

expense waivers or reimbursements) for that fiscal period, as a percentage of the Portfolio's average daily net assets, plus the annual rate of any asset-based charges (excluding any such charges that are for premium taxes) deducted under the terms of the owner's Contract for that fiscal period, exceed the sum of the annual rate of the corresponding Replaced Portfolio's total operating expenses, as a percentage of such replaced Portfolio's average daily net assets, for the twelve months ended December 31, 2004, plus the annual rate of any asset-based charges (excluding any such charges that are for premium taxes) deducted under that Contract for such twelve months.

Conclusion

For the reasons and upon the facts set forth in the application, Applicants submit that the requested order meets the standards set forth in Section 26(c) and respectfully request that the Commission issue an order pursuant to Section 26(c) of the Act approving the Substitutions.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-1745 Filed 4-12-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27957; International Series Release No. 1284]

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

April 7, 2005.

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 May 2, 2005, 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 May 2, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Scottish Power plc and Dornoch International Insurance Limited (70-10261)

Scottish Power plc ("ScottishPower"), a foreign registered holding company, 1 Atlantic Quay, Glasgow G2 8SP, Scotland, UK, and Dornoch International Insurance Limited ("DIIL"), 38/39 Fitzwilliam Square, Dublin 2, Ireland, a new captive insurance company subsidiary of ScottishPower, (collectively, "Applicants"), have filed an application-declaration, as amended ("Application"), under sections 12(b), 13(b), and 33(c) of the Act and rules 45, 54, 89, 90 and 91 under the Act.

ScottishPower Investments Limited ("ScottishPower Investments") is the direct parent of ScottishPower Insurance Limited ("SPIL"), an indirect insurance company subsidiary of ScottishPower. ScottishPower Investments is a wholly-owned direct subsidiary of ScottishPower UK, plc ("SPUK"), a foreign utility subsidiary of ScottishPower. SPIL operates as an insurance company domiciled in the Isle of Man and serves as a captive insurer for the UK-based members of the ScottishPower system. SPIL currently is authorized to provide property damage, general liability, employer's liability, motor own damage, and motor liability insurance. DIIL is also a wholly-owned direct subsidiary of ScottishPower Investments.¹

Applicants are seeking approval to operate DIIL. DIIL will assume the insurance duties currently performed by SPIL on behalf of ScottishPower and also begin to provide insurance services to PacifiCorp, the U.S.-based public utility subsidiary of the ScottishPower system.

On an annual basis, ScottishPower system companies spend approximately

\$40 million for the purchase of commercial insurance and related services. Under the current insurance program, system companies maintain commercial insurance policies with underlying deductibles of \$1 million per event for general liability coverage and \$7.5 million for property coverage. Losses below these deductibles are self-insured by system companies whereas losses in excess of these deductibles are paid by the commercial insurance. ScottishPower may from time to time choose to purchase commercial insurance in place of, or to reduce, the deductible or self-insurance to meet their strategic goals and objectives. Commercial premiums and the deductibles and self-insured retained risks are then allocated to subsidiaries owning a given risk based on such factors as number of automobiles, payroll, revenues, total property values, product throughput, as well as loss history.

ScottishPower intends that SPIL would eventually be dissolved after DIIL operates for approximately one year. DIIL intends to provide property damage and liability insurance coverage of all or significant portions of the deductibles in many of PacifiCorp's current insurance policies, and to provide coverage for activities which the commercial insurance industry carriers will no longer provide, e.g., overhead distribution and transmission line property damage insurance.

Premiums for the proposed expansion of the insurance program for the first year were determined to equal the aggregate losses for system companies plus administrative expenses. Aggregate losses for general liability were estimated using actuarial methods.

DIIL would continue to analyze the commercial insurance bought by the ScottishPower system companies, and coordinate the coverage it provides to minimize the risk of loss to the system. Supplementing its primary role of underwriting system retained risk, DIIL may also replace or reduce certain insurance sold to ScottishPower system companies by traditional insurance providers in the areas of property damage and general liability. An actuarial analysis will be performed to determine the proper premiums consistent with methods used to determine the retained risk premium. To the extent traditional insurance programs are reduced, DIIL may attempt to obtain equal levels of loss protection and coverage in the reinsurance market. Applicants state that DIIL will apply stringent credit standards to all reinsurance counterparties.

