

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27211]

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

August 11, 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 5, 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 5, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Consolidated Edison, Inc., and Northeast Utilities (70-9613)

Consolidated Edison, Inc. ("CEI"), 4 Irving Place, New York, New York 10003, a public utility holding company claiming exemption from registration under section 3(a)(1) by rule 2 under the Act, and Northeast Utilities, 174 Brush Hill Avenue, West Springfield, Massachusetts 01090-0010, a registered holding company (collectively, "Applicants"), have filed a joint application-declaration under sections 6(a), 7, 8, 9(a), 10, 11 and rule 54 under the Act.

#### Summary of Proposal

As described in more detail below, the Applicants seek authorization for Consolidated Edison, Inc. ("New CEI"),<sup>1</sup>

a Delaware corporation and a wholly owned subsidiary of CEI, to acquire all of the issued and outstanding stock of NU. Under the proposed transactions, Orange and Rockland Utilities, Inc. ("O&R"), Consolidated Edison Company of New York ("CECONY"), NU, and certain nonutility subsidiaries will become direct subsidiaries of New CEI. After the merger, the Applicants state that New CEI will register as a public utility holding company under section 5 of the Act.<sup>2</sup> The Applicants seek authorization for New CEI to operate as a combination electric and gas utility holding company. In addition, the Applicants seek authorization for New CEI to retain O&R as an exempt electric and gas subsidiary public utility holding company,<sup>3</sup> NU as a subsidiary registered public utility holding company, and Yankee Energy System, Inc. ("YES") as a subsidiary exempt gas utility holding company of NU. New CEI also seeks to retain CEI's interests in its utility and nonutility activities, businesses and investments and to acquire and retain NU's nonutility activities, businesses and investments.

#### The Proposed Merger

CEI, NU, New CEI, and N Acquisition LLC, a Massachusetts limited liability company, which is directly and indirectly owned by New CEI,<sup>4</sup> have entered into an amended and restated plan of merger dated as of January 11, 2000 ("Merger Agreement"). Under the Merger Agreement, CEI will be merged with and into New CEI, with New CEI being the surviving entity, and NU will merge with N Acquisition, with NU being the surviving entity ("Merger"). Upon consummation of the Merger, New CEI will own all of the assets of CEI and NU will be a wholly owned subsidiary of New CEI.

The Merger Agreement provides that each CEI common share outstanding immediately prior to the closing of the Merger will, at closing, be converted into one share of New CEI common stock. Any CEI common shares held by

CEI as treasury shares or owned by New CEI will be canceled without payment for those shares.

The Merger Agreement provides that NU shareholders may elect to receive, for each NU common share that they own, a fraction (the "Exchange Ratio") of a share of New CEI common stock equal to a numerator of \$25.00 divided by the weighted average trading price of a CEI common share over twenty trading days randomly selected from the forty trading days ending five trading days prior to the closing. However, the CEI share price used to calculate the Exchange Ratio will not be less than \$36.00 nor greater than \$46.000. Also, \$1.00 will be added to the numerator if, prior to the closing of the Merger, certain NU subsidiaries enter into binding agreements to sell to one or more non-affiliated third parties their respective interests in the Millstone Station Unit 2 and Millstone Station Unit 3 nuclear power plant assets, in accordance, in all material respects, with applicable law ("Divestiture Condition").<sup>5</sup> An additional \$.0034 will be added to the numerator of the Exchange Ratio for each day after August 5, 2000 the Merger fails to close through the day prior to the closing of the Merger.

In the alternative, holders of NU common shares may elect to receive cash consideration equal to \$25.00 per NU common share. An additional \$1.00 per share will be payable, if, prior to the closing of the Merger, NU satisfies the Divestiture Condition and an additional \$.0034 per share will be payable for every day after August 5, 2000 through the day prior to the closing of the Merger.

Election for stock consideration or cash consideration will be subject to allocation and proration procedures. If greater than fifty percent of the holders of shares of NU elect to receive New CEI common stock, these holders who elected to receive New CEI stock may instead receive part of his or her consideration in the form of cash. If greater than fifty percent of the holders of shares of NU elect to receive cash, those holders who elected to receive cash may instead receive part of his or her consideration in the form of shares.

