

7. The expenses of the Exchange will be borne by HLM. GE Portfolio organizational expenses will be paid by GE Portfolio and amortized over five years. The amortization of such organizational expenses will be included in the calculation of annual expenses subject to an expense limitation. Any unamortized organizational expenses of the Company at the time HLM withdraws its initial investment in the Company will be borne by HLM and not the Company.

8. The management fees for the GE Portfolio will not exceed the maximum fees currently paid by the limited partners in the Partnership. Applicants expect that other GE Portfolio expenses generally will be higher as a percentage of net asset value than the expenses of the Partnership. This is primarily because of the increased costs of operating as a registered investment company and compliance with additional regulatory requirements. HLM will, however, place a cap on annual expenses of the GE Portfolio at 1.25% of the average daily net assets. This cap will continue at the discretion of, and until further notice from, HLM.

9. The Exchange will establish the GE Portfolio as a successor investment vehicle to the Partnership. After the exchange is accomplished, HLM intends, for the foreseeable future, to manage the assets of the GE Portfolio in substantially the same manner as it had previously managed the assets of the Partnership. The Exchange will permit partners to pursue as shareholders of the GE Portfolio the same investment objectives and policies they were expecting from the Partnership without sacrificing the pass-through tax features of the Partnership. In addition, shareholders of the GE Portfolio will be able to purchase and redeem shares on each business day, as opposed to only once per quarter as currently provided under the Partnership Agreement.

10. The Company's board of directors and HLM have considered the desirability of the Exchange from the respective points of view of the Company and the Partnership. A majority of the members of the Company's board (including a majority of the independent directors) and HLM have approved the Exchange and have concluded respectively that: (a) the Exchange is desirable as a business matter for both the Company and the Partnership; (b) the Exchange is in the best interests of the Company and the Partnership; (c) the Exchange is reasonable and fair, does not involve overreaching, and is consistent with the policies of the Act; (d) the Exchange is consistent with the policies of the

Company and the Partnership; and (e) the interests of existing shareholders in the Company and existing partners in the Partnership will not be diluted as a result of the Exchange. These findings, and the basis upon which such findings were made, are fully recorded in the respective minute books of the Company and HLM.

11. The Exchange will not be effected unless and until the registration statements have been declared effective, the SEC has issued the requested order, and the Company has received a favorable opinion of counsel with respect to the tax consequences of the Exchange.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, from selling to or purchasing from such company any security or other property. Section 2(a)(3) of the Act defines an "affiliated person," among other things, as any person directly or indirectly controlling, controlled by, or under common control with, such other person, any officer, director, partner, copartner, or employee of such other person, and, if such other person is an investment company, any investment adviser thereof. Therefore, the Partnership may be considered an affiliated person of the Company because the Partnership and the Company may be deemed to be under the common control of HLM, as the investment adviser. Similarly, the Partnership may be an affiliated person of an affiliated person of the Company because HLM is the general partner of the Partnership and also is the investment adviser to the Company. Thus, the proposed Exchange may be prohibited by section 17(a).

2. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicants believe that the terms of the proposed Exchange are consistent with the standards of section 17(b). They represent, among other things, that the investment objectives and policies of the GE Portfolio are substantially similar to the Partnership and that the limited partners will hold substantially the same assets as GE Portfolio

shareholders as they had previously held as limited partners. Applicants state that the Exchange will result in no gain or loss being recognized by the partners of the Partnership. Thus, the partners will become investors in an entity that offers greater liquidity and other advantages, without immediate tax consequences and without having incurred transaction and brokerage charges in order to do so. In addition, the shareholders of the Company will be able to purchase and redeem shares on each business day, as opposed to only once per quarter as is currently provided under the Partnership Agreement.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-28075 Filed 10-31-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-26597]

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

October 25, 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 applications(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 November 18, 1996, 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.

New England Electric System (70-7338)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a post-effective amendment under sections 6(a) and 7 to its application-declaration filed previously under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and rules 42 and 50(a)(5) thereunder.