¹ DIIL was originally incorporated as Dornoch Risk International Limited ("DRIL") on June 30, 2004. DRIL changed its name to DIIL by resolution at its December 10, 2004 board meeting and this was effected by the Irish Registrar of Companies on Jan. 20, 2005.

DIIL will not be operated to generate profits beyond what is necessary to maintain adequate reserves. To the extent that premiums and interest earned exceed current claims and expenses, an appropriate reserve would be accumulated to respond in years when claims and expenses exceed premiums. To the extent that losses over the long term are lower than projected, DIIL could correspondingly lower premiums, thereby reducing the premium expenses that would otherwise be paid to DIIL.

ScottishPower would make an initial equity contribution to DIIL of approximately \$40–60 million. Beyond the initial equity contribution and funding of DIIL, ScottishPower may provide any subsequently required capital contributions through additional equity and or debt purchases exempt from the Act. PacifiCorp is not being asked to provide any capital for DIIL's operations. DIIL would set premiums and operate pursuant to rules 90 and 91 under the Act. Premium costs would closely track loss experience and be sufficient to cover DIIL's underwriting costs and future claim payments. The returns from the investment of this capital would be used to pay for DIIL's operating costs and can be used to reduce future premium costs.

Applicants maintain that with maturation DIIL may also be able to provide coverage to a wider number of PacifiCorp activities beyond property damage and general liability. For example, DIIL may seek to provide Workers Compensation coverage. ScottishPower requests a reservation of jurisdiction over the underwriting of additional insurance activities, *i.e.*, other than for property damage and general liability, pending completion of the record.

DIIL will be domiciled in Dublin, Ireland and managed by a professional captive management company, Aon Insurance Managers (Dublin) Ltd, which will perform all the management and administrative services for DIIL. Aon Insurance Managers (Dublin) Ltd is a wholly-owned indirect subsidiary of insurance broker Aon Corporation and is not an affiliate of PacifiCorp or ScottishPower. DIIL would be licensed by the Irish Financial Services Regulatory Authority ("IFSRA"). To receive this license, DIIL has had to meet numerous IFSRA standards including submission of a satisfactory business plan, financial projections, risk management measures and corporate governance standards. DIIL must also meet numerous ongoing IFSRA standards to continue in good standing, including the meeting of established

solvency margin, technical reserves and annual audit of financial results requirements.

PNM Resources, Inc., et al. (70–10285)

PNM Resources, Inc. ("PNM Resources"), Alvarado Square, Albuquerque, NM 87158, a registered holding company, Cascade Investment, L.L.C. ("Cascade"), 2365 Carillon Point, Kirkland, WA 98033, a limited liability company formed under the laws of the State of Washington, and William H. Gates III ("Mr. Gates"), One Microsoft Way, Redmond, WA 98052, Cascade's sole member (collectively, "Applicants"), have filed an application-declaration ("Application") under sections 6(a), 7, 9(a)(1), 9(a)(2), 10, 11, 12(e) and 13(b) of the Act and rules 51, 54, 62–65, 90 and 91 under the Act.

PNM Resources proposes to acquire all of the outstanding voting securities of TNP Enterprises, Inc. ("TNP Enterprises"), a public utility holding company claiming exemption by rule 2 under the Act (the acquisition is referred to as the "Transaction"). TNP Enterprises has subsidiary electric utility operations in Texas and New Mexico conducted by Texas-New Mexico Power Company ("TNMP"), its public utility subsidiary. Further, as described below Cascade currently owns about 8.68% of the outstanding common stock of PNM Resources. As a result of this preexisting stock ownership, Cascade and Mr. Gates will indirectly acquire 5% or more of the outstanding voting securities of TNMP in the Transaction. Accordingly, Cascade and Mr. Gates also seek approval under Sections 9(a)(2) and 10 of the Act for their participation in the Transaction.²

I. Parties to the Transaction

A. PNM Resources and Its Subsidiaries

PNM Resources became an exempt public utility holding company on December 31, 2001, and conducts its operations consistent with the order of the New Mexico Public Regulation Commission ("NMPRC") which authorized the holding company structure. Except for certain corporate support services provided to its subsidiaries at cost pursuant to that order, PNM Resources conducts no business operations other than as a

holding company. PNMR Services Company ("Services") is a subsidiary service company, which provides services at cost to the subsidiaries of PNM Resources. PNM Resources filed a notice of registration under the Act on December 30, 2004, and transferred its service functions to Services on January 1, 2005. PNM Resources reported operating revenues of \$1,604,792,000 and operating income of \$112,898,000, for the year ended December 31, 2004; PNM Resources had assets of \$3,487,635,000 as of December 31, 2004.