As a result of the Merger, the post-merger New CEI system will have *pro forma* assets of approximately \$27.816

<sup>2</sup> The Applicants and certain of their subsidiaries have also filed in S.E.C. file No. 70-9711 an application-declaration related to the financing of the proposed New CEI registered holding company system. A notice of that filing will be issued in the future.

<sup>3</sup> See *Rockland Light and Power Co.*, 1 S.E.C. 354 (1936) (granting an exemption under section 3(a)(2)). Rockland Light and Power Company subsequently became O&R; and Holding Company Act Release No. 27021 (May 13, 1999) (authorizing CEI's acquisition of O&R and continuation of O&R's exemption under section 3(a)(2)).

<sup>4</sup> New CEI owns 99% of N Acquisition and X Holding Company LLC (X Holding), a Massachusetts limited liability company, owns 1% of N Acquisition. New CEI owns 99% of X Holding and N Acquisition owns 1% of X Holding.

<sup>1</sup> New CEI was originally incorporated as CWB Holdings, Inc.

<sup>5</sup> If the Merger closes on or prior to December 31, 2000, and the Divestiture Condition has not been satisfied, but the Divestiture Condition is met after the Merger closes and on or prior to December 31, 2000, then each NU shareholder (whether the shareholder elected stock or cash consideration) will be entitled to \$1.00 per converted NU common share to be paid in cash by New CEI.

billion for the twelve months ended March 31, 2000 and *pro forma* total operating revenues of approximately \$13.134 billion, for the same period. If approved, New CEI will be an electric and gas distribution utility with over five million electric customers and over 1.4 million natural gas customers.

After the Merger is consummated, New CEI will register with the Commission as a public utility holding company under section 5 of the Act. New CEI proposes to retain O&R as a subsidiary exempt holding company, NU as a subsidiary registered holding company and YES as a subsidiary exempt holding company of NU.

The Merger will be accounted for using the purchase method of accounting and will result in the creation of approximately \$1.6 billion of goodwill. New CEI will not push down the goodwill to NU or its subsidiaries.<sup>6</sup>

#### *Parties of the Merger*

#### **CEI and its Subsidiaries**

CEI is a public utility holding company for its two utilities, Consolidated Edison Company of New York, Inc. ("CECONY") and Orange and Rockland Utilities, Inc. ("O & R"), and certain nonutility subsidiaries.

#### **CECONY**

CECONY, a New York Corporation incorporated in 1884, provides franchised retail electric service to over three million customers and gas to over one million customers in New York City and Westchester County. It has a service area of about 660 square miles and approximately 2,148 MW of generating assets, including the 1,000 MW the Indian Point 2 nuclear generating facility. As of December 31, 1999, CECONY's transmission system had approximately 430 miles of overhead circuits operating at 138, 230, 345 and 500 kilovolts and approximately 380 miles of underground circuits operating at 138 and 345 kilovolts. The company's transmission facilities are located in New York City and Westchester, Orange, Rockland, Putnam and Dutchess counties in New York State. At December 31, 1999, CECONY's distribution system had approximately 88,200 miles of underground distribution lines and approximately 32,500 miles of overhead distribution lines. Natural gas is delivered by pipeline to Con Edison of New York at various points in its service territory and is distributed to customers by the

company through approximately 4,200 miles of mains and 366,000 service lines. CECONY also supplies steam service to customers in parts of Manhattan. As of December 31, 1999, CECONY had 13,025 employees. CECONY is regulated by the New York Public Service Commission ("NYSC") as well as the Federal Energy Regulatory Commission ("FERC") and the Nuclear Regulatory Commission ("NRC"). CECONY has three wholly owned subsidiaries, Davids Island Development Corporation ("Davids Island"), and D.C.K. Management Corporation ("DCK"), and Steam House Leasing, LLC ("Steam House"). CECONY also owns a 28.8 percent interest in Honeoye Storage Corporation ("Honeoye Storage").

Davids Island, a New York Corporation, owns real property acquired as a possible site for an electric generating plant in Dutchess and Columbia Counties in New York State and is in the process of disposing of the property.

DCK, a New York Corporation, owns real property in New York City.

Steam House leases a steam generating plant that produces steam for CECONY's steam distribution business.

Honeoye Storage, a New York Corporation, owns and operates a gas storage facility in upstate New York.