By orders dated August 1, 1977, June 7, 1979, December 22, 1981, September 28, 1982, November 19, 1985, March 10, 1987, February 22, 1991 and December 29, 1993 (HCAR Nos. 20121, 21091, 22333, 22649, 23913, 24337, 25261 and 25966, respectively), NEES was authorized to issue and sell, through December 31, 1996, up to an aggregate of 10,693,536 shares of its authorized but unissued common stock, \$1.00 par value, pursuant to the NEES System Dividend Reinvestment and Common Share Purchase Plan ("Plan"). NEES has issued 9,093,835 of such shares through August 31, 1996 under the Plan. The Plan also provides that NEES may elect to purchase shares of its common stock on the open market and resell those shares to the Plan at the market price.

NEES now proposes to renew its authority through December 31, 2001 to issue and sell up to 10,693,536 shares of its authorized but unissued common stock pursuant to its Plan, such that, together with any other shares of common stock issued and sold under the Plan, the aggregate does not exceed 10,693,536 shares of common stock. In addition to the unissued shares of common stock, NEES may elect to purchase shares of its common stock on the open market and sell these shares to the Plan at the market price. In all respects, the terms and conditions associated with the issuance and sale of the common shares will remain as previously authorized.

The proceeds from the sale of the common stock will be added to NEES' general funds and be used for any or all of the following purposes: (1) investment in NEES' subsidiaries; (2) repayment of NEES' debt; and (3) for other corporate purposes relating to ordinary business operations, including working capital.

Central and South West Corporation, et al. (70-8133)

Central and South West Corporation, 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75202, a registered holding company, and its direct and indirect subsidiaries, CSW Energy, Inc. ("CSW Energy"), 1616 Woodall Rodgers Freeway, P.O. Box

660789, Dallas, Texas 75202, and CSW Development-I, Inc. ("Energy Sub"), a wholly owned subsidiary of CSW Energy, Orange Cogeneration GP II, Inc. ("Orange GP Sub"), a subsidiary of Energy Sub, CSW Orange II, Inc. ("Orange LP Sub"), a wholly owned subsidiary of Energy Sub, Orange Cogeneration G.P., Inc. ("JV Sub"), a wholly owned subsidiary of Orange GP Sub, CSW Orange, Inc. ("CSW Orange"), a wholly owned subsidiary of Orange LP Sub, and Orange Cogeneration Limited Partnership ("Project Venture"), a subsidiary of JV Sub and CSW Orange, each of 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75202 (collectively, "Applicants") have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 43, 45, 51 and 54 thereunder to their application-declaration, as amended, filed under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 42, 43, 45(a), 45(b), 50 and 51 thereunder.

By order dated April 15, 1993 (HCAR No. 25796) ("1993 Order"), the Commission authorized CSW and CSW Energy to, among other things, form CSW Orange, JV Sub and the Project Venture and to purchase from certain third parties a cogeneration facility located near Bartow, Florida ("Project"). The Commission also authorized the then existing Applicants to incur certain development expenses not to exceed \$7 million in connection with the Project.

By order dated February 9, 1994 (HCAR No. 25988) ("February 1994 Order"), the Commission authorized CSW, CSW Energy, Energy Sub, CSW Orange, Project Venture and JV Sub ("1994 Applicants") to obtain a credit facility ("Credit Facility") for the construction and operation of the Project in an amount up to \$140 million. The Commission also authorized an investment in the Project Venture by a third party ("New Limited Partner") in lieu of term financing for the Project. The 1994 Applicants were authorized to advance certain funds in the event the Project Venture was unable to obtain third party Project financing prior to the start of Project construction, in the form of loans, open account advances or additional equity contributions to the Project Venture from CSW Energy in an aggregate amount not to exceed \$125 million. In addition, the Commission authorized the issuance of corporate guaranties by the 1994 Applicants or standby letters of credit (with either CSW or CSW Energy as account party thereunder) in an amount not to exceed \$50 million, such guaranties or letters of credit to support payment obligations of the Project Venture required by the

provider of third party financing for the Project or fuel suppliers, fuel transportation or other third parties under various project agreements.