PNM Resources' only public utility company subsidiary is Public Service Company of New Mexico ("PNM"), a New Mexico corporation. PNM is an electric and gas public utility company. It is engaged in the generation, transmission, and distribution of electric energy at retail in the State of New Mexico and makes sales for resale ("wholesale" sales) of electricity in interstate commerce. PNM is also engaged in the distribution of natural gas in the State of New Mexico, which includes some off-system wholesale sales of natural gas. PNM had electric revenues for 2004 of \$558,412,000, excluding wholesale sales. Its 2004 electric wholesale sales were \$554,634,000; natural gas operating revenues for 2004 were \$490,921,000.

Through two of its subsidiaries, Luna Power Company LLC, a Delaware limited liability company, and PNMR Development & Management Corporation, a New Mexico corporation, PNM Resources owns a one-third interest in the Luna Energy power generation facility under development near Deming, New Mexico. When complete the project will consist of a 570 MW combined cycle gas-fired generating plant.

PNM Resources' current nonutility activities are conducted through Avistar, Inc. ("Avistar"), a company engaged solely in developing and marketing power system technologies. PNM Resources has the following inactive direct nonutility subsidiaries: EIP Refunding Corporation, PNM Electric & Gas Services, Inc., Sunbelt Mining Co. Inc., Sunterra Gas Gathering Company, and Sunterra Gas Processing Company. PNM Resources also has the following indirect inactive nonutility subsidiaries: Gas Company of New Mexico (directly owned by Sunbelt Mining Co. Inc.), Meadows Resources, Inc. (directly owned by PNM) and its subsidiaries, Bellamah Associates, Ltd., Bellamah Community Development, Bellamah Holding Company, Bellamah Investors Ltd., MCB Financial Group and Republic Holding Company. PNM also factors its receivables through a

² A notice in this matter was previously issued by the Commission concerning PNM Resources' proposal to amend its restated articles of incorporation ("Amendment"). In the same release, the Commission also issued an order authorizing PNM Resources to solicit proxies relating to the Amendment. *PNM Resources, Inc., Holding Co. Act Release No. 27954* (March 30, 2005).

financing subsidiary, PNM Receivables Corporation, but does not offer the service to non-affiliates.

PNM is subject to the jurisdiction of the NMPRC with respect to its retail electric and gas rates, service, accounting, issuance of securities, construction of major new generation and transmission facilities and other matters regarding retail utility services provided in New Mexico. PNM's principal business segments are wholesale operations and utility operations. Utility operations include Electric Services ("Electric"), Transmission Services ("Transmission") and Gas Services ("Gas"). In addition, PNM owns Merchant Plant (authorized power generation facilities that are not certified by the NMPRC to provide service to New Mexico retail customers and thus are not included in rate base) that is subject to a settlement agreement approved by the NMPRC, described below. PNM serves approximately 471,000 natural gas customers and 413,000 electric customers in New Mexico.

PNM's wholesale operations consist of the generation and sale of electricity into the wholesale market based on three product lines that include long-term contracts, forward sales and short-term sales. The source of these sales is supply created by selling energy not needed at the time by retail customers as well as the capacity of PNM's generating plant investment excluded from retail rates. The "regulated generation" (generation in rate base), "unregulated generation" (certain generation excluded from rate base) and "Merchant Plant" (including certain generation excluded from rate base) are jointly dispatched.

Electric consists of the distribution and generation of electricity for retail electric customers in New Mexico. PNM provides retail electric service to a large area of north central New Mexico, including the cities of Albuquerque and Santa Fe, and certain other areas of New Mexico. PNM owns or leases generation located in the States of Arizona and New Mexico within the Western Electricity Coordinating Council ("WECC")³ region, a National Electric Reliability Council region including much of the Western United States and portions of Canada and Mexico. PNM is also interconnected with the Southwest

Power Pool. PNM experienced a peak electrical demand on its system of 1655 MW in 2004. PNM owns or leases 1729 MW of generating capacity. Additional capacity is purchased from third parties under certain power purchase agreements that may be accounted for as leases, for a total of 2417 MW available capacity.

