Companies. The obligation to calculate voting privileges in a manner consistent with all other Participating Separate Accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Funds. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares attributable to it, in the same proportion as it votes shares for which it has received instructions.

8. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

9. All reports of potential or existing conflicts received by a Board, and all Board action with regard to: (a) determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

10. The Company will notify all Participants that disclosure in separate account prospectuses or any Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risk of mixed and shared funding may be appropriate. The Company will disclose in its prospectus that: (a) The Funds are intended to be funding vehicles for variable annuity and variable life insurance contracts offered by various insurance companies and Qualified Plans; (b) due to differences of tax treatment and other considerations; the interests of various contract owners participating in the Funds and the interests of Qualified Plans investing in the Funds may conflict; and (c) the Board will monitor for the existence of any material conflicts and determined what action, if any, should be taken.

11. The Company will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in shares of the Fund), and, in particular, the Company will either provide for annual meetings (except to the extent that the commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(a) and, if applicable, section 16(b) of the 1940 act. Further, the Company will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

12. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or if Rules 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act, or the rules thereunder, with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by applicants, then the Company and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with the Rules 6e–2 and 6e–3(T), as amended, or Rules 6e–3, as adopted, to the extent applicable.

13. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the investment adviser or its affiliate holding shares in a Fund will vote such shares in the same proportion as all contract owners having voting rights with respect to the Fund; provided, however, that such investment adviser or affiliate shall vote its shares in such other manner as may be required by the Commission or its staff.

14. Any shares of a Fund purchased by the investment adviser or its affiliate will be automatically redeemed if and when the adviser's investment advisory agreement terminates, to the extent required by applicable Treasury regulations. Neither the investment adviser nor its affiliates will sell such shares of the Fund to the public.

15. No less than annually, the Participants shall submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon its by the Conditions contained in the Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data to the Board when it so reasonably requests shall be a contractual obligation of all Participants under the agreements governing their participation in the Funds.

16. In the event that a Qualified Plan should ever become an owner of 10% or more of the assets of a Fund, such Qualified Plan will execute a participation agreement with the Fund with includes the conditions set forth herein, to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of a Fund.

Conclusion

For the reasons summarized above, applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–21752 Filed 8–24–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27215]

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

August 21, 2000.

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 **September 14, 2000,** 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 **September 14, 2000**, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CP&L Energy, Inc., et al. (70–9659)

CP&L Energy, Inc.(''CP&L Energy''), a public utility holding company claiming an exemption under section 3(a)(1) of the Act under rule 2 under the Act,

Carolina Power & Light Company (''CP&L''), an electric public utility subsidiary of CP&L Energy, North Carolina Natural Gas Corporation (''NCNG''), a gas public utility subsidiary of CP&L Energy, Strategic Resource Solutions Corp., a nonutility subsidiary, of CP&L Energy, all located at 411 Fayetteville Street Mall, Raleigh, North Carolina 27601, and Florida Progress Corporation (''Florida Progress''), a public utility holding company claiming an exemption under section 3(a)(1) of the Act under rule 2 under the Act, its utility subsidiary Florida Power Corporation (''Florida Power''), and its nonutility subsidiaries Progress Capital Holdings, Inc., Florida Progress Funding Corporation, and FPC Del, Inc. (collectively, ''Applicants''), all located at One Progress Plaza, St. Petersburg, Florida 33701, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c), and 13(b) of the Act and rules 43, 45(a), 46, 87, 90, and 91 under the Act.

I. Summary and Background

In a separate proceeding before the Commission in file no. 70–9643, CP&L Energy is seeking authority to acquire Florida Progress (''Merger''). Following consummation of the Merger, CP&L Energy will directly or indirectly own all of the issued and outstanding common stock of three public utilities, CP&L, Florida Power and NCNG (collectively, ''Utility Subsidiaries'') and will register under section 5 of the Act. In connection with the Merger and subsequent registration, Applicants request authority to engage in a variety of financing and other transactions involving CP&L, the Utility Subsidiaries and CP&L's nonutility Subsidiaries (''Nonutility Subsidiaries'') [1] through September 30, 2003 (''Authorization Period'').