By order dated September 12, 1994 (HCAR No. 26122), the Commission authorized the 1994 Applicants to organize two special purpose subsidiaries, Orange LP Sub and Orange GP Sub, in order to aid in the procurement of the Credit Facility.

Applicants now propose: (i) To organize a wholly owned subsidiary of the Project Venture ("OCLP Sub"); (ii) that the Project Venture acquire all of the to-be-issued common stock of the OCLP Sub; (iii) that the Project Venture may fund the previously-approved Credit Facility from one or more third parties to be determined (each, a "Project Lender") that will purchase certain debt securities to be issued either by the Project Venture or OCLP Sub in an amount not to exceed \$140 million for the construction and operation of the Project; (iv) that OCLP Sub loan to the Project Venture the proceeds of the Orange Securities received by OCLP Sub; (v) that Project Venture, JV Sub, CSW Orange, Orange GP Sub and Orange LP Sub guarantee OCLP Sub's obligations under the Orange Securities; and (vi) that Project Venture, JV Sub, CSW Orange, Orange GP Sub and Orange LP Sub pledge substantially all of its respective assets, including the partnership interests in the Project Venture held by JV Sub and CSW Orange, the securities of JV Sub held by Orange GP Sub, and the securities of CSW Orange held by Orange LP Sub, to secure OCLP Sub's obligations under the Orange Securities.

Applicants state that, as previously approved, the Credit Facility would include: (1) A construction loan in an amount not to exceed \$130 million, to be later converted to, or refinanced by, a term loan or repaid by additional equity capital provided by a new limited partner ("New Limited Partner") in the Project Venture, which New Limited Partner would have a right to distributions from the Project Venture on a preferred basis, and (2) letters of credit and a revolving working capital credit line, each to be provided by the Project Lender, in an aggregate amount not to exceed \$10 million to issue any letters of credit or guaranties that may be required by any fuel suppliers, fuel transporters or other third parties under the Project documents and to fund working capital for the Project. Alternatively, the Credit Facility now could include: (1) The issuance by OCLP Sub of certain debt securities to third parties ("Orange Securities") in reliance on exemptions to the

registration of such securities under the Securities Act of 1933, as amended, including such exemptions available under Rule 144A thereunder, which third party Project Lenders will have no recourse under the Orange Securities to CSW or any of its domestic public utility subsidiaries; or (2) any combination of the financing described above, provided that in no event shall such financing in the aggregate exceed \$140 million. Applicants anticipate that any unreimbursed drawings under any letters of credit issued as part of the Credit Facility will be treated as loans thereunder. It is further anticipated that the stock of JV Sub held by Orange GP Sub, the stock of CSW Orange held by Orange LP Sub, the Project assets owned by the Project Venture and the partnership interests of the Project Venture held by each of JV Sub and CSW Orange may be required to be pledged as collateral to the Project Lender as a condition to obtaining the Credit Facility.

To the extent that any proceeds remain in the Credit Facility after repaying the construction loan or issuing term debt to the New Limited Partner, as the case may be, the Project Venture may distribute the proceeds to its partners, including JV Sub and CSW Orange, to reimburse such partners for costs and risks incurred by such partners in connection with the development and construction of the Project.

As mentioned above, it is anticipated that OCLP Sub would loan to the Project Venture the proceeds of the Orange Securities received by OCLP Sub ("OCLP Sub Loan"). The OCLP Sub Loan would be on substantially the same terms as the Orange Securities, which terms would be established by OCLP Sub and the Project Lenders in an arm's length transaction in accordance with market expectations and requirements, to ensure that OCLP Sub will be able to make the debt payments required with respect to the Orange Securities. The Project Venture would distribute the proceeds of the OCLP Sub Loan to its partners, including JV Sub and CSW Orange, to reimburse such partners for costs and risks incurred by such partners in connection with the development and construction of the Project.