Transmission consists of the transmission of electricity over transmission lines owned or leased by PNM, interconnected with other utilities in New Mexico and south and east into Texas, west into Arizona and north into Colorado and Utah. PNM owns or leases approximately 2,900 circuit miles of transmission lines. PNM owns and operates in excess of 8400 miles of distribution lines excluding street lighting in New Mexico.

The PNM Gas segment includes the transportation and distribution of natural gas to end users, including end users in most of the major communities in New Mexico, including two of New Mexico's three largest metropolitan areas, Albuquerque and Santa Fe. The Gas Segment operates as an integrated system and includes approximately 11,840 miles of natural gas distribution lines.

Applicants state that the Merchant Plant owned by PNM constitutes utility assets within the meaning of the Act,⁴ and will be available through joint dispatch to support service to the retail customers of PNM. PNM's Merchant Plant activities are governed by a Global Electric Settlement Agreement ("Global Settlement") that was entered into on October 10, 2002, among PNM, the NMPRC staff, the New Mexico Attorney General, and other consumer groups.⁵

B. TNP Enterprises and Its Subsidiaries

TNP Enterprises was organized as a holding company in 1983 and transacts business through its subsidiaries. On April 7, 2000, under an Agreement and Plan of Merger among TNP Enterprises, ST Acquisition Corp. ("ST Corp.") and SW Acquisition, the parent of ST Corp., ST Corp. merged with and into TNP Enterprises (the "Merger"). TNP

Enterprises is the surviving corporation in the Merger, and is wholly-owned by SW Acquisition.

TNP Enterprises' principal operations are conducted through two wholly-owned subsidiaries: Texas-New Mexico Power Company ("TNMP") and First Choice Power Special Purpose, L.P.⁶ TNMP is a state regulated utility operating in Texas and New Mexico. In Texas, TNMP provides regulated transmission and distribution services under legislation that established retail competition in Texas. For the years ending December 31, 2004, TNP reported operating revenues were \$718,880,000 and operating income of \$109,216,000; TNP Enterprises reported assets of \$1,291,937,000 as of December 31, 2004.

In New Mexico, TNMP provides electricity service that includes transmitting, distributing, purchasing, and selling electricity to its New Mexico customers. The TNMP utility assets located in New Mexico are connected with the PNM system and operate as a sub-area of the PNM control area. Wholesale power transactions involving the TNMP New Mexico assets are scheduled through PNM's control center.

TNMP's Texas operations lie entirely within the Electric Reliability Council of Texas ("ERCOT") region. ERCOT is the independent system operator that is responsible for maintaining reliable operations of the bulk electric power supply system in the ERCOT region, which is located entirely within Texas and serves about 85% of the electrical load in Texas. First Choice was organized in 2000 to act as TNMP's affiliated retail electric provider, as required by the Texas restructuring legislation that requires competitive access to electricity supplies.

TNMP has two inactive subsidiaries: Texas Generating Company, LP ("TGC"), a Texas limited partnership, and Texas Generating Company II, LLC ("TGC II"), a Texas limited liability company. TNMP formed TGC and TGC II as Texas corporations to finance construction of TNP One, formerly its sole generation facility. Until May 2001, TNMP owned TNP One together with TGC and TGC II. At that time, TNMP converted TGC and TGC II to their

⁴ PNM Resources to date has no aggregate investment in any exempt wholesale generators or foreign utility companies", as defined in sections 32 and 33 of the Act, respectively. Applicants state that in *PNM Resources, Inc., Holding Co. Act* Release No. 27934 (December 30, 2004) ("December Order"), the Commission found the electric utility assets of PNM to constituted an integrated system.

⁵ The Global Settlement provides for, among other things, the following: (1) Joint support for the repeal of a majority of the New Mexico Electric Utility Industry Restructuring Act of 1999; (2) PNM's retail electric rates through 2007; (3) generation resources for retail loads; and (4) PNM's participation and financing of Merchant Plant activities and the eventual transfer of Merchant Plant out of PNM.

