

unaffiliated open-end investment companies.

8. Section 6(c) provides that the SEC may exempt any person or transaction from any provisions of the Act 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. Applicants believe that the requested order satisfies this standard.

#### Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The Portfolio and the Fund will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges or service fees charged with respect to securities of the Fund, when aggregated with any sales charges or service fees paid by the Portfolio with respect to securities of the underlying funds, shall not exceed the limits set forth in Article III, section 26, of the NASD's Rules of Fair Practice.

3. A majority of the trustees or directors of each of the Fund, the Portfolio and each other feeder fund investing in the Portfolio will not be "interested persons" as defined in section 2(a)(19) of the Act.

4. Before approving any advisory contract under section 15 of the Act, the Board of Trustees of the Portfolio, including a majority of the Trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, shall find that advisory fees charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any underlying fund's advisory contract. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Portfolio.

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

Margaret H. McFarland,  
*Deputy Secretary.*

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[Release No. 35-26487]

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

March 8, 1996.

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 April 1, 1996, 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.

Unitil Corporation, et al.

Unitil Corporation ("Unitil"), a registered holding company,<sup>1</sup> Unitil's wholly-owned non-utility subsidiary, Unitil Resources, Inc. ("URI"), and Unitil's wholly-owned service company subsidiary, Unitil Service Corp. ("Unitil Service") (collectively "Applicants"), all located at 216 Epping Road, Exeter, New Hampshire, 03833, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12, and 13(b) of the Act and rules 45, 54, 87, 90, and 91 thereunder.

Pursuant to a Commission order dated May 24, 1993 (HCAR No. 25816), URI is currently engaged in the business of providing certain energy related management and consulting services, including electric power brokering, to entities outside the Unitil holding company system. Applicants request authorization for URI to expand its authorized activities to include engaging in transactions as a wholesale and retail marketer of electricity, natural gas and other energy commodities ("collectively, "Energy Marketing"),<sup>2</sup>

<sup>1</sup> Unitil has four utility subsidiaries: Fitchburg Gas and Electric Light Company ("FG&E"), Concord Electric Company ("Concord"), Exeter & Hampton Electric Company ("E&H") and Unitil Power Corporation.

<sup>2</sup> Applicants state that URI's Energy Marketing activities will involve arranging the sale and

and providing customers with certain energy related services involving technical assistance and energy management (collectively, "Energy Management Services")<sup>3</sup> While initially concentrated in the New England region, URI's potential customer base may include individuals and entities located outside the New England region.

Applicants also seek authorization for Unitil to indemnify and guarantee the power and fuel transactions of URI, through December 31, 2000 and in an amount not to exceed \$30 million in the

purchase, transportation, transmission and storage of electricity, natural gas or other energy commodities for a commission as well as entering into contracts to purchase electricity, natural gas or other energy commodities from suppliers and resell them to utility and nonutility customers. Applicants state that energy marketing arrangements may be undertaken for long or short term durations and pursuant to individualized terms and conditions, and that sales of energy to groups of customers would likely be aggregated together for purposes of obtaining competitive wholesale energy supplies. Applicants state that, in some cases, URI may acquire energy supplies and then market that energy to customers as competitively as possible, whereas in other cases, URI may establish contracts with customers and then acquire energy supplies to meet the customers' requirements. Although the Energy Marketing transactions URI proposes to engage in may take a variety of different forms, in a typical transaction, URI will purchase power from a utility or nonutility generator, contract with other utilities for the transmission of the power, and resell the power to a utility or end-user. Applicants expect that the bulk of URI's Energy Marketing activities will involve marketing electricity or gas, but state the URI needs to be able to engage in transactions involving other energy commodities, such as oil, refined petroleum products, gas liquids, coal, wood and other similar combustible substances, in order to compete effectively with other suppliers in the marketplace who can provide a full range of energy options to meet customer demands.