Applicants further propose that, once formed, OCLP be included in the flow of funds for equity contributions, open account advances and intercompany loans on the terms and in the manner authorized by the 1993 Order and September 1994 Order.

Central and South West Corp., et al. (70-8469)

Central and South West Corporation ("CSW"), a registered holding company, CSW Energy, Inc. ("CSW Energy"), a wholly-owned non-utility subsidiary company of CSW, and five special-purpose, wholly-owned subsidiary companies of CSW Energy, CSW Sweeny GP, Inc. ("Sweeny GP I"), CSW Sweeny GP II, Inc. ("Sweeny GP II"), CSW Sweeny LP, Inc. ("Sweeny LP I"), CSW Sweeny LP II, Inc. ("Sweeny LP II"), and Sweeny Cogeneration L.P. ("Partnership"), all of 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas, 75202, have filed a post-effective amendment, under sections 6(a), 7 and 12(b) of the Act and rules 45 and 54 thereunder, to an application-declaration filed under sections 6, 7, 9(a), 10, and 12(b) of the Act and rules 45 and 51 thereunder.

By order dated December 9, 1994 (HCAR No. 26184) the Commission authorized CSW and CSW Energy to form Sweeny GP I, Sweeny GP II, Sweeny LP I, Sweeny LP II, and the Partnership, and to incur certain development expenses not to exceed \$20 million in connection with the investment in and development, construction, ownership and operation of a qualifying cogeneration facility known as the Sweeny Cogeneration Project ("Project").

By order dated May 29, 1996 (HCAR No. 26522), the Commission authorized the applicants (i) to obtain from third parties ("Project Lender") a credit facility ("Credit Facility") for the construction and operation of the Project in an amount of up to \$250 million, (ii) to provide advances to the Partnership in an amount not to exceed \$250 million in the event the Project could not be financed prior to the commencement of construction, (iii) to obtain or arrange for irrevocable standby letters of credit or to issue guarantees of up to \$50 million, and (iv) to provide up to \$250 million in equity support to the Project in the form of an equity support agreement, guarantee or letter of credit to the Project Lender.

The applicants now seek Commission authorization to provide up to \$250 million in equity support to the Project in the form of an equity support agreement, guarantee or letter of credit to the interest that will purchase electric power and thermal energy from the Project.

GPU International, Inc. (70-8913)

GPU International, Inc. ("GPU") (formerly Energy Initiatives, Inc.), One Upper Pond Road, Parsippany, New

Jersey 07054, a wholly-owned nonutility subsidiary company of GPU, Inc. ("GPU"), a registered holding company, has filed an application under sections 9(a) and 10 of the Act and rule 54 thereunder.

GPU proposes to enter into a joint venture ("JV"), directly or through a to-be-formed direct or indirect wholly-owned subsidiary ("Subsidiary"), with one or more nonaffiliated entities to develop, manufacture and market stationary electric power systems employing fuel cell technology. GPU states that fuel cells produce electricity directly without combustion, cleanly and with high efficiency. GPU believes that fuel cell stationary power plants could become an attractive low emission source of power, for both utility and nonutility applications; GPU notes that fuel cell power plants could be used by electric distribution companies, such as GPU's electric utility subsidiary companies, and their commercialization could generate additional revenues and earnings for the GPU system. GPU expects that power systems of 1 kw or more would be included in the JV's business and that smaller systems might also be included if otherwise consistent with the concept of "stationary systems", those having a more or less fixed location.

One of the JV partners will be an entity which has been in the business of developing and marketing fuel cell-based power systems for several years ("JV Partner"). The JV Partner will license the relevant technology and provide technical and administrative support to the JV. GPU states that the JV will not own or operate any facilities for the generation, transmission or distribution of electric energy and, therefore, neither the JV nor any Subsidiary will fall within the definition of an "electric utility company" under section 2(a)(3) of the Act.

