

SECURITIES AND EXCHANGE COMMISSION

(Release No. 35-28014)

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

August 9, 2005

Notice is hereby given that the following filing(s) has/have been made with the Commission under 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, 2005**, to the Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303, 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, 2005**, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Energy East Corporation, et al. (70-10298)

Energy East Corporation (“Energy East”), P.O. Box 12904, Albany, New York, 12212, a registered holding company under the Act and its direct and indirect subsidiaries listed below

(collectively, “Applicants”), have filed with the Securities and Exchange Commission (“Commission”) an application (“Application”) under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 13(b), 32 and 33 of the Act and rules 45, 46, 54, and 80-92 under the Act. The other Applicants are: (1) Energy East Enterprises, Inc. (“Energy East Enterprises”), a wholly owned subsidiary of Energy East and a public utility holding company exempt from registration by order of the Commission under section 3(a)(1) of the Act and Energy East Enterprises’ subsidiaries Maine Natural Gas Corporation (“Maine Natural Gas”) and Energy East Capital Trust 1, each at P.O. Box 12904, Albany, New York, 12212; (2) RGS Energy Group, Inc., (“RGS”) a wholly owned subsidiary of Energy East and a public utility holding company exempt from registration by order of the Commission under section 3(a)(1) of the Act and RGS Energy’s gas and electric utility subsidiaries New York State Electric & Gas Corporation (“NYSEG”) and Rochester Gas and Electric Corporation (“RG&E), each of 89 East Avenue, Rochester, New York, 14649; (3) CMP Group, Inc. (“CMP Group”), a wholly owned subsidiary of Energy East and a public utility holding company exempt from registration by order of the Commission under section 3(a)(1) of the Act and CMP’s subsidiaries Central Maine Power Company (“Central Maine”), a public utility holding company exempt from registration by order of the Commission under section 3(a)(1) of the Act and Maine Electric Power Company, Inc. (“MEPCo”), a majority owned electric utility subsidiary, each of 83 Edison Drive, Augusta Maine 04336; (4) NORVARCO, a wholly owned subsidiary of Central Maine Power Company of 83 Edison Drive, Augusta, Maine, 04336; (5) Connecticut Energy Corporation (“Connecticut Energy”), a wholly owned subsidiary of Energy East and a public utility holding company exempt from registration by order of the Commission under section 3(a)(1) of the Act and Connecticut Energy’s subsidiary The Southern Connecticut Gas Company (“Southern Connecticut Gas”), each of 855 Main

Street, Bridgeport, Connecticut, 06604; (6) CTG Resources, Inc. (“CTG”), a wholly owned subsidiary of Energy East and a public utility holding company exempt from registration by order of the Commission under section 3(a)(1) of the Act and CTG’s subsidiary Connecticut Natural Gas Corporation (“Connecticut Natural Gas”), each of 10 State House Square, Hartford, Connecticut, 06144; and (7) Berkshire Energy Resources (“Berkshire Energy”), a wholly owned subsidiary of Energy East and a public utility holding company exempt from registration by order of the Commission under section 3(a)(1) of the Act; and Berkshire Energy’s subsidiary The Berkshire Gas Company (“Berkshire Gas”), each of 115 Cheshire Road, Pittsfield, Massachusetts, 01201.

I. Introduction

A. Authorization Period

Applicants seek authorization under the Act to engage in various financing transactions discussed below through September 30, 2008 (“Authorization Period”) and to retain certain Intermediate Holding Companies, as defined below.¹ However, Applicants request that any Commission order granting the requests made in the Application not impose any obligation or requirement on the Applicants that survives the effective date of repeal of the Act.

¹ Energy East currently has authority to engage in various financing transactions through September 30, 2005. *See* Holding Company Act Release No. 27228 (Sept. 12, 2000); Holding Company Act Release No. 27643 (Jan. 28, 2003); and Holding Company Act Release No. 27794.

B. Description of Energy East and Its Subsidiaries

1. Energy East

Energy East is currently a registered public utility holding company, and directly neither owns nor operates any physical properties.² Through its subsidiaries (which includes all of Energy East's Utility Subsidiaries, the Intermediate Holding Companies and the Non-utility Subsidiaries, as defined below), Energy East is an energy services and delivery company with operations in New York, Connecticut, Massachusetts, Maine and New Hampshire serving approximately 1.8 million electricity customers and 900,000 natural gas customers.

2. Public Utility Operations

Energy East holds direct or indirect interests in nine public utility companies (collectively, "Utility Subsidiaries"), each of which is wholly owned by companies within the Energy East system unless otherwise noted:

- (a) NYSEG, a wholly-owned subsidiary of RGS, which purchases, transmits and distributes electricity and natural gas in parts of New York;
- (b) RG&E a wholly-owned subsidiary of RGS, which generates, purchases, transmits and distributes electricity and purchases, transports and distributes natural gas in parts of New York;
- (c) Southern Connecticut Gas a wholly-owned subsidiary of Connecticut Energy, which is primarily engaged in the retail distribution and transportation of natural gas in parts of Connecticut;

² Pursuant to Commission order dated March 4, 1998 (HCAR No. 25-26834), Energy East became the parent of New York State Electric & Gas Corporation. Pursuant to Commission order dated February 2, 2000 (HCAR No. 35-27128), Energy East became the parent of Connecticut Energy Corporation. Pursuant to Commission order dated August 31, 2000 (HCAR 35-27224), Energy East became the parent of CMP Group, Inc., CTG Resources, Inc. and Berkshire Energy Resources. Pursuant to Commission order dated June 27, 2002 (HCAR No. 35-27546), Energy East became the parent of RGS Energy Group, Inc.

(d) Connecticut Natural Gas a wholly-owned subsidiary of CTG Resources, which is primarily engaged in the retail distribution and transportation of natural gas to parts of Connecticut;

(e) Berkshire Gas a wholly-owned subsidiary of Berkshire Energy, which is primarily engaged in the retail distribution and transportation of natural gas to parts of Massachusetts;

(f) Central Maine a wholly-owned by CMP Group and which is primarily engaged in purchasing, transmitting and distributing electricity in Maine;

(g) Maine Natural Gas Corporation a wholly-owned subsidiary of Energy East Enterprises ;

(h) MEPCo which owns and operates a 345kV transmission interconnection between the Maine - New Brunswick, Canada international border at Orient, Maine. Central Maine presently owns a 78.3% voting interest in MEPCo with the remaining interests owned by two other Maine utilities; and

(i) NORVARCO, which holds a 50% general partnership interest in Chester SVC Partnership ("Chester"), a general partnership which owns a static var compensator located in Chester, Maine, adjacent to MEPCo's transmission interconnection. NORVARCO is a wholly-owned subsidiary of Central Maine.