The proceeds from the financing proposed by Applicants will be used for general corporate purposes, including (i) financing, in part, investments by and capital expenditures of CP&L Energy and its Subsidiaries, including, without limitation, the funding of future investments in exempt wholesale generators (''EWGs''), foreign utility companies (''FUCOs''),[2] and rule 58 subsidiaries, (ii) repayment, redemption, refunding or purchase by CP&L Energy or any Subsidiary of any of its own securities in accordance with rule 42, and (iii) financing working capital requirements of CP&L Energy and its Subsidiaries.

II. Financing Transactions

Applicants request authority to engage in a variety of financing transactions through September 30, 2003 (''Authorization Period'').

A. CP&L Energy

CP&L Energy requests authority to issue and sell from time to time its common stock (''Common Stock''), preferred securities (''Preferred Securities'') and debentures (''Debentures''). The amount of these securities issued will not in an aggregate amount exceed $3.8 billion (''Debenture and Stock Limitation''), in addition to outstanding amounts owed under credit facilities more particularly described below established to fund the Merger (''Acquisition Debt''). In addition, CP&L Energy proposes to incur short-term debt (''Short-Term Debt'') in amounts not to aggregate more than $1 billion at any one time outstanding. CP&L Energy states that the aggregate outstanding principal amount of the Acquisition Debt, Debentures, and Short-Term Debt will not exceed $5 billion.

1. Acquisition Debt

CP&L Energy states that the Acquisition Debt will be incurred through unsecured borrowings from banks or other institutional lenders under credit lines totaling $3.75 billion. Applicants request authority for CP&L to maintain these credit arrangements, and to renew or extend the maturities of borrowings under these facilities. These borrowings will have maturities of up to three years.

2. Common Stock

Applicants request authority for CP&L Energy to issue and sell up to $3.8 billion worth of its common stock (''Common Stock''). The price and terms of sales of Common Stock will be negotiated, or will be based upon or determined by competitive capital markets. CP&L Energy may also issue Common Stock or options, warrants or other stock purchase rights exercisable for Common Stock in public or privately-negotiated transactions as consideration for the equity securities or assets of other companies, provided that the acquisition of any such equity securities or assets has been either authorized by the Commission or is exempt under the Act or the rules under the Act.[3]

CP&L Energy also proposes to issue Common Stock and/or purchase shares of Common Stock in the open market for purposes of reissuing such shares under plans maintained for stockholders, employees and directors. Specifically, CP&L Energy will adopt and maintain for its shareholders CP&L's existing Automatic Dividend Reinvestment and Customer Stock Purchase Plan (''DRP''), dated January 15, 1993. The DRP will provide CP&L Energy's shareholders and other parties with a simple and convenient method of purchasing shares of Common Stock. The purchase price of shares purchased under the DRP on the open market will be the weighted average price (including brokerage commissions) of all shares acquired by the managing bank during the relevant investment period. The purchase price of original issue shares will be the average of the high and low sale prices for Common Stock (on the composite tape as reported in The Wall Street Journal) on the day on which such shares are purchased.

CP&L Energy also intends to maintain in effect CP&L's existing equity incentive plan (''Incentive Plan''), which authorizes grants of common stock, stock options and other stock-based awards to eligible executives and other key employees, as well as to directors of the company and its subsidiaries. The Incentive Plan is a broad umbrella plan that will allow CP&L Energy to adopt various sub-plans under which it may issue non-qualified stock options, incentive stock options, stock appreciation rights, restricted stock, performance units, performance shares and other stock unit awards or stock-based forms of awards. For example, CP&L has adopted and issues performance-based shares under a performance share sub-plan. It also issues restricted stock under restricted stock agreements with individual employees.

Shares issued under the Incentive Plan and the DRP are subject to the Debenture and Stock Limitation. For purposes of this limitation, shares

[1] As used in this notice, the term ''Nonutility Subsidiaries'' means each of the direct and indirect nonutility subsidiaries of CP&L Energy as of the effective date of the Merger. The term ''Nonutility Subsidiaries'' also includes any direct or indirect nonutility subsidiary acquired or formed by CP&L Energy after the effective date of the Merger in a transaction that either has been approved by the Commission in this or a separate proceeding or is exempt under the Act or the rules under the Act. The Utility Subsidiaries and Nonutility Subsidiaries are referred to in this notice as the ''Subsidiaries''.