The JV Partner and GPU are in the process of negotiating the definitive terms, conditions and structure of the JV. GPU anticipates that the JV will take the form of a corporation, partnership or other limited liability company organized under the laws of a state of the United States or other appropriate jurisdiction. GPU also anticipates that the JV Partner will hold a majority ownership interest in the JV and that GPU and other JV participants will receive certain to-be-agreed upon minority shareholder protective rights. GPU expects that its voting interest in the JV will not exceed 9.9%. In connection with its proposed participation in the JV, GPU may also receive warrants, options or other

similar rights to acquire securities of the JV Partner and a right/opportunity to acquire securities of joint venture projects to be formed by the JV Partner, excluding the JV.

GPU states that its aggregate investment in the JV will not exceed \$30 million, and expects to fund the proposed investment through capital contributions from GPU, internally generated sources at GPU or drawdowns by GPU under existing lines of credit, or any combination of the foregoing.

GPU requests authority to acquire an interest in the stationary fuel cell-based power system business, and to acquire the securities of a Subsidiary and/or, directly or indirectly, the securities of the JV. With respect to the acquisition of securities of a Subsidiary and/or the JV, GPU requests that the authorization expire upon the first to occur of December 31, 2000 and the adoption by the Commission of proposed rule 58 or such other rule, regulation or order as shall exempt the proposed transactions from section 9(a).

Consolidated Natural Gas Company, et al. (70-8929)

Consolidated Natural Gas Company ("CNG"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania, 15222-3199, a registered holding company, and its wholly owned gas public-utility subsidiaries, The East Ohio Gas Company ("EOG"), 1717 East Ninth Street, Cleveland, Ohio 44114, and West Ohio Gas Company ("WOG"), 319 Market Street, Lima, Ohio 45802, have filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rules 43, 44, 45 and 54 thereunder.

CNG proposes to reorganize a portion of its system by merging EOG and WOG, with EOG as the surviving corporation succeeding to all powers, privileges, and franchises and subject to all restrictions, disabilities, liabilities, and duties of both companies. Under the Agreement and Plan of Merger, each issued and outstanding share of WOG common stock, \$10,000 par value per share, will be cancelled and extinguished, and each issued and outstanding shares of EOG common stock, \$50 par value, will remain outstanding subsequent to the merger.

The applicants also request for EOG, after the merger, to succeed to any authorizations granted by the Commission to WOG under the Act which may still be effective and which therefore should appropriately survive as to EOG after the merger. Therefore, all promissory notes and other indebtedness of WOG will become

obligations of EOG, and the capital and retained earnings of WOG will be carried forward as capital and retained earnings of EOG. All property and all debts due to either company will be vested in EOG under the proposed merger, and any and all rights of creditors and all liens upon any property of WOG and EOG will be preserved unimpaired. The WOG properties to which EOG will proceed as owner will be recorded on EOG's books of account at the historical value of such properties as carried on WOG's books.

American Electric Power Company, Inc., et al. (70-8931)

American Electric Power Company, Inc., 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, and its electric utility subsidiary companies, AEP Generating Company, 1 Riverside Plaza, Columbus, Ohio 43215; Appalachian Power Company, 40 Franklin Road, S.W., Roanoke, Virginia 24011; Columbus Southern Power Company, 215 North Front Street, Columbus, Ohio 43215; Indiana Michigan Power Company, One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801; Kentucky Power Company, 1701 Central Avenue, Ashland, Kentucky 41101; Kingsport Power Company, 40 Franklin Road, S.W., Roanoke, Virginia 24011; Ohio Power Company, 301 Cleveland Avenue, S.W., Canton, Ohio 44701; and Wheeling Power Company, 51 Sixteenth Street, Wheeling, West Virginia 26003 (collectively, "Declarants"), have filed a declaration under section 12(d) of the Act and rules 44 and 54 thereunder.