3. Non-utility Subsidiaries

Energy East also has a number of direct and indirect subsidiaries that are not "public utility companies" under the Act (the "Non-utility Subsidiaries"):

(a) RGS, the parent of NYSEG and RG&E;

(b) Berkshire Energy, the parent of Berkshire Gas;

(c) CMP Group, the parent of Central Maine, MEPCo, and NORVARCO;

- (d) Connecticut Energy, the parent of Southern Connecticut Gas;
- (e) CTG Resources, the parent of Connecticut Natural Gas;
- (f) The Energy Network, Inc., whose subsidiaries focus on peaking generation and the retail marketing of electricity and natural gas;
- (g) Energy East Enterprises, the parent of Maine Natural Gas and New Hampshire Gas, and is developing gas storage in upstate New York through a wholly-owned subsidiary, Seneca Lake Storage Inc.;
- (h) Energy East Management Corporation and Utility Shared Services Corporation, each of which are Commission authorized service companies for the Energy East holding company system which own no public utility assets;
- (i) Energy East Capital Trust I, a statutory business trust formed for the purpose of issuing trust preferred securities;
- (j) TEN Companies, Inc. (“TEN Companies”), which owns and manages a district heating and cooling network in Hartford, Connecticut and owns an interest in the Iroquois Gas Transmission System;
- (k) CNE Energy Services Group, which has an interest in two small natural gas pipelines that serve power plants in Connecticut and also leases a liquefied natural gas plant that provides peaking gas in the Northeast and has an equity interest in an energy technology venture partnership;
- (l) The Union Water-Power Company, which provides energy services throughout New England and New York State;
- (m) Energy East Telecommunications, which owns fiber optic lines in central New York that it leases to retail communications companies;

(n) MaineCom Services, which owns fiber optic lines and provides telecommunications services in Maine; and

(o) Energetix, Inc. and NYSEG Solutions, Inc., which market electricity and natural gas services throughout upstate and central New York.

RGS, Berkshire Energy, CMP Group, Central Maine, Connecticut Energy, CTG Resources and Energy East Enterprises are all public utility holding companies exempt from all provisions of the Act except Section 9(a)(2). These companies are also referred to collectively as the "Intermediate Holding Companies."

4. Capital Structure of Energy East

Energy East is authorized under its Restated Certificate of Incorporation, as amended, to issue 300,000,000 shares of common stock, par value \$.01 per share and 10,000,000 shares of preferred stock, par value \$.01 per share. At December 31, 2004, Energy East had issued and outstanding 147,118,329 shares of common stock. Energy East's shares are listed on the New York Stock Exchange.

Energy East's consolidated capitalization (including short-term debt) at March 31, 2005 was as follows:

	Book Value (millions)	Percentage of Total (%)
Common Stock Equity*	2,832	41
Preferred Stock	47	1
Long-Term Debt	3,771	55
Short-Term Debt**	<u>182</u>	<u>3</u>
Total	6,832	100.0%

* Including minority interests.

** Including current portion of long-term debt.

Energy East's senior unsecured debt is currently rated BBB by Standard & Poor's Inc. ("S&P"), Baa2 by Moody's Investor Service ("Moody's") and BBB by Fitch IBCA Inc. ("Fitch"). To the extent it is rated, the senior unsecured debt of the Utility Subsidiaries is rated as follows:

	<u>S&P</u>	<u>Moody's</u>	<u>Fitch</u>
Central Maine	BBB+	A3	A-
NYSEG	BBB+	Baa1	BBB+
RG&E	BBB	Baa1	BBB
Connecticut Natural Gas	BBB+	A3	A-
Southern Connecticut Natural Gas	n/a	n/a	A-

The Intermediate Holding Companies do not currently have external debt.

II. Request for Financing Authority

A. Energy East External Financing

1. General

Energy East requests authorization to issue and sell common stock, preferred stock, preferred securities, equity-linked securities, options, warrants, purchase contracts, units (consisting of one or more purchase contracts, warrants, debt securities, shares of preferred stock, shares of common stock or any combination of these securities), long-term debt, subordinated debt, bank borrowings, securities with call or put options, and securities convertible into any of these securities.³ The aggregate amount of new financing obtained by Energy East during the Authorization Period (exclusive of short-term debt), through the issuance of securities, in each case valued at the time of issuance, shall not exceed \$3.9 billion outstanding at any one

³ Any convertible or equity-linked securities would be convertible into or linked only to common stock, preferred securities or unsecured debt securities that Energy East is otherwise authorized to issue directly or indirectly through a financing entity on behalf of Energy East.

time ("Energy East External Limit"),⁴ provided that securities issued for purposes of refunding or replacing other outstanding securities where Energy East's capitalization is not increased from that in place on December 31, 2004 shall not be counted against this limitation.⁵

In addition, Energy East requests authority to issue and sell from time to time, directly or indirectly through one or more financing subsidiaries, short-term debt, including commercial paper and bank borrowings, in an aggregate principal amount at any time outstanding during the Authorization Period not to exceed \$750 million ("Energy East Short-term Limit"), provided that securities issued for purposes of refunding or replacing other outstanding short-term debt securities where Energy East's capitalization is not increased shall not be counted against this limitation.

All securities issued by Energy East in accordance with the authorization requested, including, without limitation, securities issued for the purpose of refunding or retiring outstanding securities, will comply with the applicable financing parameters set forth below. Further, the aggregate principal amount of all indebtedness of Energy East issued and outstanding during the Authorization Period shall not exceed \$2.3 billion (the "Energy East Debt Limitation").

Energy East contemplates that securities will be issued and sold directly to one or more purchasers in privately-negotiated transactions or to one or more investment banking or

⁴ Because the limit applies only to securities issued and outstanding during the Authorization Period, when a security is issued during the Authorization Period and later redeemed or retired during the Authorization Period, the aggregate amount issued and outstanding under the limit is reduced and additional financing capacity under the limit is made available.

⁵ Any refunding or replacement of securities where capitalization is not increased will be through the issuance of securities of the type authorized by the Commission.

underwriting firms or other entities who will resell the securities without registration under the Securities Act of 1933, as amended ("1933 Act") in reliance upon one or more applicable exemptions from registration, or to the public either (a) through underwriters selected by negotiation or competitive bidding or (b) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers. If underwriters are used, the securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Securities may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by Energy East) or directly by one or more underwriters acting alone, or may be sold directly by Energy East or through agents designated by Energy East from time to time. If dealers are utilized, Energy East will sell the securities to the dealers, as principals. Any dealer may then resell the securities to the public at varying prices to be determined by the dealer at the time of resale. If common stock is being sold in an underwritten offering, Energy East may grant the underwriters a "green shoe" option permitting the purchase from Energy East at the same price additional shares then being offered solely for the purpose of covering over-allotments.

2. Common Stock

Energy East may issue and sell common stock, or options, warrants or other stock purchase rights exercisable for common stock, pursuant to underwriting agreements of a type generally standard in the industry. Public distributions may be pursuant to private negotiation with underwriters, dealers or agents, or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public

offerings to one or more persons. All common stock sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets. Energy East may also issue common stock or options, warrants or other stock purchase rights exercisable for common stock in public or privately-negotiated transactions as consideration for the equity securities or assets of other companies, provided that the acquisition of any equity securities or assets has been authorized in a separate proceeding or is exempt under the Act or the rules under the Act (*e.g.*, rule 58).⁶

Energy East also proposes to issue common stock and/or purchase shares of its common stock (either currently or under forward contracts) in the open market for purposes of (a) reissuing the shares at a later date pursuant to stock-based plans which are maintained for stockholders, employees and nonemployee directors or (b) managing its capital structure. Energy East may make open-market purchases of common stock in accordance with the terms of, or in connection with, the operation of the plans, or as part of a program to repurchase its securities generally. Stock repurchases would be conducted through open market transactions and could include the acquisition at arm's-length of Energy East common stock from institutional investors that may have an affiliate interest in Energy East.