[2] Applicants state that the aggregate amount of proceeds of financing and guarantees proposed in this matter which are used to fund investments in EWGs and FUCOs will not, when added to CP&L Energy's ''aggregate investment'' (as defined in rule 53) in all such entities at any point in time, exceed 50% of CP&L Energy's ''consolidated retained earnings'' (also as defined in rule 53).

[3] For purposes of the Debenture and Stock Limitation, Common Stock will be valued either at its market value on the day before closing of the acquisition, or at the average high and low market price for a period prior to the closing, as negotiated by the parties.

issued under all stock-based plans will be valued at the closing price on the New York Stock Exchange on the last trading day before the award and other securities will be valued using a reasonable and consistent method applied at the time of the award.

3. Preferred Securities and Debentures

CP&L Energy states that it may issue Preferred Securities and Debentures directly or through one or more special purpose financing subsidiaries more particularly described below. Preferred Securities may be issued in one or more series with rights, preferences, and priorities as may be designated in the instrument creating each series, as determined by CP&L Energy's board of directors. All Preferred Securities will be redeemed no later than 50 years after the date of issuance thereof.

The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to the Debentures 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. Debentures will have maturities ranging from one to 50 years.

4. Short-Term Debt

Applicants state that Short-Term Debt may take the form of commercial paper, which will be sold to dealers at the annual discount rate prevailing at the date of the sale for commercial paper of comparable quality and maturities. Short-Term Debt may also include lines of credit from banks. Applicants state that Short-Term Debt will mature in one year or less from the date of issuance.

5. Guarantees

Applicants request authority for CP&L Energy to provide guarantees and other forms of credit support on behalf of or for the benefit of its subsidiaries in an aggregate principal or nominal amount not to exceed $750 million at any one time outstanding (''CP&L Energy Guarantee Limit''), subject to the limitations of rules 53 and 58. Applicants state that CP&L Energy will charge its subsidiary a fee for each guarantee that is provide on its behalf that will not exceed the cost of obtaining the liquidity necessary to perform the guarantee for the period of time that guarantee remains outstanding.

B. Utility Subsidiaries

1. Debt and Preferred Securities

Applicants request authority for CP&L and NCNG to issue and reissue notes evidencing up to $1 billion and $125 million of indebtedness outstanding at any one time, respectively, having maturities of two years or less. In addition, Applicants request authority for NCNG to sell long-term debt securities and trust preferred securities having maturities of up to 50 years. NCNG will not issue more than $750 million of these securities at any time outstanding.

2. Utility Money Pool

NCNG and CP&L propose to borrow from CP&L Energy, Florida Power and each other, and Florida Power and CP&L Energy propose to lend to the other Utility Subsidiaries through a system money pool which Applicants propose to establish (''Utility Money Pool'').[4] CP&L and NCNG requests authority to borrow through the Utility Money Pool up to $400 million and $125 million, respectively, at any time outstanding. Loans would be repayable on demand and, in any event, not later than one year after the date of the loan.

Under the proposed terms of the Utility Money Pool, short-term funds would be available from surplus funds in the treasuries of the Utility Money Pool participants (''Internal Funds'') and proceeds from bank borrowings or the sale of commercial paper (''External Funds''). Utility Money Pool participants that borrow would borrow *pro rata* from each participant that lends, in the proportion that the total amount loaned by each such lending company bears to the total amount then loaned through the Utility Money Pool. In addition, when more than one fund source is used for Utility Pool loans, each borrower would borrow pro rata from each such fund source in the same proportion that the amount of funds provided by that fund source bears to the total amount of funds available to the Utility Money Pool.

The interest rate applicable to loans of Internel 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. The interest rate applicable of loans of External Funds will equal the lending company's cost for such External Funds.[5] The rate applicable to loans comprised of both Internal and External Funds will be a weighted average of the rates determined as described above.

The cost of compensating balances, if any, and fees paid to banks to maintain credit lines and accounts by Utility Money Pool participants lending External Funds to the Utility Money Pool would initially be paid by the participants maintaining such lines. The portion of these costs that are allocable to loans in the Utility Money Pool will be retroactively allocated every month to the companies borrowing those External Funds, in proportion of their respective daily outstanding borrowings of those funds.