Declarants request authorization to sell and/or transfer certain utility assets to customers and noncustomers for a period ending December 31, 2001 without prior Commission approval. It is stated that the consideration for the transfers will be not less than the net book value of the assets and will not exceed \$5 million per operating subsidiary per calendar year and \$50 million in any calendar year for the AEP System. In the case of a lease, the lease payments will be valued over the term of the lease and be counted against the exemption amount in the initial year of the lease.

SEI Birchwood, Inc., et al. (70-8935)

SEI Birchwood, Inc. ("SEI Birchwood"), a direct nonutility subsidiary of SEI Holdings, Inc., a direct nonutility subsidiary of The Southern Company, a registered holding company, and Birchwood Power Partners, L.P. ("BPP") (together, "Applicants"), a subsidiary of SEI Birchwood, both located at 900

Ashwood Parkway, Suite 500, Atlanta, GA 30338, have filed a joint application pursuant to sections 9(a) and 10 of the Act and rule 54 thereunder.

SEI Birchwood and Cogentrix/Birchwood Two, L.P. ("Cogentrix Two"), a nonassociate limited partnership, each hold a 2% general and 48% limited partnership interest in BPP (together, "Owners"). BPP owns a 237 MW coal-fired cogeneration power plant in Virginia ("Plant"). The Plant produces electricity for sale at wholesale to Virginia Electric and Power Company under a long-term contract. The Plant also produces and delivers steam to a 36-acre greenhouse complex ("Greenhouse Facility") located on a site that is adjacent to the Plant. The Plant and Greenhouse Facility (together, "Project") were constructed as integrated parts of a single project that was intended to qualify as a cogeneration "qualifying facility" ("QF") under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"). The Federal Energy Regulatory Commission ("FERC") certified the Project on the basis, among others, that it would use steam produced by BPP for the Greenhouse Facility operations in quantities sufficient to satisfy the operating standards applicable to QFs under PURPA regulations.¹

In addition, SEI Birchwood and BPP have each been determined by FERC to be an "exempt wholesale generator" ("EWG"), as that term is defined in section 32 of the Act. To become an EWG under section 32, the Applicants had to demonstrate that they would be engaged exclusively in the business of owning and operating an eligible facility and selling electricity at wholesale. In order to meet the "exclusively engaged" requirement, the Greenhouse Facility is held by Greenhost, Inc. ("Greenhost"), a Delaware special purpose corporation, whose common shares are owned by a nonassociated, indirect subsidiary of CT Corporation ("CT"). CT is not associated with the Applicants nor Cogentrix Two.

Under the Project financing arrangements with the Owners of the Plant, Greenhost incurred an obligation to pay that portion of the total debt for the Project that went to finance the cost of constructing the Greenhouse Facility, and separately entered into a site lease and steam sales agreement with BPP ("Lease"). Payments under the Lease are designed to match the proportional payments of principal and interest on Greenhost's indebtedness. Greenhost operates the Greenhouse Facility under a long-term facility and site sublease

¹ 18 C.F.R. 292.602.

("Sublease") with a nonassociated third-party ("Sublessee"). As a part of these interrelated transactions, the Applicants and Cogentrix Two obtained certain rights and security interests which enable them to terminate the Lease, take possession of the Greenhouse Facility, and/or acquire the shares of Greenhost in the event of defaults by Greenhost and the Sublessee.

In 1996, the Sublessee experienced financial losses and currently is in default on its Sublease obligations. The parties to these agreements have entered into a settlement agreement respecting all claims and terminating the Sublease. Under the settlement, SEI Birchwood and Cogentrix Two may acquire 50% of the common shares of Greenhost for a nominal consideration. Alternatively, BPP may acquire 100% of Greenhost's shares and hold it as a subsidiary. Greenhost's outstanding indebtedness will remain in place, and the Greenhouse Facility will continue to be used for the purposes for which it was built and operated by a third-party.