Energy East currently has in effect certain stock based plans which authorize grants of its common stock, stock options and other stock-based awards to eligible employees and directors. Energy East may issue shares of its common stock under the authorization and within the limitations set forth herein in order to satisfy any of its obligations under all the plans and under plans which replace any plans currently in effect. Energy East requests authorization to

⁶ Energy East will value the equity issued in those circumstances in accordance with the agreement negotiated between the purchaser and the seller.

issue and/or sell shares of common stock pursuant to these existing and future stock plans and employee or director plans without any additional prior Commission order. The market value at the time of issuance of stock under stock-based compensation programs would count against the Energy East External Limit. Energy East common stock issued pursuant to an option would count against the Energy East External Limit at the time, if any, that the option is exercised.

Energy East also has a dividend reinvestment plan under which shares of its common stock may be issued to shareholders reinvesting cash dividends and/or making optional cash investments to purchase additional shares of common stock. Energy East seeks authority for the issuance and sale of its shares in accordance with its dividend reinvestment plan under the authorization and within the limitations set forth in the Application.

Energy East proposes to issue shares of its common stock under the authorization and within the limitations set forth in the Application in order to satisfy its obligations under each of these existing stock-based plans, as they may be amended or extended, and similar future plan funding arrangements adopted without any additional Commission order. Shares of common stock issued under these plans may either be newly issued shares, treasury shares or shares purchased in the open market. The market value of newly issued shares will be counted against the Energy East External Limit.

3. Preferred Stock, Preferred Securities and Equity-linked Securities

Energy East also proposes to issue and sell preferred stock directly and/or issue, indirectly through one or more financing subsidiaries, other forms of preferred securities (including, without limitation, trust preferred securities or monthly income preferred securities). Preferred stock and other forms of preferred securities may be issued in one or more

series with the rights, preferences, and priorities as may be designated in the instrument creating each the series, as determined by Energy East's board of directors, and may be convertible or exchangeable into shares of Energy East common stock or unsecured indebtedness. Dividends or distributions on the securities will be made periodically and to the extent funds are legally available for the purpose, but may be made subject to terms which allow the issuer to defer dividend payments for specified periods. Energy East may also issue and sell equity-linked securities in the form of stock purchase units, which combine a security with a fixed obligation (*e.g.*, preferred stock or debt) with a stock purchase contract that is exercisable (either mandatorily or at the option of the holder).⁷ The dividend or distribution rates, interest rates, redemption and sinking fund provisions, conversion features, if any, and maturity dates with respect to the preferred stock or other types of preferred securities and equity-linked securities of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by Energy East's board of directors, negotiation or competitive bidding.

Energy East contemplates that the preferred stock would be issued and sold directly to one or more purchasers in privately-negotiated transactions or to one or more investment banking or underwriting firms or other entities who would resell the preferred stock either without registration under the 1933 Act in reliance upon one or more applicable exemptions from registration, or to the public either (a) through underwriters selected by negotiation or competitive bidding or (b) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

⁷ Any convertible or equity-linked securities would be convertible into or linked only to common stock, preferred securities or unsecured debt securities that Energy East is otherwise authorized to issue directly or indirectly through a financing entity on behalf of Energy East.

4. Long-term Debt

Long-term debt would be unsecured and may be issued directly through a public or private placement or indirectly through one or more financing subsidiaries, in the form of notes, convertible notes, medium-term notes or debentures under one or more indentures, or long-term indebtedness under agreements with banks or other institutional lenders. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to the long-term debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding at the time of issuance.⁸

Energy East also requests authorization to issue and sell from time to time during the Authorization Period debentures in one or more series, subject to the Energy East Debt Limitation. The debentures (a) may be convertible into any other securities of Energy East, (b) will have maturities ranging from one to 50 years, (c) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof, (d) may be entitled to mandatory or optional sinking fund provisions, (e) may provide for reset of the coupon pursuant to a remarketing arrangement, and (f) may be called from existing investors by a third party. The debentures will be issued under an indenture to be entered into between Energy East and a national bank, as trustee.

Energy East contemplates that the debentures would be issued and sold directly to one or more purchasers in privately-negotiated transactions or to one or more investment banking or

⁸ Any convertible debt issued by Energy East would be convertible only into common stock, preferred securities or unsecured debt securities that Energy East is otherwise authorized to issue directly or indirectly through a financing entity on behalf of Energy East.

underwriting firms or other entities which would resell the debentures either without registration under the 1933 Act in reliance upon one or more applicable exemptions from registration or to the public either (a) through underwriters selected by negotiation or competitive bidding or (b) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to the debentures of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding and reflected in a purchase agreement or underwriting agreement setting forth the terms; provided, however, that debentures issued by Energy East shall be subject to the financing parameters set forth below.

5. Short-term Debt

Energy East proposes to issue and sell from time to time, directly or indirectly through one or more financing subsidiaries, unsecured short-term debt, in the form of commercial paper, notes issued to banks and other institutional lenders, and other forms of short-term indebtedness, in an aggregate principal amount at any time outstanding during the Authorization Period not to exceed the Energy East Short-term Limit. Unused borrowing capacity under a credit facility would not count towards the Energy East Short-term Limit. Short-term borrowings under credit lines will have maturities of a year or less from the date of each borrowing.

Commercial paper issued under any commercial paper facility would be sold, directly or indirectly through one or more financing subsidiaries, in established U.S. or European commercial paper markets. Commercial paper would typically be sold to dealers at the discount

rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper would re-offer it at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. It is anticipated that the commercial paper would be reoffered to investors such as commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, finance companies and non-financial corporations.

Energy East also may establish bank lines in an aggregate principal amount not to exceed the aforementioned Energy East Short-term Limit. While the agreements may be for periods of three to five years or more, loans under these bank credit lines are expected to have maturities not more than one year from the date of each borrowing. Energy East may engage in other types of short-term debt financing generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

6. Utility Subsidiary Financing

Applicants state that the issue and sale of most securities by the Utility Subsidiaries will be exempt from the pre-approval requirements of sections 6(a) and 7 of the Act pursuant to rule 52(a), as most securities offerings by a Utility Subsidiary must be approved by the state utility commission with jurisdiction over the utility. However, certain financings by the Utility Subsidiaries for which authorization is requested in the Application may be outside the scope of the rule 52 exemption because they will not be subject to state commission approval.

Accordingly, the Utility Subsidiaries request authorization to issue and sell from time to time during the Authorization Period, directly or indirectly through one or more financing

subsidiaries, short-term debt, in the form of commercial paper, notes issued to banks and other institutional lenders, and other forms of short-term indebtedness⁹ to the extent they are not otherwise exempt pursuant to rule 52(a), with maturities of one year or less, up to the following aggregate principal amounts:

Utility Subsidiaries	Aggregate Principal Amount
NYSEG	\$275,000,000
Maine Natural Gas	50,000,000
Central Maine	150,000,000
MEPCo	30,000,000
NORVARCO	30,000,000
Southern Connecticut Gas	125,000,000
Connecticut Natural Gas	125,000,000
Berkshire Gas	50,000,000
RG&E	200,000,000

7. Short-Term Debt of Intermediate Holding Companies

Two of the Intermediate Holding Companies, Connecticut Energy and Berkshire Energy, historically have had short-term debt outstanding under bank credit facilities, although Applicants state that no debt securities issued to non-system companies are currently outstanding. Connecticut Energy and Berkshire Energy request authority to issue, sell and have outstanding at any one time during the Authorization Period unsecured short-term debt to Energy East or to third party lenders under credit facilities in amounts at any one time outstanding not to exceed \$25 million and \$10 million, respectively.

