One Energy Place
Pensacola, Florida 32520

850 444 6111

GULF POWER
A SOUTHERN COMPANY

December 8, 2000

Ms. Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0870

Dear Ms. Bayo:

RE: The Southern Company – Amendment No. 1 to Form U-1, File No. 70-9727 as filed with the Securities and Exchange Commission

Rule 53(a)(4), 17 C.F.R. §250.53 (a)(4), of the rules and regulations promulgated by the Securities and Exchange Commission ("SEC") under the Public Utility Holding Company Act of 1935, as amended, 15 U.S.C. §§79a et seq. (the "Act"), specifies that a copy of each application must be filed with each public utility commission having jurisdiction over retail rates of such holding Company's public utility subsidiaries.

The enclosed copy of Amendment No. 1 to Form U-1 was filed with the SEC by Southern on October 13, 2000. To comply with the requirements of the SEC's Rule 53(a)(4), a copy of such filing is being provided to you herewith.

If you have any questions regarding the enclosed, please feel free to call me at (850) 444-6231.

Sincerely,

Susan D. Ritenour

Susan D. Ritenour
Assistant Secretary and Assistant Treasurer

lw

Enclosure

cc: Beggs and Lane
J. A. Stone, Esq.

File No. 70-9727

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

AMENDMENT NO. 1
to
APPLICATION OR DECLARATION
on
FORM U-1

under

The Public Utility Holding Company Act of 1935

THE SOUTHERN COMPANY
270 Peachtree Street, N.W.
Atlanta, Georgia 30303

SOUTHERN ENERGY, INC.
900 Ashwood Parkway
Suite 500
Atlanta, Georgia 30338

SOUTHERN ENERGY
RESOURCES, INC.
900 Ashwood Parkway
Suite 500
Atlanta, Georgia 30338

(Name of company or companies filing this statement
and addresses of principal executive offices)

THE SOUTHERN COMPANY

(Name of top registered holding company parent of
each applicant or declarant)

Tommy Chisholm, Secretary
The Southern Company
270 Peachtree Street, N.W.
Atlanta, Georgia 30303

Marce Fuller, President
Southern Energy, Inc.
900 Ashwood Parkway
Suite 500
Atlanta, Georgia 30338

(Names and addresses of agents for service)

The Commission is requested to mail signed copies of all orders, notices and communications to:

W.L. Westbrook
Financial Vice-President
The Southern Company
270 Peachtree Street, N.W.
Atlanta, Georgia 30303

Marce Fuller, President
Southern Energy, Inc.
900 Ashwood Parkway
Suite 500
Atlanta, Georgia 30338

John D. McLanahan
Robert P. Edwards, Jr.
Troutman Sanders LLP
600 Peachtree Street, N.E.
Suite 5200
Atlanta, Georgia 30308-2216

The Application pending in the foregoing file is amended and restated in its entirety as follows:

Item 1. Description of the Transaction

The Southern Company ("Southern"), 270 Peachtree Street, N.W., Atlanta, Georgia 30303, a holding company registered pursuant to the Public Utility Holding Company Act of 1935, as amended (the "Act"), and its subsidiaries Southern Energy, Inc. ("Southern Energy," formerly SEI Holdings, Inc.) and Southern Energy Resources, Inc. ("SERI," formerly Southern Electric International, Inc.), both of 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338 ("Applicants"), file this application and declaration in order (a) to extend and renew the organizational and operational authority previously conferred by the Securities and Exchange Commission (the "Commission"), (described below as "Existing Organizational and Operating Authority") in *The Southern Company*, HCAR No. 26468 (February 2, 1996) (the "1996 Order") beyond the current expiration date of the 1996 Order of December 31, 2000[1] in order to facilitate the divestiture by Southern of Southern Energy during calendar year 2001,[2] (b) to obtain any required authorizations pertaining to the implementation of the plan for the distribution, during calendar year 2001, of the voting securities of Southern Energy by Southern to the common stock stockholders of Southern (the "Distribution") and (c) for Southern to retain the Existing Organizational and Operational Authority through June 30, 2005, subject to compliance with the other applicable rules, regulations and orders of the

[1] The 1996 Order authority of Southern to issue Performance Guarantees of Southern Energy extends through December 31, 2003.

[2] The divestiture is expected to occur in the first half of 2001.

Commission.

1.1 Existing Organizational and Operational Authority.

Through its 1996 Order, the Commission authorized the Applicants to carry out the restructuring and consolidation of Southern's interests in exempt wholesale generators ("EWGs"), foreign utility companies ("FUCOs") and Qualifying Facilities ("QFs") (collectively "Exempt Projects") and certain other non-utility activities under Southern Energy. Southern Energy was authorized to acquire Southern Energy North America, Inc. and SEI Europe, Inc., the umbrella companies for Southern Energy's domestic and certain foreign operations, respectively. Applicants were further authorized "to organize one or more intermediate subsidiaries to make investments in Exempt Projects, other power projects, and Energy-Related Companies,[3] and to provide project development and management services to projects and companies held by them ('Intermediate Subsidiaries'), and to organize one or more special purpose subsidiaries to engage in any of the activities in which [SERI] is currently authorized[4] to engage ('Special Purpose Subsidiaries')...."[5] The 1996 Order also included authority to acquire Energy-Related Companies engaged in energy marketing ("Marketing Subsidiaries"). The authority of such Marketing Subsidiaries is co-extensive with the energy marketing authority subsequently conferred by Rule 58, 15 C.F.R. § 250.58, except that HCAR No. 27020 (May 13, 1999) also authorized the acquisition of Marketing Subsidiaries that engaged in

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[3] The 1996 Order defined Energy-Related Companies in anticipation of the adoption of Rule 58, 17 C.F.R. § 250.58, and subject to the definition expressed in Rule 58.