<sup>3</sup> Applicants state that such Energy Management Services may include demand side management, and energy usage consulting services, as well as limited engineering services pertaining to power quality management (ensuring uninterruptible supplies, proper grounding of equipment and related matters) and power factor correction, both of which are designed to help customers manage their power efficiency, supply and cost. Applicants state that Concord, E&H and FG&E currently provide demand side management services to their customers, including, among other things, hot water heater tank and pipe wrapping, energy efficient lighting, heating and cooling programs, energy audits and the provision of rebates in connection with energy efficient equipment. Concord, E&H and FG&E also currently provide engineering services pertaining to power quality management and power factor correction for their own systems and, on occasion, for their customers. Applicants note that some employees of Unitil's public utility subsidiaries may perform certain of the technical engineering functions that are part of URI's demand side management services but state that the performance of such functions will not impair the employees' ability to provide services to the relevant utility subsidiaries. Applicants expect that URI's Energy Marketing and Energy Management Services will often be marketed jointly to customers as a complete energy services package and state that the ability to offer both types of services will enable URI to offer complete energy management services and solutions to customers on a competitive basis.

aggregate,<sup>4</sup> and for Unitol Service to provide URI with facilities, personnel and services necessary for its energy Marketing and Energy Management Services activities.<sup>5</sup>

Applicants state that URI must obtain authorization from the Federal Energy Regulatory Commission ("FERC") before engaging in wholesale electric power marketing activities and from the appropriate state authorities before engaging in retail electric power marketing activities. Applicants state that URI will not enter into any electric power purchase or sale contracts that are not within federal or state regulatory purview and that its activities in developing wholesale and retail electric power markets will, therefore, be subject to appropriate limitations, conditions and controls.<sup>6</sup> Applicants state that

<sup>4</sup> Applicants state that URI may, from time to time, need Unitol to indemnify third parties, to guarantee performance of its obligations or payment of its debts and/or to act as surety for its activities. The need for such guarantee authority grows out of customary market practice pursuant to which energy marketing companies, which often are not highly capitalized, demonstrate their financial credibility to customers. Applicants state that the usual method for establishing the financial credibility of the marketing company is by the parent (such as Unitol) standing behind its subsidiary through guarantees, thus allowing the subsidiary to compete effectively in increasingly deregulated markets.

<sup>5</sup> Applicants state that services would be provided by Unitol Service pursuant to its service agreement with URI and may include gas and power supply planning and contracting, marketing, sales, customer services, engineering, operations management, conservation services design and contracting and related management and professional services. Applicants note that Unitol Service currently provides similar services to other Unitol system companies and state that Unitol Service personnel have extensive knowledge of the markets for electric power and natural gas and are experienced in evaluating potential electric power and natural gas suppliers, negotiating contracts and arranging for the transmission and pooling of electric power. URI would reimburse Unitol Service at cost for the services provided in the same manner as any other Unitol affiliate company. Applicants state that the provision of these services to URI by Unitol Service will not impair Unitol Service's ability to provide services to other Unitol system companies. They also note that, if needed in the future, URI could employ its own staff to provide these services.

<sup>6</sup> Applicants note, for example, that FERC regulations would preclude URI from purchasing electric energy or capacity from, or selling these products to, any affiliated companies in the Unitol system unless specifically authorized by the FERC. In addition, under FERC regulations, URI would be unable to charge competitive, market based rates at wholesale unless its affiliated public utility companies have filed open access transmission tariffs acceptable to the FERC, and until URI has satisfied the FERC that it has mitigated any market power which it may have. Applicants also state that, while URI is not deemed a utility under most state laws, URI would only be able to undertake retail power marketing activities in the context of state legislative or regulatory initiatives, such as the New Hampshire Retail Wheeling Pilot Program and the Massachusetts Industry Restructuring Proceedings. Thus, Applicants say, URI's retail

URI's gas and energy commodity marketing activities and its Energy Management Services activities will also be undertaken in accordance with all applicable federal and state laws.