In addition, RGS requests authority to issue, sell and have outstanding at any one time during the Authorization Period unsecured short-term debt securities with maturities of one year or less in the aggregate principal amount of \$100 million. Subject to those limitations and

⁹ For example, Central Maine's borrowings are secured by an unperfected lien on receivables. The Utility Subsidiaries request the flexibility to issue short-term debt secured by their accounts

pursuant to the terms and conditions set forth in the application, RGS may engage in short-term financing as it may deem appropriate in light of its needs and market conditions at the time of issuance. The short-term financing could include, without limitation, commercial paper sold in established commercial paper markets in a manner similar to Energy East, bank lines, debt securities issued under indentures, or note programs. In addition, RGS will not issue any indebtedness in contravention of any pre-existing orders of any state utility commission.

The Intermediate Holding Companies also request authorization to issue and sell their securities to Energy East and to acquire the securities of their direct or indirect subsidiaries for the purpose of financing the current or future authorized or permitted businesses of the subsidiaries.

8. Non-utility Subsidiary Financing

Energy East, through its Non-utility Subsidiaries, is engaged in and expects to continue to engage in energy-related, telecommunications or otherwise functionally related, non-utility businesses, which include, principally, fuel transportation and storage, energy marketing, energy management and demand side services, district heating and cooling, and investments in exempt wholesale generators as defined in section 32 of the Act (“EWGs”), exempt telecommunications companies (“ETCs”) and "qualifying facilities" (“QFs”) within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended (“PURPA”). To finance investments in these competitive businesses, it will be necessary for the Non-utility Subsidiaries to have the ability to engage in financing transactions which are commonly accepted for these types of investments.

receivable.

Applicants believe that, in almost all cases, the financings will be exempt from prior Commission authorization pursuant to rule 52(b).

To be exempt under rule 52(b), any loans by Energy East to a Non-utility Subsidiary or by one Non-utility Subsidiary to another must have interest rates and maturities that are designed to parallel the lending company's effective cost of capital. However, in the limited circumstances where the borrowing Non-utility Subsidiary is not wholly-owned by Energy East directly or indirectly, Applicants request authority for Energy East or a Non-utility Subsidiary, as the case may be, to make loans to the subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. If the loans are made to a Non-utility Subsidiary, the company will not sell any services to any associate Non-utility Subsidiary unless the associated purchaser falls within one of the categories of companies to which goods and services may be sold on a basis other than "at cost."

9. Guaranties

a. Energy East Guaranties

Energy East requests authorization to enter into guaranties, obtain letters of credit, enter into expense agreements or otherwise provide credit support to or on behalf of Subsidiaries (collectively, "Energy East Guaranties") as may be appropriate to enable the Subsidiaries to operate in the ordinary course of business, in an aggregate principal amount not to exceed \$1 billion issued and outstanding at any one time during the Authorization Period, provided however, that the amount of any Energy East Guaranties in respect of obligations of any EWG, foreign utility company as defined in section 33 of the Act ("FUCO"), or a company engaged or formed to engage in activities permitted by rule 58 ("Rule 58 Subsidiary") shall also be subject to the limitations of rule 53(a)(1) or rule 58(a)(1), as applicable. Energy East may charge each

Subsidiary a fee for each guaranty provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the guaranty (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses).

b. Non-utility Subsidiary Guaranties

In addition to the guaranties that may be provided by Energy East, as described above, the Non-utility Subsidiaries¹⁰ request authorization to enter into guaranties, obtain letters of credit, enter into expense agreements or otherwise provide credit support to or on behalf of other Non-utility Subsidiaries (collectively, "Non-utility Subsidiary Guaranties") in an aggregate principal amount not to exceed \$750 million issued and outstanding at any one time during the Authorization Period, exclusive of any guaranties and other forms of credit support that are exempt pursuant to rule 45(b) and rule 52, provided that the amount of any Non-utility Subsidiary Guaranties in respect of obligations of any Rule 58 Subsidiary shall also be subject to the limitations of rule 58(a)(1). The Non-utility Subsidiary providing this credit support proposes to charge each Subsidiary a fee for each guarantee provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the guaranty.

c. Intermediate Holding Company Guaranties

CTG Resources, an Intermediate Holding Company, has provided guaranties and other forms of credit support on behalf of its subsidiaries. Specifically, CTG Resources has guaranteed \$40 million of promissory notes issued by a non-utility subsidiary, TEN Companies, that will mature in 2009 (\$25 million) and 2010 (\$15 million). CTG Resources has also provided guaranties totaling approximately \$40.7 million for other financial and contractual obligations of TEN Companies. These include letters of credit totaling \$25.7 million backing

¹⁰ Excluding CTG Resources and RGS.

development authority bonds and other similar contractual obligations of TEN Companies that expire at various times not later than 2025. CTG Resources requests authorization to maintain and replace as necessary these guaranties and other forms of credit support ("CTG Resources Guaranties") during the Authorization Period and thereafter for so long as the underlying obligations of any subsidiary shall remain outstanding in an aggregate amount not to exceed \$100 million.

In addition, RGS requests authorization to enter into guaranties, obtain letters of credit, enter into expense agreements or otherwise provide credit support to or on behalf of its subsidiary companies ("RGS Guaranties") as may be appropriate to enable the companies to operate in the ordinary course of business, in an aggregate principal amount not to exceed \$100 million at any one time outstanding during the Authorization Period.

The amount of CTG Resources Guaranties and RGS Guaranties would not count against the limit applied to Non-utility Subsidiary Guaranties. The amount of any guaranties in respect of obligations of any Rule 58 subsidiary shall also be subject to the limitations of rule 58(a)(1). Each guarantor may charge its subsidiaries a fee for each guaranty or other form of credit support provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform under the obligation (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses).

10. Hedging Transactions

Energy East proposes to enter into, perform, purchase and sell financial instruments intended to manage the volatility of currencies and interest rates, including but not limited to currency and interest rate swaps, caps, floors, collars and forward agreements or any other similar agreements ("Hedging Instruments"). Energy East would employ Hedging Instruments

as a means of prudently managing the risk associated with any of its outstanding or anticipated debt by, for example, synthetically (a) converting variable rate debt to fixed rate debt, (b) converting fixed rate debt to variable rate debt, (c) limiting the impact of changes in interest rates resulting from variable rate debt, and (d) providing an option to enter into interest rate swap transactions in future periods for planned issuances of debt securities.

Energy East proposes to enter into Hedging Instruments with respect to anticipated debt offerings (“Anticipatory Hedges”) in order to fix and/or limit the interest rate or currency exchange rate risk associated with any new issuance. In addition to the use of Hedging Instruments, Anticipatory Hedges may include (a) a forward sale of exchange-traded government securities¹¹ futures contracts, government securities and/or a forward swap (each a “Forward Sale”), (b) the purchase of put options on government securities (“Put Options Purchase”), (c) a Put Options Purchase in combination with the sale of call options on government securities (“Zero Cost Collar”), (d) transactions involving the purchase or sale, including short sales, of government securities, or (e) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges. Energy East may seek to hedge its exposure to currency fluctuations through currency swaps or options and forward exchange or similar transactions.