⁶ First Choice Power Special Purpose, L.P. is a bankruptcy remote special purpose entity certificated retail electric provider ("REP") in Texas to which the original REP certificate of First Choice Power, Inc. and its price to beat customers were transferred under the order of the Public Utility Commission of Texas. A new certificate was granted to First Choice Power, Inc., which is now First Choice Power, L.P., also a direct subsidiary of TNP Enterprises. These entities are collectively referred to as "First Choice."

³ The WECC was formed on April 18, 2002 by the merger of the Western Systems Coordinating Council, the Southwest Regional Transmission Council and the Western Regional Transmission Association. It coordinates and supports electric system reliability and open power transmission access throughout its service area, encompassing 1.8 million square miles.

present forms and consolidated the ownership of TNP One into TGC to comply with restructuring legislation. Neither TNMP nor TNP Enterprises any longer owns, directly or indirectly, any interest in generating plants. PNM Resources proposes to retain these subsidiaries in their present inactive status. TNP Enterprises reported a net loss for calendar year 2004 of \$75,603 and negative shareholder equity of \$29,680,000.

Effective January 1, 2002, Texas restructuring legislation established retail competition in the Texas electricity market. Prior to January 1, 2002, TNMP operated as an electric utility in Texas, generating, transmitting and distributing electricity to customers in its Texas service territory. As required by the Texas restructuring legislation, and in accordance with a plan approved by the Public Utility Commission of Texas ("PUCT"), TNMP separated its Texas utility operations into three components:

Retail Sales Activities. First Choice assumed the activities related to the sale of electricity to retail customers in Texas, and, on January 1, 2002, TNMP's customers became customers of First Choice, unless they chose a different retail electric provider. First Choice and other retail electric providers now perform all activities with Texas retail customers, including acquiring new customers, setting up accounts, billing customers, acquiring power for resale to customers, handling customer inquiries and complaints, and acting as a liaison between the transmission and distribution companies and the retail customers.

Power Transmission and Distribution. TNMP continues to operate its regulated transmission and distribution business in Texas.

Power Generation. TGC became the unregulated entity performing TNMP's generation activities in Texas. However, in October 2002, TNMP and TGC sold TNP One to Sempra Energy Resources. As a result of the sale, TGC and TGC II neither own property nor engage in any operating activities, and neither TNMP nor any of its affiliates are currently in the power generation business.

TNMP serves smaller-to medium-sized communities. TNMP provides electric service, either directly or through retail electric providers, to approximately 256,000 customers in 85 Texas and New Mexico municipalities and adjacent rural areas. Only three of the 85 communities in TNMP's service territory have populations exceeding 50,000. TNMP's service territory is organized into two operating areas: Texas and New Mexico. In most areas that TNMP serves, it is the exclusive provider of transmission and distribution services. First Choice had

approximately 219,000 customers in Texas as of December 31, 2004.

TNP Enterprises also wholly-owns several small subsidiaries which are inactive: TNP Technologies, LLC (a Texas limited liability company for real property acquisition in New Mexico); TNP Operating Company (inactive Texas corporation for real property acquisition in Texas and New Mexico); Facility Works, Inc. (inactive Texas corporation formerly engaged in heating, ventilating, and air conditioning service); TNP Enterprises-Magnus, L.L.C. (inactive Texas limited liability company intended for exempt business development). Applicants propose to retain these subsidiaries as inactive subsidiaries solely for winding up their affairs, absent further Commission authorization.

C. Cascade

Cascade is a limited liability company formed under the laws of the State of Washington. Mr. Gates is Cascade's sole member. Cascade was formed in 1995 to make and hold certain investment securities for Mr. Gates. Cascade invests in and holds the securities of numerous publicly and privately held companies; it does not conduct any business operations of its own.

By order dated July 17, 2001 (Holding Co. Act Release No. 27427) (the "Cascade Order"), the Commission authorized Cascade and Mr. Gates to acquire 5% or more (but less than 10%) of the outstanding voting securities of three public utility or holding companies: PNM Resources, Otter Tail Corporation ("Otter Tail"), which provides electric service in portions of Minnesota, North Dakota and South Dakota, and Avista Corporation ("Avista"), which provides electric and gas service in portions of Washington, Idaho, Oregon and California. Cascade currently holds 5,541,150 shares (or approximately 8.68%) of the outstanding common stock of PNM Resources and 2,389,299 shares (or approximately 8.2 %) of the outstanding common stock of Otter Tail. Subsequent to the issuance of the Cascade Order, Cascade reduced its ownership interest in Avista's common stock to below 5% of the total outstanding and is therefore no longer an "affiliate" of Avista.