#### New England Electric System (70-8803)

New England Electric System ("NEES"), a registered holding company, located at 25 Research Drive, Westborough, Massachusetts 01582, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rule 45 thereunder.<sup>7</sup>

NEES proposes to form one or more direct or indirect new subsidiaries ("Marketing Companies") in Massachusetts, Rhode Island, New Hampshire, New York, New Jersey, Pennsylvania, Maryland and Delaware to engage in the business of wholesale and retail marketing of electricity.<sup>8</sup> Marketing Companies in Massachusetts, Rhode Island and New Hampshire that elect to provide Standard Offer Service may provide such services only to customers of affiliated Retail Companies. In addition, NEES proposes to establish Marketing Companies in each of these three states, as well as the other states noted above, that will market electricity to retail and wholesale customers of affiliated Retail Companies that do not choose Standard Offer Service and to customers of nonaffiliated electric utilities ("General Marketing Companies").<sup>9</sup>

The Marketing Companies also propose to provide a broad range of energy and related services to customers, including but not limited to audits, power quality, fuel supply,

activities would be effectively limited to those permitted by state regulators. Applicants also note that Unitol has notified the New Hampshire Public Utility Commission and the Massachusetts Department of Public Utilities, the two state commissions with jurisdiction over the public utility subsidiaries in the Unitol system, of the plan to expand URI's business activities.

<sup>7</sup> NEES owns three retail electric utility companies ("Retail Companies") serving New Hampshire, Massachusetts, and Rhode Island, as well as New England Power Company ("NEP"), which generates, purchases, transmits, and sells electric energy in wholesale quantities primarily to the Retail Companies.

<sup>8</sup> New Hampshire has adopted a pilot program to establish retail electric competition, under which each New Hampshire utility must allow customers representing three percent of their peak loads to have access to alternative suppliers of electricity for two years, starting on or about May 28, 1996. Massachusetts and Rhode Island also are considering programs to promote retail competition. Under a proposal developed by NEES, customers could elect to receive service under a standard offer from an affiliate of their incumbent utility ("Standard Offer Service"), the pricing of which would be approved by regulators.

<sup>9</sup> Under New Hampshire's pilot program, a General Marketing Company would have limited ability to contract with customers of nonaffiliated electric utilities within New Hampshire.

repair, maintenance, construction, design, engineering and consulting.

Initially, the Marketing Companies are expected to have only a few employees, primarily sales staff. Technical and support staff needed for a particular project could be assigned for the duration of that project from NEES, NEP and/or the Retail Companies. No more than 1% of the employees of NEES, NEP and/or the Retail Companies will render, directly or indirectly, services to the Marketing Companies at any one time. All costs associated with such staff (including compensation, overheads and benefits) would be fully reimbursed by the Marketing Company to which they were assigned in accordance with rules 90 and 91. Reimbursements for these costs will be on a thirty-day cycle in accordance with service contracts to be entered.

NEES proposes initially to finance the Marketing Companies by purchasing 1,000 shares of their capital stock, for a total purchase price of \$1,000. Subsequently, NEES intends to make capital contributions and/or loans to the Marketing Companies from time to time through December 31, 1999, provided that such contributions and/or loans for all Marketing Companies will not exceed \$15 million. Any loans will be in the form of noninterest bearing subordinated notes payable in twenty years or less from the date of issue. The Marketing Company may prepay any or all of the outstanding notes without premium or penalty. NEES shall only make such loans provided: (a) There shall be in full force and effect appropriate orders of all regulatory authorities having jurisdiction; (b) the making of such loan shall not contravene any provision of law or any provisions of the certificate of incorporation or by-laws or any binding agreement of the Marketing Company; (c) and the making of such loan shall not contravene any provision of law or any provision of the Agreement and Declaration of Trust of NEES. To the extent that these loans require state commission approval, rule 52 of the Act may apply.

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

Margaret H. McFarland,

*Deputy Secretary.*

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#### Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the