Hedging Instruments and instruments used to affect Anticipatory Hedges will be executed on-exchange (“On-Exchange Trades”) with brokers through the opening of futures and/or options positions, the opening of over-the-counter positions with one or more counterparties

¹¹ Government Securities would include U.S. Treasury obligations or the appropriate government benchmark security for the currency involved in the hedge.

(“Off-Exchange Trades”), or a combination of On-Exchange Trades and Off-Exchange Trades. Energy East will determine the optimal structure of each transaction at the time of execution. Off-Exchange Trades would be entered into only with Intermediate Companies or with counterparties whose senior debt ratings are investment grade as determined by S&P, Moody's or Fitch (“Approved Counterparties”).

The Utility Subsidiaries, to the extent the securities are not exempt under rule 52(a), also propose to enter into Hedging Instruments with third-party Approved Counterparties, but not other Energy East System companies, on the same terms generally applicable to Energy East. The Utility Subsidiaries expect to use the authority principally to hedge external debt. Energy East maintains a central treasury department whose activities are governed by policies and guidelines approved by the Board of Directors, with regular reviews and monitoring by a standing committee of the Board. The treasury department operates as a service center rather than as a profit center and is subject to internal and external audit. Treasury activities are managed in a non-speculative manner and all transactions in Hedging Instruments would be matched to an underlying business purpose. Consequently, Energy East and the Utility Subsidiaries would not enter into transactions in Hedging Instruments for speculative purposes or to finance businesses that are not permitted, authorized or exempt under the Act. Energy East will qualify transactions in Hedging Instruments for hedge-accounting treatment under generally accepted accounting principles in the U.S. No gain or loss on a Hedging Instrument entered into by Energy East or associated tax effects, will be allocated to the Utility Subsidiaries, regardless

of the accounting treatment accorded to the transaction. Consequently, the Utility Subsidiaries would not be adversely affected by these transactions.¹²

11. Changes in Capital Stock of Subsidiaries

Applicants state that the portion of an individual Subsidiary's aggregate financing to be effected through the sale of stock to Energy East or other intermediate parent company during the Authorization Period pursuant to rule 52 and/or pursuant to an order issued in regard to the Application cannot be ascertained at this time. It may happen that the proposed sale of capital securities may in some cases exceed the then authorized capital stock of the Subsidiary. In addition, the Subsidiary may choose to use capital stock with no par value. Also, a wholly-owned Subsidiary may wish to engage in a reverse stock split to reduce franchise taxes. As needed to accommodate the proposed transactions and to provide for future issues, Applicants request authority to change any wholly-owned Subsidiary's authorized capital stock capitalization by an amount deemed appropriate by Energy East or other intermediate parent company. A Subsidiary would be able to change the par value, or change between par value and no-par stock, without additional Commission approval. Any action by a Utility Subsidiary would be subject to and would only be taken upon the receipt of any necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business.

¹² The terms applicable to Hedging Instruments entered into by the Utility Subsidiaries differ from those applicable to Energy East because to the extent a Utility Subsidiary incurs a gain or loss on a Hedging Instrument that it has entered into to hedge a currency or interest rate risk associated with a security that the Utility Subsidiary has issued, the gain or loss would be attributed to the Utility Subsidiary.

12. Financing Subsidiaries

Energy East and the Subsidiaries (other than Intermediate Holding Companies) request authority to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships or other entities ("Financing Subsidiaries") created specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of companies through the issuance of long-term debt or equity securities, including but not limited to monthly income preferred securities, to third parties. Any Financing Subsidiary may loan, dividend or otherwise transfer the proceeds of the financings to its parent or to other Subsidiaries, provided, however, that a Financing Subsidiary of a Utility Subsidiary will dividend, loan or transfer proceeds of financing only to the Utility Subsidiary. Energy East may, if required, guaranty or enter into expense agreements in respect of the obligations of any Financing Subsidiary that it organizes. The Subsidiaries may also provide guaranties and enter into expense agreements, if required, on behalf of any Financing Subsidiaries which they organize pursuant to rules 45(b)(7) and 52, as applicable. The amount of securities issued by a Financing Subsidiary would count against the limitation applicable to its parent for the securities, as if the parent company had issued the securities directly. In that case, however, the guaranty by the parent of the security issued by its Financing Subsidiary would not be counted against the limitations on Energy East Guaranties, CTG Resources or RGS Guaranties, or Non-utility Subsidiary Guaranties, as the case may be.

13. Intermediate Subsidiaries

Energy East requests authorization to acquire, directly or indirectly, the securities of one or more Intermediate Subsidiaries, which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or

more EWG, FUCO, Rule 58 Subsidiary, ETC or other Non-utility Subsidiary (as authorized by the Commission or permitted under the Act), provided that Intermediate Subsidiaries may also engage in development activities ("Development Activities") and administrative activities ("Administrative Activities"), as described below, relating to the subsidiaries. To the extent the transactions are not exempt from the Act or otherwise authorized or permitted by rule, regulation or order of the Commission, Energy East requests authority for Intermediate Subsidiaries to provide management, administrative, project development and operating services to the entities. The services may be rendered at fair market prices to the extent they qualify for any of the exceptions from the "at cost" standard requested below.

Development Activities will be limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal "hosts," fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the acquisition of securities of or interests in new businesses. Intermediate Subsidiaries request authority to expend up to \$100 million during the Authorization Period on all Development Activities.

Administrative Activities will include ongoing personnel, accounting, engineering, legal, financial, and other support activities necessary to manage Energy East's investments in Non-utility Subsidiaries.

Applicants state that there are several legal and business reasons for the use of special-purpose intermediate companies in connection with making investments in EWGs and FUCOs, Rule 58 Subsidiaries, ETCs and other Non-utility Subsidiaries. For example, the formation and acquisition of special-purpose subsidiaries is often necessary or desirable to facilitate financing the acquisition and ownership of a FUCO, an EWG or another non-utility enterprise.

Furthermore, the laws of some foreign countries may require that the bidder in a privatization program be organized in that country. In such cases, it may be necessary to form a foreign subsidiary as the entity (or participant in the entity) that submits the bid or other proposal.

An Intermediate Subsidiary may be organized, among other things, (a) to facilitate the making of bids or proposals to develop or acquire an interest in any EWG or FUCO, Rule 58 Subsidiary, ETC or other Non-utility Subsidiary; (b) after the award of a bid proposal, in order to facilitate closing on the purchase or financing of the acquired company; (c) at any time subsequent to the consummation of an acquisition of an interest in any company in order, among other things, to effect an adjustment in the respective ownership interests in the business held by Energy East and non-affiliated investors; (d) to facilitate the sale of ownership interests in one or more acquired non-utility companies; (e) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (f) as a part of tax planning in order to limit Energy East's exposure to state, U.S. and foreign taxes; (g) to further insulate Energy East and the Utility Subsidiaries from operational or other business risks that may be associated with investments in non-utility companies; or (h) for other lawful business purposes.