Funds not required by the Utility Money Pool to make loans (with the exception of funds required to satisfy the Utility Money Pool's liquidity requirements) would ordinarily be invested in one or more short-term investments, including: (1) Interest-bearing accounts with banks; (ii) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements; (iii) obligations issued or guaranteed by any state or political subdivision of that state, provided that those obligations are rated not less than ''A'' by a nationally recognized rating agency; (iv) commercial paper rated not less than ''A–1'' or ''P–1'' or their equivalent by a nationally recognized rating agency; (v) money market funds; (vi) bank certificates of deposit; (vii) Eurodollar funds; and (viii) such other investments as are permitted by section 9(c) of the Act and Rule 40 under the Act.

CP&L Energy's service company subsidiary, CP&L Service Company LLC, will administer the Utility Money Pool on an ''at-cost'' basis.

C. Nonutility Subsidiaries

1. Money Pool

CP&L Energy intends to lend to and the Nonutility Subsidiaries intend to borrow from CP&L Energy and each other money through a system money pool (''Nonutility Money Pool'').[6] Applicants state that the Nonutility Money Pool will be operated on the same terms as the Utility Money Pool, except that CP&L Energy's funds made available to the two Money Pools will be made available to the Utility Money Pool first and afterwards to the Nonutility Money Pool.

2. Other Borrowings

Applicants request authority for each Nonutility Subsidiary that is not wholly

[4] Applicants state that borrowings by Florida Power under the Utility Money Pool are exempt under rule 52(a).

[5] The applicable interest rate on loans of External Funds provided by more than one Utility Money Pool participant will be a composite rate equal to the weighted average of the costs incurred by those participants.

[6] Applicants state that borrowings by the Nonutility Subsidiaries under the Nonutility Money Pool will be exempt under rule 52.

owned by CP&L Energy to borrow from CP&L Energy and the other Nonutility Subsidiaries at interest rates and maturities designed to provide a return of not less than the lending company's effective cost of capital. Applicants state that none of these borrowing Nonutility Subsidiaries will sell any services to any associated Nonutility Subsidiary (unless that company falls within one of the categories, described below, of companies to which goods and services may be sold on an other than at-cost basis).

3. Existing Guarantees

Applicants request authority for Florida Progress and its nonutility subsidiaries to continue, extend and/or replace all guarantees and other forms of credit support outstanding on the date the proposed Merger is effected relating to credit facilities, other financing arrangements of certain nonutility subsidiaries, and other existing obligations, described in Exhibit A to this notice (''Existing Guarantees''). The aggregate maximum exposure under the Existing Guarantees is approximately $2.2 billion.

4. New Guarantees

In addition to the Existing Guarantees, the Nonutility Subsidiaries request authority to provide guarantees and other forms of credit support on behalf of or for the benefit of other Nonutility Subsidiaries in an aggregate principal or nominal amount not to exceed $500 million at any one time outstanding (''Nonutility Subsidiary Guarantee Limit''), subject to the limitations of rule 58. A Nonutility Subsidiary will charge its associate company a fee for each guarantee that is provided on its behalf that will not exceed the cost of obtaining the liquidity necessary to perform the guarantee for the period of time the guarantee remains outstanding.

D. Hedging Transactions

CP&L Energy and the Subsidiaries request authority to enter into hedging transactions (''Interest Rate Hedges'') with respect to their existing indebtedness. Interest Rate Hedges will involve the use of financial instruments commonly used in capital markets, such as interest rate swaps, caps, collars, floors, and 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 obligations. Applicants state that the transactions will be for fixed periods and stated notional amounts that in no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure.

In addition, Applicants request authority for CP&L Energy and the Subsidiaries to enter into Anticipatory Hedges. The Anticipatory Hedges would be utilized to fix and/or limit the interest rate risk associated with any new issuance through: (1) A forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap; (ii) the purchase of put options on U.S. Treasury obligations (''Put Options Purchase''); (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations; and (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars.

E. Energy-Related Activities

Nonutility Subsidiaries request authority to invest up to $500 million (''Investment Limitation'') in the acquisition or construction of certain types of nonutility energy-related assets that are incidental to their energy marketing brokering or trading activities (''Energy-Related Assets'') or in the equity securities of existing or new companies substantially all of whose physical properties consist or will consist of those Energy-Related Assets.[7] Applicants state that, if common stock is issued in connection with these acquisitions, the market value of that stock on the date of its issuance will be used for purposes of the Investment Limitation.

