

XIII. Distributions Out of Capital or Unearned Surplus

Distributions by Columbia. Columbia requests authorization to transfer some or all of the net proceeds of any sale or sales of the securities or assets of Nonutility Subsidiaries of Columbia to NiSource, either by paying a dividend or by repurchasing shares of its common stock that are held by NiSource. Columbia has sold or entered into agreements to sell the stock or assets of several of its Nonutility Subsidiaries since being acquired by NiSource and seeks to distribute some or all of the proceeds to NiSource.²⁴ The ability of Columbia to distribute the cash proceeds from the sales to NiSource as a dividend is limited by section 12(c) of the Act and rules 26(c) and 46. Columbia states that it will not pay any dividend to NiSource or repurchase shares of its common stock from NiSource if, as a result, common equity as a percentage of its capitalization would be less than 30% on a consolidated basis.

Payment of Dividends by Nonutility Subsidiaries. NiSource also proposes, on behalf of its current and future Nonutility Subsidiaries, that they be permitted to pay dividends, through the Authorization Period, out of capital and unearned surplus, to the extent permitted under applicable corporate law and the terms of any credit agreements and indentures that restrict the amount and timing of distributions to shareholders.

XIV. Tax Allocation Agreement

Applicants request authorization to continue to file consolidated income tax returns for tax years ending during the Authorization Period in accordance with the previously approved Tax Allocation Agreement. Applicants are authorized to file consolidated income tax returns and allocate the consolidated income tax liability of the group in accordance with the Tax Allocation Agreement which does not conform in all respects to the requirements of rule 45(c). See Supplemental Order dated September 12, 2002 (SEC File No. 70-9681). Specifically, under the Tax Allocation Agreement, NiSource is permitted to retain the benefit (*i.e.*, the tax savings) in consolidated tax liability that is attributable to the interest

expense on the acquisition debt,²⁵ subject to certain limitations and restrictions.

E.ON AG, et al. (70-10171)

E.ON AG ("E.ON"), a registered public-utility holding company under the Act, and Hibernia Industriewerte GmbH ("Hibernia"), a wholly owned nonutility subsidiary (together "Applicants"), both located at E.ON-Platz 1 40479 Düsseldorf, Germany, have filed an application ("Application") under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 54. The Applicants request authorization to modify certain terms of the E.ON nonutility money pool ("E.ON Nonutility Money Pool") permitted by a previous Commission order, dated June 14, 2002 (Holding Co. Act Release No. 27539) ("June 2002 Order").

E.ON proposes (1) that the E.ON Nonutility Money Pool be administered by Hibernia, an E.ON subsidiary currently used to provide financing to all of the companies in the E.ON registered holding company system (the "E.ON Group"), and (2) that the interest rate paid to lenders to the pool be set at market rates.

Background

By the June 2002 Order, the Commission authorized E.ON to acquire Powergen plc, a registered public-utility holding company, and, subsequent to the acquisition, E.ON registered as a public-utility holding company. The June 2002 Order also authorized E.ON and its subsidiaries to issue and sell securities and, further, authorized E.ON to establish three money pools, including the E.ON Nonutility Money Pool, to facilitate the financing of the E.ON Group.²⁶ The E.ON Nonutility

²⁵ The acquisition debt includes \$2.95 billion of senior unsecured notes with varying maturities, between April 15, 2003 and November 15, 2010, that were issued by NiSource Finance to refinance most of the commercial paper borrowings incurred by NiSource Finance during the merger in order to fund the cash portion of the consideration paid for Columbia's shares and certain debentures. The term also includes indebtedness that may be incurred by NiSource or NiSource Finance during the Authorization Period for the purpose of refinancing any of the acquisition indebtedness. For the tax year ended December 31, 2001, the tax benefit attributable to the interest expense on the debt was approximately \$100.2 million and, for the tax year ended December 31, 2002, it is estimated that the tax benefit will be approximately \$97.0 million.

²⁶ Specifically, E.ON was authorized to organize: (1) A Utility Money Pool to include E.ON's public utility subsidiary companies, Louisville Gas and Electric Company and Kentucky Utilities Company as borrowers and lenders to the pool, and certain other companies as lenders only; (2) a U.S. Nonutility Money Pool to include the nonutility subsidiaries of LG&E Energy Corp., as borrowers and lenders to the pool, and certain other companies as lenders only, and; (3) the E.ON Nonutility Money Pool.

Money Pool, the subject of the Application, includes as participants all the companies in the E.ON Group, as borrowers and lenders to the pool, except E.ON, the registered holding company subsidiaries of E.ON, and LG&E Energy and its subsidiaries. E.ON and its registered holding company subsidiaries may lend funds to the E.ON Nonutility Money Pool.

Under the June 2002 Order, the E.ON Nonutility Money Pool was authorized to "be administered by E.ON at no charge or by E.ON NA or its special purpose subsidiary at cost. The interest rate charged by the pool would be set according to the Market Rate Method²⁷ and surplus funds would be invested in the same manner proposed for the Utility Money Pool. The interest rate paid on deposits to the E.ON Nonutility Money Pool [would] be a weighted average of the rates charged borrowers and the money pool investment rate."²⁸

The Proposal

E.ON now proposes that the E.ON Nonutility Money Pool be administered by Hibernia, a different affiliate, and that the interest rate paid to lenders to the pool be set at market rates. First, with respect to the change in the money pool administrator, the Applicants state that Hibernia would receive financial management services from E.ON employees in connection with managing the pool, and conducting Hibernia's other functions, as an E.ON Group financing entity. The Applicants state that these services would be provided at no charge, unless a Commission exemption from the restrictions of section 13(a) is obtained. In addition, the E.ON Nonutility Money Pool will operate as described in the June 2002 Order²⁹ and as elaborated on in the Application.

Secondly, Applicants state that authorizing the proposed change in interest rates to the payment of market rates will avoid the transfer pricing issues that arise in loans between affiliated companies when transactions

²⁷ In determining a lending rate under the Market Rate Method, the Money Pool administrator would review the nature of each borrowing subsidiary's business, evaluate its capital structure, the particular risks to which it is subject and generally prevailing market conditions, all in the context of information from third parties (such as banks) that would indicate the prevailing market rates for similar businesses. Information on the range of rates used by one or more banks for loans to similar businesses would serve as an index against which an appropriate market rate could be determined. This analysis is referred to as the Market Rate Method and would be provided to the Commission upon request. June 2002 Order at 109.

²⁸ June 2002 Order at 83.

²⁹ See generally June 2002 Order at 81-83.

²⁴ Columbia has sold or announced its agreement to sell the stock or assets of Columbia LNG Corporation, Columbia Energy Retail Corporation, Columbia Electric Corporation and its subsidiaries, Columbia Propane Corporation, Columbia Petroleum Corporation, Columbia Energy Resources, Inc. and its subsidiaries, Columbia Transmission Communications Corporation and Columbia Service Partners, Inc. and its subsidiaries.