Investments in Intermediate Subsidiaries may take the form of any combination of the following: (a) purchases of capital shares, partnership interests, member interests in limited

liability companies, trust certificates or other forms of equity interests; (b) capital contributions; (c) open account advances with or without interest; (d) loans; and (e) guaranties issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries or new Subsidiaries. Funds for any direct or indirect investment in any Intermediate Subsidiaries or new Subsidiaries will be derived from (x) financings authorized in this proceeding; (y) any appropriate future debt or equity securities issuance authorization obtained by Energy East from the Commission; and (z) other available cash resources, including proceeds of securities sales by a Non-utility Subsidiary pursuant to rule 52. To the extent that Energy East provides funds or guaranties directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any EWG, FUCO or a Rule 58 Subsidiary, the amount of funds or guaranties will be included in Energy East's "aggregate investment," as calculated in accordance with rule 53 or rule 58, as applicable.

Energy East may determine from time to time to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in Non-utility Subsidiaries, and the activities and functions related to the investments, under a company, including one or more Intermediate Subsidiaries. To effect any consolidation or other reorganization, Energy East may wish to either contribute the equity securities of one Non-utility Subsidiary to another company or sell (or cause a Non-utility Subsidiary to sell) the equity securities of one Non-utility Subsidiary to another company. To the extent that these transactions are not otherwise exempt under the Act or its rules, Energy East is requesting authorization to consolidate or otherwise reorganize under one or more direct or indirect subsidiaries its ownership interests in existing and future Non-utility Subsidiaries. Transactions may take the form of a sale, contribution or transfer of the securities of a Non-utility Subsidiary as a dividend to a company and the

acquisition by a company of securities either by purchase or by receipt of a dividend. The purchasing company in any transaction structured as an intra-system sale of equity securities may execute and deliver its promissory note evidencing all or a portion of the consideration given. Each transaction would be carried out in compliance with all applicable U.S. or foreign laws and accounting requirements, and any transaction structured as a sale would be carried out for a consideration equal to the book value of the equity securities being sold. Energy East will report each transaction in the next quarterly certificate filed pursuant to rule 24 in this proceeding, as described below.

14. Investments in Energy-Related Assets

Non-utility Subsidiaries request authority to acquire or construct in one or more transactions from time to time during the Authorization Period, non-utility energy assets in the United States, including, without limitation, natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities (collectively, "Energy-Related Assets"), that would be incidental to the energy marketing, brokering and trading operations of Energy East's Subsidiaries. Non-utility Subsidiaries request authorization to invest up to \$500 million ("Investment Limitation") during the Authorization Period in Energy-Related Assets or in the equity securities of existing or new companies substantially all of whose physical properties consist or will consist of Energy-Related Assets. Energy-Related Assets (or equity securities of companies owning Energy-Related Assets) may be acquired for cash or in exchange for Common Stock or other securities of Energy East or a Non-utility Subsidiary of Energy East, or any combination of the foregoing. If Common Stock of Energy East is used as consideration in connection with any acquisition, the market value on the date of issuance will be counted against the requested Investment

Limitation. The stated amount or principal amount of any other securities issued as consideration in any transaction will also be counted against the Investment Limitation. Under no circumstances will any Non-utility Subsidiary acquire, directly or indirectly, any assets or properties the ownership or operation of which would cause the company to be considered an "electric utility company" or "gas utility company" as defined under the Act.

Energy East may add to the existing base of non-utility, marketing-related assets held by its subsidiaries as and when market conditions warrant, whether through acquisitions of specific assets or groups of assets that are offered for sale, or by acquiring existing companies (for example, other gas marketing companies which own significant physical assets in the areas of gas production, processing, storage, and transportation).

15. Sales of Services and Goods Among Non-utility Subsidiaries

Energy East's Non-utility Subsidiaries request authorization to provide services and sell goods to each other at fair market prices determined without regard to cost, and request an exemption (to the extent that rule 90(d) does not apply) pursuant to section 13(b) from the cost standards of rules 90 and 91 applicable to the transactions, in any case in which the Non-utility Subsidiary purchasing the goods or services is:

- a FUCO or foreign EWG which derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;
- an EWG which sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission ("FERC"), provided that the purchaser is not one of the Utility Subsidiaries;
- a QF that sells electricity exclusively (a) at rates negotiated at arms'-length to one or more industrial or commercial customers purchasing electricity for their own use and not for resale,

and/or (b) to an electric utility company (other than a Utility Subsidiary) at the purchaser's "avoided cost" as determined in accordance with the regulations under PURPA;

- a domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser thereof is not one of the Utility Subsidiaries; or
- a Rule 58 Subsidiary or any other Non-utility Subsidiary that (a) is partially-owned by Energy East, provided that the ultimate purchaser of the goods or services is not a Utility Subsidiary service company (or any other entity that Energy East may form whose activities and operations are primarily related to the provision of goods and services to the Utility Subsidiaries), (b) is engaged solely in the business of developing, owning, operating and/or providing the services or goods to Non-utility Subsidiaries described above, or (c) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public-utility company operating within the United States.

16. Activities of Rule 58 Subsidiaries Within and Outside the United States

Energy East, on behalf of any current or future Rule 58 Subsidiaries, requests authority to engage in business activities permitted by rule 58 both within and outside the United States, including:

- the brokering and marketing of electricity, natural gas and other energy commodities ("Energy Marketing");
- energy management services ("Energy Management Services"), including the marketing, sale, installation, operation and maintenance of various products and services related to energy management and demand-side management, including energy and efficiency audits; facility design and process control and enhancements; construction, installation, testing, sales and

maintenance of (and training client personnel to operate) energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies, design and specification of energy consuming equipment; and general advice on programs; the design, construction, installation, testing, sales and maintenance of new and retrofit heating, ventilating, and air conditioning, electrical and power systems, alarm and warning systems, motors, pumps, lighting, water, water-purification and plumbing systems, and related structures, in connection with energy-related needs; and the provision of services and products designed to prevent, control, or mitigate adverse effects of power disturbances on a customer's electrical systems; and

- engineering, consulting and other technical support services ("Consulting Services") with respect to energy-related businesses, as well as for individuals. Consulting Services would include technology assessments, power factor correction and harmonics mitigation analysis, meter reading and repair, rate schedule design and analysis, environmental services, engineering services, billing services (including consolidation billing and bill disaggregation tools), risk management services, communications systems, information systems/data processing, system planning, strategic planning, finance, feasibility studies, and other similar services.

Applicants state that these investments would count against the rule 58 limit.

In regard to: (a) Energy Marketing activities outside the United States and Canada, (b) the provision of Energy Management Services and Consulting Services anywhere outside the United States, and (c) other activities of Rule 58 Subsidiaries outside the United States, Energy East requests that the Commission continue to reserve jurisdiction over these activities pending completion of the record.