F. Financing Subsidiaries

CP&L Energy and the Subsidiaries request authority to acquire the equity securities of one or more special-purpose subsidiaries (''Financing Subsidiaries''), each of which will be organized solely to issue securities to support the businesses of CP&L Energy and the Subsidiaries. Applicants state that financing Subsidiaries may dividend, loan or otherwise transfer the proceeds of such financings to or as directed by the financing Subsidiary's parent company; provided, however, that a Financing Subsidiary of a Utility Subsidiary will dividend, loan or otherwise transfer proceeds of a financing only to that Utility Subsidiary.

Applicants state that the amount of long-term debt or preferred securities issued by a Financing Subsidiary will be counted against the limitation on amounts of similar types of securities applicable to the Financing Subsidiary's parent company, to the extent the parent company is a guarantor of the securities. Applicants propose that guarantees by a Financing Subsidiary's parent company not be counted toward the guaranty limit applicable to it described above, if any.

G. Payment of Dividends by Nonutility Subsidiaries

Applicants note that there may be situations in which it or one or more Nonutility Subsidiaries will have unrestricted cash available for distribution in excess of the company's current and retained earnings. Accordingly, Applicants also request authority for each Nonutility Subsidiary to pay dividends with respect to its securities, and/or acquire, retire or redeem any of its securities held by associate companies from time to time out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law.

III. Other Transactions

A. Intermediate Subsidiaries

Applicants request authority for CP&L Energy to acquire, directly or indirectly, the one or more intermediate subsidiaries (''Intermediate Holding Companies'') to be organized exclusively for the purpose of acquiring, financing, and holding the securities of existing or future Nonutility Subsidiaries. The Intermediate Subsidiaries may also engage in certain development and administrative activities during the Authorization Period relating to the Nonutility Subsidiaries.[8] Applicants request authority for the Intermediate Subsidiaries to expend up to $250

[7] Energy-Related Assets include natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities.

[8] Applicants state that development activities include: Due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including 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; negotiation of financing commitments; and other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the acquisition of securities of or interests in new businesses. Applicants also state that administrative activities include ongoing personnel, accounting, engineering, legal, financial, and other support activities necessary to manage CP&L Energy's investments in Nonutility Subsidiaries.

million during the Authorization Period on these activities.

B. Changes in Capital Structure

Applicants request that each of the wholly-owned Subsidiaries be authorized to change the terms of its authorized stock capitalization by an amount deemed appropriate by CP&L Energy or its direct parent company. As examples, Applicants state that a Subsidiary may choose to change the par value of a capital security or engage in a reverse stock split. Any change in capitalization will be subject to the approval of the State commission in the State in which the Subsidiary is incorporated and doing business.

C. Rule 58 Subsidiaries Operation Outside the United States

Applicants also request authority for Subsidiaries engaged or formed in engage in activities permitted by rule 58 to engage in those activities, including energy marketing, energy management services and consulting services, anywhere outside the United States.[9]

D. Payment of Dividends by CP&L Energy and NCNG

Applicants request authority: (1) For CP&L Energy to pay dividends out of capital and unearned surplus in an amount equal to the sum of (a) CP&L's consolidated retained earnings prior to the establishment of CP&L Energy as the holding company over CP&L (''Reorganization''),[10] (b) Florida Progress's retained earnings prior to the Merger,[11] and (c) NCNG's retained earnings prior to the acquisition of NCNG by CP&L,[12] and (2) for NCNG to pay dividends out of capital and unearned surplus in an amount equal to its retained earnings just prior to its acquisition by CP&L in July 1999.

Applicants state that NCNG seeks authority to pay dividends to CP&L Energy out of capital and unearned surplus in an amount equal to NCNG's retained earnings prior to its acquisition because its retained earnings were recharacterized as capital due to ''push down'' accounting when the company was acquired. Applicants state that authority is sought for CP&L Energy to pay dividends out of capital and unearned surplus in amounts equal to the sum of CP&L's pre-Reorganization consolidated retained earnings, Florida Progress' pre-Merger retained earnings, and NCNG's retained earnings prior to the acquisition of NCNG by CP&L because dividends by CP&L and Florida Progress out of their retained earnings, and by NCNG out of its capital and unearned surplus in amounts equal to its preexisting retained earnings, will be reflected on CP&L Energy's books as returns of capital, not as increases in earnings.[13]