GPU, Inc., et al. (70-8937)

GPU, Inc. ("GPU"), a registered holding company, and its wholly owned subsidiary service company, GPU Service, Inc. ("GPUS"), each of 100 Interpace Parkway, Parsippany, New Jersey 07054, and GPU's subsidiary companies GPU International, Inc. ("GPUI") One Upper Pond road, Parsippany, New Jersey 07054, and GPU Generation, Inc. ("GENCO"), 1001 Broad Street, Johnstown, Pennsylvania 15907 (collectively, "Applicants") have filed an application-declaration with this Commission under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 54, 90 and 91 thereunder.

As more fully described below, Applicants propose to engage, through one or more direct or indirect subsidiaries, in the business of brokering and marketing electricity, gas and other energy commodities, including, without limitation, oil, natural gas and coal ("Energy Commodities"), and in providing incidental related services to customers, such as fuel management, storage and procurement services.

GPU and GPUI propose to acquire the securities of one or more newly formed subsidiaries ("Energy Subsidiaries") and to make cash capital contributions to the Energy Subsidiaries.² GPU and GPUI

propose to invest, in the aggregate, no more than \$20 million in the Energy Subsidiaries prior to December 31, 2000, either by acquisition of securities or by making capital contributions. The authorization with respect to the acquisition of securities of any Energy Subsidiaries shall expire upon the first to occur of either (i) December 31, 2000, or (ii) the adoption by the Commission of proposed rule 58 (HCAR No. 26313, June 20, 1995) or such other rule, regulation or order as shall exempt the proposed transactions from section 9(a) of the Act.

Applicants also request the authority for Energy Subsidiaries to issue debt. Debt financing of any Energy Subsidiaries will not exceed a term of 15 years and will bear interest and carry fees at negotiated rates based on prevailing market conditions. Applicants represent that such issuance of debt will be exempt from prior Commission approval under the Act pursuant to rule 52.

GPU also requests authority through December 31, 2000 to guarantee the debt and other obligations of any Energy Subsidiaries. Such other obligations of Energy Subsidiaries may take the form of bid bonds or performance or other direct or indirect guarantees of contractual or other obligations. The maximum amount of debt and other obligations proposed to be guaranteed at any one time is \$150 million.

Applicants state that the Energy Subsidiaries would engage in such activities without regard to the location or identity of customers or source of revenues; provided, however, that (i) unless additional approvals are obtained from the Federal Energy Regulatory Commission under the Federal Power Act, the Energy Subsidiaries will not sell electricity to GPU's electric utility subsidiaries, and (ii) the Energy Subsidiaries will not make any sales of electricity or natural gas to retail customers in any state unless authorized or permitted to make such sales under the laws of that state.

It is also proposed that Energy Subsidiaries may, from time to time through December 31, 2000, invest up to \$50 million at any one time outstanding to acquire or construct physical assets that are incidental and reasonably necessary in the day-to-day conduct of marketing operations, such as oil and gas storage facilities, gas or coal reserves, or a pipeline spur that is needed in order to make deliveries of fuel to an industrial customer.

To minimize financial exposure of Energy Subsidiaries and of GPU resulting from its guarantees, it is proposed that Energy Subsidiaries

utilize risk mitigation measures to balance overall portfolio position in order to limit the financial impact of any loss that may be sustained on any particular commodity transaction due to adverse market price movements or counterparty defaults. Such measures may include entering into offsetting physical delivery contracts, the purchase and sale of derivative instruments, such as options and futures contracts, for purposes of hedging a physical position, and an appropriate mix of long and short-term contracts. In addition, Energy Subsidiaries may purchase or sell commodity-based derivative instruments, such as electricity or gas futures contracts and options of electricity or gas futures, such as are traded on the New York Mercantile Exchange, and gas and oil price swap agreements in order to hedge positions under existing contracts for physical delivery. Energy Subsidiaries will use market hedging measures solely to minimize risk.