B. Payment of Dividends

1. Payment of Dividends by Energy East, the Intermediate Holding Companies and the Utility Subsidiaries

Energy East, the Intermediate Holding Companies (other than Energy East Enterprises), and Central Maine, Southern Connecticut Gas, Connecticut Natural Gas and Berkshire Gas propose during the Authorization Period: (a) to pay dividends out of capital and unearned surplus in an amount equal to retained earnings prior to their respective mergers with Energy East, and (b) to pay dividends out of earnings before any amortization of intangibles recognized as a result of their respective mergers, and any impairment of either goodwill or other intangibles recognized as a result of the merger.¹³

Applicants state that the requested dividend relief is an important tool for managing capital structures and it helps to prevent excessive equity levels. Applicants cite the example of a state commission deciding to reduce a Utility Subsidiary's amount of equity that will earn an equity return. In that case, it would be contrary to the interests of investors to maintain a higher level of equity and appropriate to reduce equity levels through dividends to the level on which earnings may accrue. In another example, a company's sale of assets may give rise to surplus capital and the need to pay dividends out of capital to re-balance the capital structure of the company. Finally, Applicant's note that periodic goodwill impairment tests may result in a goodwill impairment charge that would reduce retained earnings. This type of non-cash charge

¹³ Applicants are asking for an extension of the authority that the Commission has previously granted them. See HCAR No. 35-27228 (September 12, 2000) and HCAR No. 35-27643 (January 28, 2003). Applicants state that, although not a frequent occurrence, companies in the Energy East group have found it appropriate to pay dividends out of capital from time to time since the receipt of this authority.

does not affect operating cash flows and Applicants state that it still may be appropriate to pay a dividend out of capital.

Applicants state that because the Utility Subsidiaries would not pay dividends out of capital if the payments would reduce equity levels below 30%, or any higher levels required by state utility commission regulation, that the requested dividend authority is not adverse to the interests of investors or consumers. In addition, Energy East, the Intermediate Holding Companies and the Utility Subsidiaries represent that they will not declare or pay any dividend out of capital or unearned surplus in contravention of any law restricting the payment of dividends. In this regard, Applicants note that all U.S. jurisdictions limit to some extent the authority of corporations to make dividend distributions to shareholders. Most state corporation statutes contain either or both an equity insolvency test or some type of balance sheet test. Energy East, the Intermediate Holding Companies and the Utility Subsidiaries also will comply with the terms of any credit agreements and indentures that restrict the amount and timing of distributions to shareholders.

2. Payment of Dividends by Certain Non-utility Subsidiaries

Energy East requests authorization, on behalf of its current and future Non-utility Subsidiaries, permitting the companies to pay dividends or to redeem securities (collectively, a “Dividend”), from time to time through the Authorization Period, out of capital and unearned surplus.

Energy East anticipates that there may be situations in which one or more Non-utility Subsidiaries will have unrestricted cash available for distribution in excess of the company's current and retained earnings. In that situation, the declaration and payment of a Dividend would

have to be charged, in whole or in part, to capital or unearned surplus. As an example, if an Intermediate Subsidiary of Energy East were to purchase all of the stock of an EWG or FUCO and, following the acquisition, the EWG or FUCO incurs non-recourse borrowings, some or all of the proceeds of which are distributed to the Intermediate Subsidiary as a reduction in the amount invested in the EWG or FUCO (*i.e.*, return of capital), the Intermediate Subsidiary (assuming it has no earnings) could not, without the Commission's approval, in turn distribute the cash to Energy East or its immediate parent.¹⁴

Similarly, Applicants state that using the same example, if an Intermediate Subsidiary, following its acquisition of all of the stock of an EWG or FUCO, were to sell part of that stock to a third party for cash, the Intermediate Subsidiary would again have substantial unrestricted cash available for distribution, but (assuming no profit on the sale of the stock) would not have current earnings and therefore could not, without the Commission's approval, declare and pay a Dividend to its parent out of the cash proceeds.

Further, Applicants state that there may be periods during which unrestricted cash available for distribution by a Non-utility Subsidiary exceeds current and retained earnings due to the difference between accelerated depreciation allowed for tax purposes, which may generate significant amounts of distributable cash, and depreciation methods required to be used in determining book income.

Finally, Applicants state that even under circumstances in which a Non-utility Subsidiary has sufficient earnings, and therefore may declare and pay a Dividend to its immediate parent,

¹⁴ The same problem would arise where an Intermediate Subsidiary is over-capitalized in anticipation of a bid which is ultimately unsuccessful. In such a case, Energy East would normally desire a return of some or all of the funds invested.

the immediate parent may have negative retained earnings, even after receipt of the Dividend, due to losses from other operations. In this instance, cash would be trapped at a subsidiary level where there is no current need for it.

Energy East, on behalf of its Non-utility Subsidiaries, represents that these companies will not declare or pay any Dividend out of capital and unearned surplus, except as permitted under the corporate law and state or national law applicable in the jurisdiction where each company is organized and the terms of any credit agreements and indentures that restrict the amount and timing of distributions to shareholders. In addition, none of the companies will declare or pay any Dividend out of capital or unearned surplus unless it: (a) has received excess cash as a result of the sale of some or all of its assets; (b) has engaged in a restructuring or reorganization; and/or (c) is returning capital to an associate company.

III. Financing Parameters

A. General Terms and Conditions of Financing

Applicants request authorization to engage in financing transactions during the Authorization Period for which the specific terms and conditions are not at this time known, and which may not be exempt under rule 52, without further prior approval by the Commission. The following general terms will be applicable to the proposed external financing activities (including, without limitation, securities issued for the purpose of refinancing or refunding outstanding securities of the issuer):

1. Effective Cost of Capital

The effective cost of capital for long-term debt, preferred stock, preferred securities, and equity-linked securities issued by Energy East, the Utility Subsidiaries and the Non-utility Subsidiaries will not exceed competitive market rates available at the time of issuance for

securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that in no event will the effective cost of capital on (a) any long-term debt securities exceed at the time of issuance 500 basis points over comparable term U.S. Treasury securities or other government benchmark for the currency concerned (“Treasury Securities”); or (b) any short-term debt securities exceed at the time of issuance 300 basis points over the London Interbank Offered Rate. The dividend and distribution rate on any series of preferred stock, preferred securities or equity-linked securities will not exceed at the time of issuance 700 basis points over Treasury Securities. Applicants request that the Commission reserve jurisdiction over issuances of long-term debt, short-term debt, preferred stock, preferred securities and equity-linked securities by Energy East, the Utility Subsidiaries and the Non-utility Subsidiaries, other than transactions exempt under the Act or any rule thereunder, where the cost of capital is in excess of the limits stated above but is not more than competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality, until the record is complete with regard to such issuances.

2. Maturity

The maturity of long-term debt will be more than one year but not longer than 50 years after the issuance thereof. Preferred securities and equity-linked securities will be redeemed no later than 50 years after the issuance thereof, unless converted into common stock; however, preferred stock issued directly by Energy East may be perpetual in duration. Short-term debt will have a maturity of up to one year.

3. Commissions

The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities pursuant to the Application (not including any original issue discount) will not exceed 5% of the principal or total amount of the securities being issued.

4. Common Equity

Energy East will maintain common stock equity¹⁵ as a percentage of total consolidated capitalization,¹⁶ as shown in its most recent quarterly balance sheet of at least 30%.¹⁷ Each Utility Subsidiary and Intermediate Holding Company on an individual basis (except NORVARCO),¹⁸ will maintain common stock equity of at least 30% of total capitalization as shown in each company's most recent quarterly balance sheet.

5. Investment Grade Criteria

Applicants represent that with respect to the securities issuance authority proposed in this application: (a) within four days after the occurrence of a Ratings Event,¹⁹ Applicants will notify

¹⁵ Common stock equity includes common stock (i.e., amounts received equal to the par or stated value of the common stock), additional paid-in capital, retained earnings and minority interests.