Applicants also request authority for CP&L Energy to pay dividends out of earnings before the amortization of goodwill resulting from the Merger[14] and the acquisition of NCNG, and for NCNG to pay dividends out of earnings before the amortization of goodwill resulting from its acquisition by CP&L.[15] CP&L Energy states that its request to pay dividends of amounts reflecting NCNG's exclusion of its amortization of goodwill from earnings is based on the fact that dividend payments by NCNG of those amounts may be recorded as a return of capital of CP&L Energy, not an increase in its earnings. Applicants state that this goodwill will be amortized over a period of up to 40 years.[16]

E. Tax Allocation Agreement

Applicants request authority for an agreement that does not fully comply with the requirements of rule 45(c) for the allocation between CP&L Energy and the Subsidiaries of consolidated taxes. Applicants state that, under the proposed agreement, CP&L Energy would retain the benefit of tax losses created by CP&L Energy's interest expense on the Acquisition Debt.

F. Intrasystem Transactions

Applicants propose that certain Nonutility Subsidiaries provide services and/or sell goods to each other at fair market prices determined without regard to cost under certain circumstances. Specifically, Applicants request an exemption where the purchasing Nonutility Subsidiary is:

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

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

(3) 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 such electricity for their own use and not for resale, and/or (b) to an electric utility company (other than one of the Utility Subsidiaries) at the purchaser's ''avoided cost'' as determined in accordance with the regulations under PURPA;

(4) 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

[9] Energy marketing activities include the brokering and marketing of electricity, natural gas and other energy commodities. Energy management services include the marketing, sale, installation, operation and maintenance of various products and services related to energy management and demand-side management, including energy and efficiency audits; facility design and process control and enhancements; construction, installation, testing, sales and maintenance of (and training client personnel to operate) energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies, design and specification of energy consuming equipment; general advice on programs; the design, construction, installation, testing, sales and maintenance of new and retrofit heating, ventilating, air conditioning, electrical and power systems, alarm and warning systems, motors, pumps, lighting, water, water-purification and plumbing systems, and related structures, in connection with energy-related needs; and the provision of services and products designed to prevent, control, or mitigate adverse effects of power disturbances on a customer's electrical systems. Consulting services include engineering, consulting and other technical support services with respect to energy-related businesses, as well as for individuals. These services include technology assessments, power factor correction and harmonics mitigation analysis, meter reading and repair, rate schedule design and analysis, environmental services, engineering services, billing services (including consolidation billing and bill disaggregation tools), risk management services, communications systems, information systems/data processing, system planning, strategic planning, finance, feasibility studies, and other similar services.

[10] The Commission recently authorized the establishment of CP&L Energy as the holding company over CP&L. *See* Holding Co. Act Release No. 27188 (June 15, 2000).

[11] Applicants state that, as of June 30, 2000, the retained earnings of Florida Progress was approximately $819 million.

[12] Applicants state that NCNG's had approximately $63.3 million retained earnings prior to its acquisition.

[13] Over time, CP&L Energy will record its share of the earnings of its subsidiaries under the equity method of accounting as prescribed in rule 26(c) under the Act.

[14] Applicants state that CP&L Energy will record the amortization of goodwill arising from the Merger on its own books because ''push down'' accounting will not be used to account for the Merger, under an exception provided by accounting guidelines for companies with significant amounts of publicly-held debt and preferred stock.

[15] As noted above, NCNG is recording the amortization of goodwill resulting from its acquisition by CP&L because ''push down'' accounting was used to account for the acquisition.

[16] Applicants state that approximately $240 million was recorded as goodwill on NCNG's books as a result of the company being acquired in July of 1999, and approximately $3 billion could be allocated to goodwill on CP&L Energy's books as a result of the Merger.

(5) either (a) partially-owned by CP&L Energy, provided that the ultimate purchaser of such goods or services is not a Utility Subsidiary or CP&L Services (or any other entity that CP&L Energy may form whose activities and operations are primarily related to the provision of goods and services to the Utility Subsidiaries or CP&L Services), (b) engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries described in clauses (1) through (4) above, or (c) not a public utility operating within the United States and does not derive any material part of its income from sources within the United States.