In accordance with its divestiture plan for its fossil-fueled electric generation in New York City ("Divestiture Plan"), which the NYPSC approved, CECONY has divested almost all of its in-City electric generation to unaffiliated third parties. CECONY retains about 460 MW of generating capacity that produces both electricity and steam for its steam distribution system in Manhattan and some small combustion turbines located in various facilities in New York City and Westchester County.

#### **CEI's Nonutility Subsidiaries**

CEI<sup>7</sup> also engages in other nonutility businesses through four directly owned nonutility subsidiaries, Consolidated Edison Solutions ("CES"), Consolidated Edison Development, Inc. ("CEDI"),<sup>8</sup> Consolidated Edison Energy, Inc. ("CEEI"), and Consolidated Edison Communications ("CECI"), which are described below:

CES is organized in New York and provides wholesale and retail energy and related services. CES has a 50 percent interest in Inventory

Management & Distribution Company, Inc. ("IMD"), an energy marketing firm organized in Delaware, which is in the process of being dissolved. CES also has a 14.4 percent interest in Remote Source Lighting International, Inc. ("RSLI"), a lighting technology company organized in Delaware.

CEDI, organized in New York, is in the business of investing in foreign and domestic energy and other infrastructure projects and the marketing of CECONY's technical services. CEDI has the following direct subsidiaries: Con Edison Development Guatemala, Ltd. ("CED Guatemala"), Consolidated Edison Leasing, Inc. ("CEI Leasing"), Con Edison Leasing, LLC ("Con Ed Leasing"), CED Ada, Inc. ("CED Ada"), Carson Acquisition, Inc. ("Carson Acquisition"), CED/SCS Newington, LLC, ("CED/SCS"), CED GTM 1, LLC ("CED GTM 1"), Consolidated Edison Energy Massachusetts, Inc. ("CEEMI"), CED Generation Holding Company, LLC ("CED Generation"), CEDST, LLC ("CEDST"), Con Edison Development Acquisition and Finance, Ltd. ("CEDAF"), and Con Edison El Salvador One, Ltd (CEES), which are discussed below:

CED Guatemala is organized under the laws of the Cayman Islands. It is in the business of investing in energy projects in Central America.

CEI Leasing, a Delaware corporation, has an investment in a leveraged lease transaction in a power plant in the Netherlands.

Con Ed Leasing, a Delaware limited liability company, has an investment in a leveraged lease transaction in a gas distribution system in the Netherlands.

CED Ada, a Delaware corporation, owns an approximate 96 percent interest in CED/DELTA Ada, LLC, ("CED/DELTA"), a Delaware limited liability company, which owns a 49.5 percent limited partnership interest and a 0.5 percent general partnership interest in Ada Cogeneration Limited Partnership, ("ACLP"), a Michigan limited partnership. ACLP owns a 30 MW gas-fired qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978 ("PURPA")<sup>9</sup> in Ada, Michigan.

Carson Acquisition, Inc. ("CAI"), a Delaware corporation, which formerly owned an interest in a 42 MW qualifying cogeneration facility under PURPA in Carson, California, is presently inactive.

CEI owns approximately 95% of CED/SCS, a Delaware limited liability

<sup>6</sup> Staff Accounting Bulletin 54, Topic 5.J. question 2 (grants an exception to push down accounting for companies with significant public debt or preferred stock.)

<sup>7</sup> CEI's unregulated subsidiaries own approximately 608 MW of additional generating assets.

<sup>8</sup> CEDI has nine direct subsidiaries which are discussed below.

<sup>9</sup> Pub. L. No. 95-617, 92 Stat. 3117 (codified in scattered sections of 16 USC).

company. CED/SCS owns 100% of Newington Energy, LLC, a Delaware limited liability company, which is currently developing a 525 MW electric generating facility in Newington, New Hampshire.

CED GTM1, a Delaware limited liability company, owns an approximate one-half interest in GTM Energy LLC, a Delaware limited liability company, which was formed to pursue an opportunity to develop an electric generating facility in New York City. It has recently been decided to discontinue the pursuit of this opportunity.

CEEMI is a Delaware company which was established for the purpose of owning and operating 290 MW of generation facilities acquired from Western Massachusetts Electric Company, a wholly-owned subsidiary of NU, in July 1999.

CED Generation is a Delaware company which indirectly owns and manages a 236 MW power plant located in Lakewood, New Jersey.

CEDST is a Delaware company which owns 100% of CED 42, LLC, both formed to invest in low-income housing transactions to achieve tax credits for the system.