In connection with the proposed Transaction, Cascade has agreed to purchase \$100 million in equity-linked securities of PNM Resources to enable PNM Resources to finance a portion of the purchase price for TNP Enterprises. Applicants state that Cascade and Mr. Gates are joined as Applicants in this Application because they will indirectly acquire 5% or more of the voting

securities of TNP Enterprises by virtue of Cascade's existing ownership of common stock in PNM Resources. Applicants state that in all other respects, the terms and conditions of the Cascade Order will remain in effect and undisturbed.

II. Requested Authority

A. TNP Acquisition

PNM Resources and SW Acquisition, L.P. ("SW Acquisition"),⁷ the holder of all of the shares of common stock (no par value per share) of TNP Enterprises, entered into a stock purchase agreement ("SPA") dated as of July 24, 2004. Pursuant to the SPA, PNM Resources agreed to purchase an aggregate of 100 shares of common stock, no par value per share, of TNP Enterprises. These shares constitute all of the issued and outstanding shares of common stock of TNP Enterprises. The closing of the Transaction will occur on the third business day following the receipt of all regulatory approvals and the satisfaction of other conditions precedent.

The aggregate purchase price that PNM Resources is to pay to acquire the TNP Enterprises stock held by SW Acquisition, consisting of all the voting securities of TNP Enterprises, is \$189,100,000, subject to certain adjustments specified in the SPA. The purchase price that PNM Resources will pay to SW Acquisition will comprise (i) a cash amount equal to 50% of the purchase price and (ii) a number of shares of common stock, no par value, of PNM Resources by the Per Share Amount (the Per Share Amount is \$20.20, subject to certain conditions). No later than five business days prior to the closing, the chief financial officer of TNP Enterprises will deliver to PNM Resources a written statement of the estimated purchase price including all adjustments. It is estimated that the PNM Resources common stock acquired by SW Acquisition will equal 4.7 million newly issued shares, or 6% of

⁷ SW Acquisition is a Texas limited partnership that presently holds 100% of the voting securities of TNP Enterprises. The General Partner of SW Acquisition is SWI Acquisition G.P., L.P. SWI Acquisition G.P., L.P. is comprised of Laurel Hill Capital Partners, LLC and SWI II Acquisition, L.C. The Limited Partners of SW Acquisition are: Caravelle Investment Fund, LLC, CIBC WG Argosy Merchant Fund 2, LLC, Co-Investment Merchant Fund 3, LLC, Continental Casualty Company, Laurel Hill Capital Partners, LLC, Carlyle High Yield Partners, LP, 75 Wall Street Associates, LLC, Dresdner Kleinwort Capital Partners 2001, L.P., American Securities Partners II, LP, and American Securities Partners II(B), LP. These entities own all of the beneficial equity interest in TNP Enterprises. The general partner and the limited partners have approved the proposed acquisition, including the compensation that TNP Enterprises' shareholders will receive as a result of the acquisition.

the outstanding voting securities of PNM Resources, which will be held by SW Acquisition in a purely custodial role pending imminent distribution to its constituent partners. Pursuant to the SW Acquisition limited partnership agreement, the consideration for the sale, including the common stock received, will be divided proportionally in accordance with each partners' economic interest. The largest interests, those of Continental Casualty Company and CIBC WG Argosy Merchant Fund 2, L.L.C., account for 35% and 21.93% of the PNM Resources shares received as consideration, respectively. As a result, following the closing of the Transaction, no partner in SW Acquisition will own, with power to vote, 5% or more of the voting securities of PNM Resources.

In order to finance a portion of the acquisition cost, PNM Resources will issue and sell 4,000,000 units of its 6.625% Hybrid Income Term Security Units (the "Units") to Cascade Investment, L.L.C. ("Cascade"), a limited liability company formed under the laws of the State of Washington, in consideration for \$100,000,000. Each Unit will have a stated amount of \$25.00. The proceeds of the sale of the Units will be used by PNM Resources to finance a portion of the cash consideration paid in the Transaction and for refinancing the debt and preferred securities of TNP Enterprises. The Units will be sold pursuant to the terms of a Unit Purchase Agreement, dated August 13, 2004, between PNM Resources and Cascade (the "UPA").