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

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Existing Guarantees

Florida Progress has unconditionally guaranteed all indebtedness of Progress Capital Holdings, Inc. (''Progress Capital''), one of its direct subsidiaries. Progress Capital currently has in place a $600 million commercial paper facility supported by three revolving bank credit facilities: one $100 million facility and one $200 million facility under each of which Progress Capital may make borrowings with a term of up to 364 days, and a $300 million facility under which it may make borrowings with a term of up to five years. The $100 million facility and the $200 million facility have a current expiration date of November 16, 2000 and July 16, 2000, respectively, and the 5-year facility expires November 30, 2003. As of March 31, 1999, Progress Capital had issued an outstanding $366.6 million in commercial paper. These lines of credit were not drawn upon. In addition, Progress Capital has uncommitted bank bid facilities authorizing it to borrow and re-borrow, and has outstanding at any one time, up to $300 million principal amount of indebtedness with maturities of up to one year. As of March 31, 2000, there were $35 million in loans outstanding under these bid facilities. Progress Capital also has a private medium-term note program providing for the issuance of up to $844 million of fixed or floating interest rate notes with maturities ranging from nine months to 30 years. As of March 31, 2000, there were $444 million of notes outstanding under this program.

Progress Capital has itself guaranteed an aggregate of $198.6 million of payment obligations of an indirect subsidiary, MEMCO Barge Line, Inc. (''MEMCO''), under a synthetic lease covering barges and towboats. Florida Progress, Progress Capital, Electric Fuels and other subsidiaries of Progress Capital have guaranteed obligations and/or provided other forms of credit support in an aggregate amount of $133 million on behalf of subsidiaries, including the obligations of MEMCO under various operating leases covering barges, obligations of Progress Capital and Electric Fuels under stand-by letters of credit covering workers' compensation, black lung and similar liabilities, and a guarantee of tax-exempt bonds issued by an industrial development authority in Louisiana to finance port facilities.

Further, Florida Progress has also unconditionally guaranteed the sale of $300 million of quarterly income preferred securities indirectly issued by Progress Funding Corporation, one of its direct subsidiaries. Quarterly distributions are payable at the annual rate of 7.10%.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27214]

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

August 21, 2000.

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 applicant(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 September 14, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 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 September 14, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Exelon Corporation (70–9645)

Exelon Corporation (''Exelon'' or ''Applicant''), a Pennsylvania corporation located at 10 South Dearborn Street, Chicago, Illinois 60603, and a subsidiary of PEPCO Energy Company (''PECO''), a combination electric and gas utility holding company claiming exemption from registration under section 3(a)(1) of the Act by rule 2, has filed an amended application-declaration under sections 3(a)(1), 4, 5, 6(a), 7, 8, 9(a)(1), 9(a)(2), 9(c)(3), 10, 11(b), 12, and 13, and rules 43, 44, 54, and 80 through 92 under the Act.

Under the terms of an Agreement and Plan of Exchange and Merger (''Merger Agreement''), dated September 22, 1999 and amended and restated on January 7, 2000. Exelon proposes to acquire all of the issued and outstanding shares of common stock of PECO and of Unicom Corporation (''Unicom''), a public utility holding company exempt from registration under section 3(a)(1) of the Act by order of the Commission,[1] through a two-step process. First, the Merger Agreement provides for a mandatory share exchange of the outstanding common stock of PEPO for common stock of Exelon. Following this exchange, Unicom will merge with and into Exelon, with Exelon as the surviving corporation. Together, these two transactions are referred to as the ''Merger.'' After the Merger, Exelon will register as a holding company under the Act. In addition, Exelon proposes to engage in various related transactions, including intrasystem transactions.

Exelon further seeks authority to engage in certain corporate restructurings following consummation of the Merger, including (1) Re-aligning the ownership of its nonutility subsidiary companies; (2) transferring all of its generating capacity to Exelon Generation Company, LLC (''Genco''), a subsidiary company to be organized by Exelon; and (3) creating two additional subsidiary utility holding companies (together, the ''Restructurings''). [2]

[1] HCAR No. 26900 (July 22, 1994).

[2] Exelon states that the Restructurings are subject to certain federal and state regulatory approvals and other actions that may be completed at the time the Merger is otherwise ready to close. Accordingly, Exelon requests authority to complete the Merger with or without the Restructurings.