Price risk exposure may also be hedged under a purchase or sale contract by taking an opposite position to that purchase or sale. Similarly, in a portfolio of purchase and sales contracts, risk may also be limited through an appropriate mix of long-term and short-term contracts, and diversification of the mix of customers and suppliers regionally and across industry lines. Finally, GPU will endeavor to limit risk exposure through contract provisions (i.e., liquidated damages) that would place a ceiling on the amount of damages payable when performance failure occurs and/or exclude consequential damages.

Authorization is also sought for any Energy Subsidiary to enter into arrangements with GPUS and GENCO, pursuant to which personnel and other resources may be made available to the Energy Subsidiaries, upon request, to support the Energy Subsidiaries in connection with their authorized activities. Pursuant to these arrangements, GPUS and GENCO will provide, account for and bill their services to the Energy Subsidiaries, utilizing a work order system, on a full cost reimbursement basis in accordance with rules 90 and 91 under section 13(b) of the Act. It is stated that no more than 5% of the total employees of the GPU System will, at any one time, directly or indirectly render services to the Energy Subsidiaries in connection with the Energy Commodities Business.

GPU states that, absent further order of the Commission, none of the Energy Subsidiaries will own or operate facilities used for the distribution of gas at retail or facilities used for the

² Applicants state that, under rule 52, the subsequent issuance of additional securities by Energy Subsidiaries and their acquisition is exempt from prior Commission approval under the Act. Applicants further state that rule 45(b)(4) exempts from prior Commission approval the making of cash capital contributions to the Energy Subsidiaries.

generation, transmission, or distribution of electric energy for sale. Furthermore, it is stated that the Energy Subsidiaries will limit their activities to ensure that they do not come within the definitions of either "electric utility company" or "gas utility company," as defined by sections 2(a)(3) and 2(a)(4) of the Act, respectively.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-28003 Filed 10-31-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37871; Filed No. SR-CBOE-96-65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Exchange Fees

October 25, 1996.

Pursuant to Section 19(b)(1), of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 24, 1996, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CBOE is proposing to waive Exchange fees on transactions in Equity FLEX options from the start of trading of Equity FLEX options, which is scheduled to begin on October 24, 1996, until January 31, 1997. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has

prepared summaries, set forth in sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, Proposed Rule Change

The purpose of this proposed rule change is to waive Exchange fees related to transactions in Equity FLEX options from the start of trading of these options on the Exchange until January 31, 1997. The Exchange plans to begin trading Equity FLEX options on October 24, 1996. The fees affected and the amount of the fees absent any reduction or rebate¹ are: (1) Exchange transaction fees, which are \$.05 per contract side for market-makers, \$.06 for member firm proprietary trades, \$.15 for customer trades for options under \$1, and \$.30 for customer trades for options of \$1 or more; (2) trade match fees, which are \$.04 per contract side for all trades; and (3) floor broker fees, which are \$.03 per contract side for all trades. The foregoing fee changes are being implemented by the Exchange pursuant to CBOE Rule 2.22. The Exchange will distribute a circular to its members to notify them of this waiver of Exchange fees.

The Exchange is adopting this waiver of fees related to transactions in Equity FLEX options in order to promote trading in these options at the outset of their trading on the Exchange. The Exchange believes that the reduction in the fees may encourage more participation in the trading of these options and enhance the prospect that Equity FLEX options will prosper on the Exchange in the future. The fee reduction also will place the Exchange in a position to compete effectively for business in Equity FLEX options with other exchanges trading the same product.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(4) of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

¹ The fees may actually be less than these amounts pursuant to the Exchange's Prospective Fee Reduction Schedule, the Customer Large Trade Discount Program, and rebate programs that have been filed with the Commission as part of the Exchange's fee schedule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-96-65 and should be submitted by November 22, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-27997 Filed 10-31-96; 8:45 am]

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² 17 CFR 200.30-3(a)(12).