CEDAF is organized under the laws of the Cayman Islands. It was organized in connection with a potential investment in Guatemala, which was never made. At present, CEDAF has no assets or operations and is inactive.

CEES is organized under the laws of the Cayman Islands. CEES was organized in connection with a potential investment in El Salvador, which was never made. At present, CEES has no assets or operations and is inactive.

CEEI is a wholly-owned subsidiary of CEI, organized in New York to invest in, operate and market the output of electric energy supply facilities in the United States and to provide specialized wholesale energy services in the electric power and natural gas markets.

CECI, a wholly owned subsidiary of CEI, was organized in New York in late 1997 to own, operate or invest in facilities used for telecommunications or otherwise to compete in the telecommunications industry. On November 23, 1999, CECI agreed to acquire a 10.75% stock interest in Northeast Optic Network, Inc. ("NEON"), a provider of broadband telecommunications services in the northeast United States, in exchange for certain telecommunication facilities and rights of way in New York City. NU owns approximately 30% of NEON's common shares.

## O&R

O&R, a New York Corporation incorporated in 1926, is a wholly owned utility subsidiary of CEI and an electric and gas public utility holding company currently exempt from registration by order under section 3(a)(2) of the Act. After the merger is consummated, O&R proposes to remain an exempt holding company under the Act. Along with its public utility subsidiaries, O&R supplies franchised retail electricity to approximately 275,640 customers and gas to approximately 117,283 customers in its service territory that covers approximately 1,350 square miles. The eastern boundary of the service area extends along the west bank of the Hudson, directly across the river from the service territory of CECONY. O&R has two utility subsidiaries: Rockland Electric Company ("RECO") and Pike County Light and Power Company ("Pike"). As of December 31, 1999, O&R and its utility subsidiaries owned, in whole or in part, transmission and distribution facilities which include 601 circuit miles of transmission lines, and 5,046 pole miles of overhead distribution lines and 2,493 miles of underground distribution lines. O&R and Pike own their gas distribution systems, which include 1,780 miles of mains. As of December 31, 1999, O&R had 1,001 employees. Neither RECO nor Pike have employees.

O&R directly owns three nonutility subsidiaries: Clove Development Corporation ("Clove"); O&R Energy Development, Inc. ("O&R Energy"); and other O&R Development, Inc. ("O&R Development"). O&R indirectly owns other nonutility subsidiaries, which are discussed below. O&R is regulated by the NYPSC.

RECO, a New Jersey corporation incorporated in 1899, supplies electricity to parts of New Jersey. RECO directly and indirectly owns several nonutility subsidiaries, as discussed below. RECO's retail rates and certain other matters are subject to regulation by the New Jersey Board of Public Utilities ("NJBP").

Pike, a Pennsylvania corporation incorporated in 1914, supplies electricity and gas to the northeastern corner of Pike County in Pennsylvania. Pike's retail rates and certain other matters are subject to regulation by the Pennsylvania Public Utility Commission ("PaPUC").

O&R, Pike and RECO also are subject to regulation by FERC.

In accordance with its divestiture plan ("Divestiture Plan") filed under NYPSC divestiture orders, O&R sold all

of its electric generating facilities in July 1999.

O&R engages in nonutility businesses through three directly owned subsidiaries: Clove, a New York Corporation, that owns real estate, located primarily in the Mongaup Valley region of Sullivan County, New York; O&R Energy, a Delaware corporation, that owns real estate that is being marketed for sale and was formed to promote industrial and corporate development in O&R's service territory by providing improved sites and buildings; and (3) O&R Development, Inc., a Delaware corporation, that is inactive.

RECO engages in nonutility businesses through its directly and indirectly owned subsidiaries, Enserve Holdings, Inc. ("Enserve"), Saddle River Holdings Corp. ("SRH"), Palisades Energy Services, Inc. ("Palisades Energy"), Compass Resources, Inc. ("Compass"), NORSTAR Holdings, Inc. ("NHI"), NORSTAR Management, Inc. ("NMI"), and Millbrook Holdings, Inc. ("Millbrook"): Enserve is a wholly owned nonutility holding company subsidiary of RECO and a Delaware corporation. It wholly owns Palisades Energy and Compass which are Delaware inactive corporations. SRH is a wholly owned nonutility holding company subsidiary of RECO and a Delaware corporation. NHI is a wholly owned nonutility holding company subsidiary of SRH and a Delaware corporation. NHI wholly owns Millbrook, a Delaware corporation. Millbrook holds a leasehold interest in nonutility real estate in Morris County, New Jersey. NHI also wholly owns NMI, a Delaware Corporation. NMI is the sole general partner of a Delaware limited partnership, NORSTAR Energy Limited Partnership ("NORSTAR Partnership"), a gas marketing company that is discontinuing operation, of which NHI is the sole limited partner. NORSTAR Partnership is the majority owner of the NORSTAR Energy Pipeline Company, LLC, a Delaware limited liability company, which is inactive.