¹⁶ Applicants will calculate the common stock equity to total capitalization ratio as follows: common stock equity/common stock equity + preferred stock + gross debt. Gross debt is the sum of the long-term debt, short-term debt and current maturities.

¹⁷ Energy East will be able to issue common stock (including pursuant to stock-based plans maintained for shareholders, employees and management) to the extent authorized in a Commission order issued pursuant to the Application.

¹⁸ NORVARCO owns a 50% interest in a partnership that owns a transmission line and is wholly capitalized with debt to minimize the cost of the transmission facility.

¹⁹ A "Ratings Event" will occur if, during the Authorization Period (a) any security issued by Applicants upon original issuance, if rated, is rated below investment grade; and (b) any

the Commission of its occurrence (by means of a letter, via fax, email or overnight mail to the Office of Public Utility Regulation); and (b) within 30 days after the occurrence of a Ratings Event, Applicants will submit a post-effective amendment to the Application explaining the material facts and circumstances relating to that Ratings Event (including the basis on which, taking into account the interests of investors, consumers and the public as well as other applicable criteria under the Act, it remains appropriate for Applicant(s) to issue the securities for which authorization has been requested in this Application, so long as Applicant(s) continue to comply with the other applicable terms and conditions specified in the Commission's order authorizing the transactions requested in the Application). Furthermore, no securities authorized as a result of this Application other than common stock or short-term debt to fund the Utility Subsidiaries, will be issued following the 60th day after a Ratings Event if the downgraded rating(s) has or have not been upgraded to investment grade. Applicants request that the Commission reserve jurisdiction over the issuance of any securities (other than common stock or short-term debt to fund the Utility Subsidiaries) that Applicants are prohibited from issuing following the 60th day after a Ratings Event until the record is complete with regard to the issuance.

No security will be issued pursuant to the authorization sought herein after the last day of the Authorization Period, provided that securities issuable or deliverable upon exercise or conversion of, or in exchange for, securities which were issued during the Authorization Period, may be issued or delivered subsequent to the end of the Authorization Period.

outstanding security of Applicants that is rated is downgraded below investment grade. For purposes of this provision, a security will be deemed to be rated "investment grade" if it is rated investment grade by at least one nationally recognized statistical rating organization as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3-1 under the Securities Exchange Act of 1934, as amended ("1934 Act").

B. Use of Proceeds

The financing proceeds will be used for general corporate purposes, including: (a) financing investments by and capital expenditures of Energy East and its Subsidiaries, including, the funding of future investments in EWGs, FUCOs, Rule 58 Subsidiaries, and ETCs, (b) the repayment, redemption, refunding or purchase by Energy East or any Subsidiary of any of its own securities; and (c) financing working capital requirements of Energy East and its Subsidiaries. Energy East represents that no financing proceeds will be used to acquire the securities of, or other interests in, any company unless the acquisition has been approved by the Commission in this proceeding or in a separate proceeding or in accordance with an available exemption under the Act or its rules, including sections 32 and 33 and rule 58.

Energy East states that the aggregate amount of the proceeds of any financing and Energy East guaranties approved by the Commission in this proceeding that are used to fund investments in EWGs and FUCOs will not, when added to Energy East's "aggregate investment" (as defined in rule 53) in all such entities at any point in time, exceed 50% of Energy East's "consolidated retained earnings" (also as defined in rule 53). Furthermore, Energy East represents that the proceeds of any financing and Energy East Guaranties and Non-utility Subsidiary Guaranties utilized to fund investments in Rule 58 Subsidiaries will be subject to the limitations of that rule.

IV. Retention of Intermediate Holding Companies

Energy East requests that the Commission extend the authorization to maintain its Intermediate Holding Companies within the Energy East system on a permanent basis. Applicants state that section 11(b)(2) of the Act is intended to eliminate the pyramiding of holding company groups – the interposition of one or more holding companies between the

uppermost holding company and the operating companies – and the issuance, at each level of the structure, of different classes of debt or stock with unequal voting rights. The only Intermediate Holding Company which itself has a subsidiary company which is a holding company is CMP Group. Therefore, Applicants assert that the provisions of section 11(b)(2) are not triggered by Energy East's ownership of CTG Resources, Berkshire Energy, Connecticut Energy and Energy East Enterprises.

Applicants state that although CMP Group does have a subsidiary which itself is a holding company the retention of CMP Group also does not implicate the abuses that section 11(b)(2) was designed to address. CMP Group is the parent of Central Maine, which is itself a public utility. As a public utility, Central Maine is regulated by the Maine Public Utilities Commission and the Federal Energy Regulatory Commission. Central Maine is a holding company with respect to two partially-owned special purpose subsidiaries: MEPCo, and, indirectly, Chester, a subsidiary of NORVARCO. These utility subsidiaries were organized to own specific transmission facilities in Maine jointly with unaffiliated public utilities. Central Maine and its utility subsidiaries were not established and are not currently maintained by Energy East a device to further the unfair distribution of voting control or an unnecessarily complicated capital structure. Given Central Maine's primary role as a public utility company Applicants assert that it is appropriate to view CMP Group in the same light as CTG Resources, Berkshire Energy, Connecticut Energy and Energy East Enterprises.²⁰ These companies do not serve as a means to diffuse control, but rather are being maintained for the purpose of helping Energy East capture economic efficiencies that might otherwise be lost. For example, the

²⁰ Under 35-A M.R.S.A. §708, Energy East would need the authorization of the Maine Public Utilities Commission to effect a restructuring that would result in the elimination of CMP Group.

continued existence of each company will contribute to shareholder value by allowing efficiencies to be captured and to the effective local regulation of the operating utility subsidiaries by preserving local name recognition, operations and supervision. It also provides maximum separation of utility and non-utility ventures, insulating each utility from any potential economic impact associated with Energy East's other businesses. Further, the costs associated with maintaining these companies continue to be minimal.

The Intermediate Holding Companies do not have operational functions and simply serve as conduits between Energy East and Energy East's public utility subsidiaries with respect to financing and dividends. With the exception of short-term debt and guarantees on behalf of their subsidiaries, the Intermediate Holding Companies are not used for external financing purposes, to make acquisitions, or to perform service, sales or construction contracts.²¹

²¹ CMP Group does not issue securities to parties outside of the Energy East group to finance its subsidiaries.

The continued existence of these holding companies also will help to preserve favorable tax attributes that would be lost if they were eliminated. In particular, the Intermediate Holding Companies provide flexibility with respect to the filing of state tax returns.²²

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

Margaret H. McFarland
Deputy Secretary

Action as set forth herein APPROVED pursuant to authority delegated by the Commission under Public Law 87-592.
For the Division of Investment Management

By: _____ Branch Chief
August 9, 2005

²² In addition to these structural and regulatory benefits, the continued existence of CTG Resources will also preserve the benefits associated with certain existing financing arrangements. Specifically, Ten Companies currently has approximately \$40 million of private placement bonds outstanding that are supported by CTG Resources under the terms of a Forward Equity Purchase Agreement. The elimination of CTG Resources would constitute an event of default under the notes and the holders would have the right to "put" the bonds to the issuer at a large (approximately \$5 million) make-whole premium.