B. Post-Transaction Operations

In the December Order, the Commission authorized PNM Resources to issue various types of equity and debt securities, including equity-linked securities in the form of stock purchase units. The financing plan that provided the basis for the authority extended by the Commission in the December Order included the acquisition of TNP Enterprises and no new financing authorizations are required.

PNM Resources plans to retain TNP Enterprises; however, TNP Enterprises will exist only as a conduit, with no active operations or financial obligations, and will retain no personnel or operational authority. PNM Resources also proposes to include TNP Enterprises, TNMP and First Choice as client companies of PNMR Services, a subsidiary service company that provides the following support services: Accounting, Audit, Business Ethics and Compliance, Business Excellence (including Business Process Improvement), Corporate Communications, Community Affairs,

Corporate Governance, Economic Development, Environmental Management, Environmental Policy, Executive Management, General Services, Governmental Regulations, Health and Safety, Human Resources, Information Technology, Investor Relations, Legal, Organization Development, Purchasing, Regulatory Affairs, Risk Management, and Treasury.

PNM Resources will integrate the support services functions that currently exist at TNMP into Services. Applicants state that the consolidation of the support services functions into Services is expected to result in reduced costs for the affiliate companies through reductions in corporate and headquarters staffing, reduced corporate and administrative programs, and purchasing savings through economies of scale. Services will also establish common processes and systems and centralized expertise.

Under the program of restructuring implemented by the State of Texas pertaining to the ERCOT System of TNP Enterprises, affiliates of TNMP are able to access certain shared services, such as billing, accounting, and payroll systems. Applicants propose to maintain these arrangements in place where such is consistent with economical operations and to comply with both state and Federal Energy Regulatory Commission affiliate transaction regulation and the applicable rules of the Commission, including rules 90 and 91.

First Choice is a firm engaged in domestic energy marketing and Avistar is a firm engaged in the domestic marketing of energy technologies. Applicants maintain that First Choice qualifies as an energy-related company under rule 58 under the Act. PNM Resources proposes to retain FirstChoice. PNM Resources also proposes to retain the nonutility subsidiaries of TNP Enterprises which are currently inactive. PNM Resources also proposes to retain a limited partnership interest in National Corporate Tax Credit Fund XII, an investment qualifying for low income housing tax credits.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-1748 Filed 4-12-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51503; File No. SR-Amex-2004-65]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change, and Amendments No. 1 and 2 Thereto, Relating to Revisions to Amex Rule 21, Appointment of Floor Officials

On August 10, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Amex Rule 21, Appointment of Floor Officials. On December 22, 2004, the Amex filed Amendment No. 1 to the proposed rule change.³ On February 3, 2005, the Amex filed Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on March 8, 2005.⁵ The Commission received no comments on the proposal.

The Exchange proposed the following amendments to Amex Rule 21: (1) Eliminate the requirement that an Exchange Official who is appointed as a senior Floor Official must have previously served as a member of the Exchange's Board of Governors ("Board");⁶ (2) provide that an Exchange Official who has been appointed as a Senior Floor Official shall have the same authority and responsibilities as a Floor Governor with respect to matters that arise on the trading floor and require review or action by a Floor Governor or Senior Floor Official;⁷ and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1 the Amex revised the text of the proposed rule.

⁴ In Amendment No. 2 the Amex further revised the text of the proposed rule.

⁵ See Securities Exchange Act Release No. 51279 (March 1, 2005), 70 FR 11279.

⁶ The proposal would retain the requirement that any such Exchange Official must spend a substantial part of his or her time on the Exchange's floor.

⁷ The Exchange has represented that an Exchange Official who makes a ruling on the floor would not be permitted to review such ruling while later acting as a Senior Floor Official or in place of a Floor Governor. Telephone conversation among William Floyd-Jones, Assistant General Counsel, Amex, Susie Cho, Special Counsel, Division of Market Regulation ("Division"), Commission, and Geraldine Idrizi, Attorney, Division, Commission, on January 31, 2005.

A number of Amex rules provide for Floor Governor or Senior Floor Official action or review with respect to matters that arise on the trading floor. The Amex noted that these rules may change