CECONY and O&R (including RECO and Pike) are transmission owner market participants in the New York Independent System Operator ("NYISO") power pool.

For the twelve month period ending March 31, 2000, CEI had approximately \$8 billion in consolidated operating revenues. CEI's common stock is listed on the New York Stock Exchange. As of March 31, 2000, CEI had outstanding 211,959,922 common shares (\$.10 par value per share).

## NU and Subsidiaries

NU, a Massachusetts business trust, is a registered public utility company that is the parent of a number of companies comprising the NU system ("System") and is not itself an operating company. NU serves approximately 30 percent of New England's electric needs and had 9,099 employees as of December 31, 1999. NU owns all of the outstanding shares of common stock of five electric utility operating subsidiaries: The Connecticut Light and Power Company ("CL&P"), Public Service Company of New Hampshire ("PSNH"), Western Massachusetts Electric Company ("WMECO"), Holyoke Water Power Company ("HWP"), and North Atlantic Energy Corporation ("NAEC").<sup>10</sup> NU has traditionally furnished franchised retail electric service in Connecticut, New Hampshire and western Massachusetts through CL&P, PSNH and WMECO. NU has also furnished retail electric service to a limited number of customers through HWP, doing business in and around Holyoke, Massachusetts. In addition to their retail electric service businesses, CL&P, PSNH, WMECO and HWP (including its wholly owned subsidiary Holyoke Power and Electric Company ("HPEC")) together furnish wholesale electric service to various municipalities and other utilities throughout the Northeast. The NU System is also engaged in the retail distribution of natural gas through its directly owned Yankee Energy System, Inc. ("YES").<sup>11</sup> YES directly owns Yankee Gas Service Company ("Yankee Gas"). Yankee Gas purchases, distributes, and sells natural gas to residential customers in Connecticut. NU also wholly owns six nonutility businesses: Northeast Utilities Service Company ("NUSCO"), North Atlantic Energy Service ("NAESCO"), Northeast Nuclear Energy Company ("NNECO"), Rocky River Realty Company ("Rocky River"), The Quinnehtuk Company ("Quinnehtuk") and NU Enterprises ("NUEI").

The four electric utility and one gas utility operating subsidiaries of NU are each described below:

CL&P, a corporation organized under the laws of Connecticut, furnishes electric retail delivery franchise service to approximately 1.12 million customers

through its service territory of 149 cities and towns in Connecticut. As of December 31, 1999, CL&P owned 1,286 pole miles (1,638 circuit miles) of overhead transmission lines and 36 bank miles (167.8 cable miles) of underground transmission lines, and 18,202 pole miles of overhead and 746 bank miles (7,271 cable miles) of underground distribution lines. CL&P also owns an 81% interest in the 870 MW Millstone 2 nuclear generating facility ("Millstone 2"), approximately 53% of the 1,154 MW Millstone 3 nuclear generating facility ("Millstone 3") located in Waterford, Connecticut, and approximately 4% of the 1,148 MW Seabrook nuclear generating facility ("Seabrook") located in Seabrook, New Hampshire.

PSNH, a New Hampshire corporation, furnishes retail delivery franchise service to 422,000 customers through its service territory of 198 towns and cities in New Hampshire. Properties, Inc. is a wholly owned subsidiary of PSNH. As of December 31, 1999, PSNH owned approximately 974 pole miles (974 circuit miles) of overhead transmission lines and 11,188 pole miles of overhead distribution lines and 1102 bank miles (1102 cable miles) of underground distribution lines.

