder of Consolidated.

Upon the earlier to occur of (a) ten days after the date ("Shares Acquisition Date") of the public announcement that a person or affiliated group ("Acquiring Person") has acquired or obtained the right to acquire beneficial ownership of securities having 10% or more of the voting power of the outstanding voting securities of Consolidated, or (b) ten days after commencement of, or announcement of the intention of a person to make, a tender or exchange offer that would result in such person acquiring, or obtaining the right to acquire, beneficial ownership of securities having 10% or more of the voting power of the outstanding voting securities of Consolidated (such earlier date being the "Distribution Date"), separate certificates evidencing the Rights will be mailed to holders of record of Common Stock as of the close of business on the Distribution Date.

The Rights will become exercisable after the Distribution Date on the following terms: (1) If a person becomes an Acquiring Person after the Distribution Date, each holder (other than an Acquiring Person) may exercise a Right and receive Common Stock (or, in certain cases, cash, property or other securities of Consolidated) having a value equal to two times the Purchase Price of the Right then in effect. Rights that are beneficially owned by an Acquiring Person will be null and void. (2) If, after the Shares Acquisition Date, Consolidated is acquired in a business combination transaction of 50% or more of its assets or earning power is sold or transferred, each holder of a Right will have the right to receive, upon exercise, common stock of the acquiring company having a value equal to two times the Purchase Price of the Right then in effect.

The Purchase Price is subject to adjustment to prevent dilution in certain situations involving stock dividends, splits, combinations or reclassification; grants of warrants to subscribe for or purchase Common Stock or convertible securities at less than market price; or distribution to holders of Common Stock of evidences of indebtedness or assets or of subscription rights or warrants. Adjustments will be required upon the earlier of three years from the date of the event giving rise to the adjustment or the time when cumulative adjustments require a 1% or more change in the Purchase Price.

Consolidated may redeem the Rights in whole, but not in part, prior to 5 p.m. on the tenth day after the Shares Acquisition Date (subject to extension

by the board of directors of Consolidated for an additional 20 days), at a price of \$0.01 per Right, payable in cash or stock. In addition, at any time after a person becomes an Acquiring Person, the board may exchange the Rights (other than Rights held by an Acquiring Person, which become void), in whole or in part, at an exchange ratio of one share of Common Stock (and/or other securities, cash or other assets having the same value as a share of Common Stock) per Right, subject to adjustment.

The Agreement may be amended by the board of directors of Consolidated without the consent of the holders of Rights prior to the Distribution Date. Therefore, the board may amend the Agreement in order to cure any ambiguity, defect or inconsistency or to make changes that do not adversely affect the interests of holders of Rights (other than any Acquiring Person), provided that no amendment may be made on and after the Distribution Date that changes the principal economic terms of the Rights.

Yankee Atomic Electric Company (70-8743)

Yankee Atomic Electric Company ("Yankee Atomic"), 580 Main Street, Bolton, Massachusetts 01740, a subsidiary of both New England Electric System and Northeast Utilities, both registered holding companies, has filed an application under sections 6(a) and 7 of the Act and rule 54 thereunder.

By order dated March 11, 1994 (HCAR No. 26002), Yankee Atomic was authorized to borrow up to \$10 million through December 31, 1995.

Yankee Atomic now proposes to borrow money from one or more banks up to a maximum aggregate amount outstanding at one time of \$10 million, from January 1, 1996 through December 31, 1997.

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

Margaret H. McFarland,

*Deputy Secretary.*

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[Rel. No. IC-21524; 812-9730]

### State Street Research Tax-Exempt Fund, et al.; Notice of Application

November 20, 1995.

**AGENCY:** Securities and Exchange Commission (the "SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** State Street Research Tax-Exempt Fund (the "Acquiring Fund"), State Street Research California Tax-Free Fund (the "California Fund"), State Street Research Florida Tax-Free Fund (the "Florida Fund"), State Street Research Pennsylvania Tax-Free Fund (the "Pennsylvania Fund") (collectively, the California, Florida and Pennsylvania Funds are the "Acquired Funds" and the Acquiring and Acquired Funds are the "Funds"), and State Street Research & Management Company ("State Street").

**RELEVANT ACT SECTIONS:** Order requested under section 17(b) of the Act to exempt applicants from the provisions of section 17(a). Applicants further request an order pursuant to rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by section 17(d) and rule 17d-1.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit applicants to effectuate a reorganization between the Acquiring and Acquired Funds.

**FILING DATES:** The application was filed on August 21, 1995, and amended on November 1, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, One Financial Center, Boston, Massachusetts 02111.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 942-0572, or C. David Messman, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are series of State Street Research Tax-Exempt Trust (the