WMECO, a Massachusetts corporation, provides electric retail delivery to approximately 198,012 retail franchise customers through its service territory of 59 cities and towns in Massachusetts. As of December 31, 1999, WMECO owned approximately 342 pole miles of overhead transmission lines (446 circuit miles) and 8 bank miles (28 cable miles) of underground transmission lines. WMECO also owns 3,660 pole miles of overhead distribution lines and 267 bank miles (2,416 cable miles) of underground distribution lines. WMECO also owns a 19% interest in Millstone 2 and approximately 13% in Millstone 3.

Restructuring legislation in New Hampshire, Massachusetts and Connecticut now requires PSNH, WMECO and CL&P, respectively, to separate the distribution and transmission functions of their business from the generation function by mandating the sale of fossil fuel and hydroelectric generation assets.

In addition to regulation by the respective state commissions of their states of operation, CL&P, WMECO and PSNH are also regulated by FERC and the NRC.

HWP, a Massachusetts corporation, serves 32 retail customers in Holyoke, Massachusetts under contracts regulated by FERC. HWP wholly owns HPEC. HWP owns 200 MW of generating

assets, 13.3 pole miles (14.5 circuit miles) of overhead transmission lines, 18.47 pole miles of overhead distribution lines and 2.24 bank miles (4.3 cable miles) of underground distribution lines.

NAEC is a special-purpose operating subsidiary of NU, organized under the laws of New Hampshire, that owns a 35.98 percent interest in Seabrook. NAEC sells its share of the capacity and output from Seabrook to PSNH under two life-of-unit, full-cost recovery contracts. These contracts are regulated by FERC.

YES is a public utility holding company incorporated in Connecticut in 1988. In addition to being the holding company for Yankee Gas, it is also the holding company for four nonutility subsidiaries, NorConn Properties, Inc. ("NorConn"), Yankee Energy Financial Services Company ("Yankee Financial"), Yankee Energy Services Company ("YESCo") and R.M. Services, Inc. ("RMS"). These companies are referred to collectively as "the Yankee Energy System."

Yankee Gas, a gas utility company, purchases, distributes and sells natural gas to approximately 185,000 residential, commercial and industrial users in Connecticut. Its service territory consists of 69 cities and towns, and covers approximately 1,995 square miles, all in Connecticut and all within the service territory of CL&P.<sup>12</sup> In addition to being regulated by the Connecticut Department of Public Utility Control, Yankee Gas is also regulated by FERC.

NorConn, a Connecticut corporation, was formed in 1988 to hold property and facilities of the Yankee Energy System.

Yankee Financial, a Connecticut corporation incorporated in 1992, provides customers with financing for energy equipment installments.

YESCo, a Connecticut corporation, provides a wide range of energy-related services for its customers. Through its YESCo Controls division, such services include comprehensive building automation with engineering, installation and maintenance of building control systems. Through its YESCo Mechanical Services division, customers are provided comprehensive heating, ventilation and air-conditioning, boiler and refrigeration equipment services and installation.

<sup>10</sup> The Commission has found that NU's electric companies operate as an integrated system. See *In the Matter of Northeast Utilities*, 42 SEC 963.

<sup>11</sup> By order dated January 31, 2000, *Northeast Utilities*, (Holding Co. Act Release No. 27127), the Commission approved NU's acquisition of Yankee Energy System, Inc. ("YES"). YES is the holding company of Yankee Gas and is currently claiming an exception from registration under section 3(a)(1) of the Act by rule 2.

<sup>12</sup> Yankee Gas' assets include distribution lines, meters, pumps, valves and pressure and flow controllers. Yankee Gas owns approximately 2,820 miles of distribution mains, 133,033 service lines, and 185,000 active meters for customer use, all located in Connecticut.

RMS, a Connecticut corporation, was formed in 1994 to provide debt collection services to utilities and other businesses nationwide.

NU also has six wholly owned nonutility subsidiaries:

NUSCO is a wholly owned subsidiary of NU and provides centralized accounting, administrative, information resources, engineering, financial, legal, operational, planning, purchasing and other services to the NU System companies.

NAESCO is a wholly owned subsidiary of NU. NAESCO has operational responsibility for Seabrook.

NNECO is a wholly owned subsidiary of NU. NNECO acts as an agent for the System companies and other New England utilities in operating the Millstone Nuclear generating facilities, which are located in Waterford, Connecticut.

Rocky River and Quinnehtuk, both wholly owned subsidiaries of NU, and Properties, Inc. construct, acquire, or lease some of the property and facilities used by the NU System companies.

NU Enterprises, Inc. ("NUEI"), a wholly owned subsidiary of NU, acts as the holding company for NU's nonutility businesses.

Northeast Generation Company ("NGC"), a subsidiary of NUEI, was formed to acquire and manage generating facilities.

Northeast Generation Services Company, another subsidiary of NUEI, was formed to acquire and manage generating facilities.

Northeast Generation Services Company, another subsidiary of NUEI, was formed to provide services to the electric generation market as well as to large commercial and industrial customers in the Northeast.

In January of 1999, NU transferred to NUEI the stock of three of its wholly owned subsidiaries: Select Energy, Inc., HEC, Inc. and Mode I Communications, Inc. These companies engage, either directly or indirectly through subsidiaries, in a variety of energy-related and telecommunications activities, primarily in the unregulated energy retail and wholesale commodity, marketing and services fields.

Select Energy Portland Pipeline, Inc., a subsidiary of NUEI, and was formed as a single purpose rule 58 subsidiary to hold a 5% partnership interest in the Portland Natural Gas Transmission System Partnership, the partnership that owns and operates the Portland Natural Gas Transmission Pipeline.

The NU electric operating companies are members of the New England Power Pool ("NEPOOL" and have transferred control over most of their transmission

facilities to Independent System Operator-New England. NEPOOL is a cooperative association of the major electric utilities operating in the New England region.

For the twelve month period ending March 31, 2000 NU had approximately \$4.8 billion in consolidated operating revenues. The Common Shares of NU are listed on the New York Stock Exchange. As of March 31, 2000, NU had approximately 143,150,550 shares outstanding \$5.50 par value per share).

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

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43147; File No. SR-NASD-00-11]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., Amending Its Mediation Fee Structure

August 11, 2000.

#### I. Introduction

On March 9, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend certain aspects of NASD Regulation's mediation program. The proposed rule change was published for comment in the **Federal Register** on May 24, 2000<sup>3</sup> and no comments were received. This order approves the proposed rule change.

#### II. Description of the Proposal

NASD Regulation proposes to amend its Code of Arbitration Procedure ("Code") to increase revenue by adjusting the mediation fee schedules and to permit parties to agree to stay arbitrations in order to mediate their claims. The proposed rule change also would eliminate the adjournment fees when parties conduct their mediation

through NASD Regulation. NASD Regulation believes that the proposal would encourage the use of mediation and be a first step toward making the NASD Regulation mediation program financially self-sustaining.

NASD Regulation initiated a mediation program in 1995 to provide an additional dispute resolution option for parties.<sup>4</sup> According to NASD Regulation, the goal of the mediation program is to provide public customers, member firms, and associated persons with an alternative and effective means of resolving their disputes. Since its inception in 1995, over 3,500 cases have been submitted to the mediation program. By 1999, parties in twenty percent of all arbitration cases filed with NASD Regulation used mediation to help resolve their disputes. NASD Regulation believes that a settlement that results from mediation, rather than arbitration or litigation, often saves the parties substantial time and expense.

#### Summary of Proposal

The mediation program is currently subsidized. Because the mediation program has continued to grow steadily since its inception. NASD Regulation believes that this is an appropriate time to change the mediation fee structure. The objective of the proposed rule change is to take preliminary steps toward making the mediation program financially self-sustaining while preserving it as a cost-effective alternative to arbitration for parties with claims of any dollar value.

The rules establishing mediation filing fees are currently contained in Rules 10205 and 10332 of the Code, which address intra-industry and customer arbitration fees, respectively. NASD Regulation proposes to delete the provisions relating to mediation fees from the arbitration sections of the Code, and to include them in the Rule 10400 Series that pertains to mediation. NASD Regulation would create a new rule, Rule 10407, entitled "Mediation Fees."

The proposed rule change includes three components. First, new Rule 10407(a) would replace the current flat fee with a sliding-scale schedule of fees for cases filed directly in mediation. Second, new Rule 10407(b) would require parties to pay a mediation case filing fee when they choose to use the mediation program after having initiated arbitration. Third, Rule 10403(a) would be changed to make clear that the parties in arbitration can agree to stay

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 42792 (May 17, 2000), 65 FR 33602 (May 24, 2000).

<sup>4</sup> See Securities Exchange Act Release No. 35990 (July 19, 1995), 60 FR 38384 (July 26, 1995), (SR-NASD-95-25).