[4] By order dated December 30, 1994 (HCAR No. 26212), Southern Electric International, Inc. (now SERI) was authorized to engage in preliminary project development activities and the sale of operating construction, project management, administrative and other services to associates and nonassociates.

[5] HCAR No. 26468 (February 2, 1996), at p. 5.

energy marketing in Canada through December 21, 2003. The above-referenced authority to provide goods and services among affiliates at cost is subject to applicable state and Federal Energy Regulatory Commission ("FERC") requirements and does not preempt state or federal regulation or ratemaking authority. The 1996 Order also authorized Special Purpose Subsidiaries to provide services or sell goods to any affiliate engaged in the development or operation of EWGs, FUCOs or QFs, either directly or indirectly, through its related Intermediate Subsidiary, at fair market prices. The 1996 Order, pursuant to Section 13(b) of the Act, exempted certain transactions from the requirements of Rules 90 and 91, as applicable, to any such transactions in any case in which any of the following circumstances apply:

1. Such Exempt Project derives no part of its income, directly or indirectly, from the generation, transmission or distribution of electric energy for sale within the United States;

2. Such Exempt Project company is an EWG that sells electricity at market-based rates which have been approved by the FERC, provided that the purchaser thereof is not an affiliate public utility company of such Special Purpose Subsidiary within the Southern system;[6]

3. Such Exempt Project company is a QF that sells electricity exclusively (i) at rates negotiated at arms'-length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, and/or (ii) to an electric utility company of such Special Purpose Subsidiary within the Southern System, at the

[6] File No. 70-8733, Amendment No. 3, effective pursuant to HCAR No. 26468 (February 2, 1996). See also HCAR No. 26212 (December 30, 1994), at 6-7.

purchaser's "avoided cost" as determined in accordance with the regulations under the Public Utility Regulatory Policies Act of 1978 ("PURPA"); or

4. Such Exempt Project company is an 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 an affiliate public utility company of such Special Purpose Subsidiary within the Southern system.

The foregoing exemption from Rules 90 and 91 was subject to and does not preempt any state or federal regulatory requirement or ratemaking treatment. Special Purpose Subsidiaries were authorized to engage in development activities ("Development Activities") pertaining to the potential acquisition and ownership of QFs and facilities to be owned or operated by EWGs and FUCOs, and other power production facilities which, when placed in operation, would be a part of Southern's "integrated public-utility system," within the meaning of section 2(a)(29)(A) of the Act, together with facilities and equipment that are ancillary to the foregoing, such as may be used for fuel production, conversion, handling and/or storage; electrical transmission; and energy management, recovery and efficiency. The development activities of SERI and Special Purpose Subsidiaries include and are limited to project due diligence and design review; market studies; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds, cash deposits or the like; 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 host users, fuel suppliers and other project contractors; negotiation of financing commitments with

lenders and equity co-investors; and such other preliminary development activities as may be required in preparation for the acquisition or financing.[7] Authorized Development Activities also included rendering project development, engineering, design, construction and construction management, operating, fuel management, maintenance and power plant overhaul, and other similar kinds of managerial and technical services (including intellectual property other than that created for or on behalf of the public utility company subsidiaries of Southern) to both affiliated project entities and to non-affiliated developers, operators and owners of independent power projects and foreign and domestic utility systems and industrial concerns. SERI was authorized to render such services utilizing its own work force, independent contractors and personnel and other resources of affiliates obtained at cost pursuant to existing service agreements.[8]

1.2 Reasons for Distribution of Southern Energy.

Southern and Southern Energy's activities under the 1996 Order have resulted in Southern Energy growing into a major energy business that is structurally separate from the public utility company operations of Southern. Southern Energy's business, which has grown significantly in size in recent years, is a high growth business with enormous capital requirements. The purpose of the transactions described herein is to permit Southern Energy to raise the capital needed to conduct its existing authorized business activities consistent with the ability of Southern to raise the capital required for its integrated public utility company system. Southern has determined that its existing and

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[7] HCAR No. 26212 (December 30, 1994) at 5; HCAR No. 26468 (February 2, 1996), at 5, fn. 9. SERI was authorized to expend up to $300 million in Development Activities.[7] Applicants seek to renew this authority for South Energy in the amount of $300 million until the date of the Distribution.

[8] HCAR No. 26212 (December 30, 1994) at 5-6, HCAR No. 26468 (February 2, 1996), at 5, fn. 9, and at 8-9.

potential stockholders would prefer the opportunity to select between a predominantly traditional public utility holding company system and an Exempt Project oriented business such as Southern Energy. Southern has determined that the Distribution will result in benefits accruing both to the stockholders of Southern and to the public through an enhancement of Southern's ability to perform its role as a registered public utility holding company. Applicants expect that the benefits to accrue to Southern and its public utility company subsidiaries and to Southern Energy through separation will be equivalent to those typical of distributions of business units.[9]

1.3 Matters Preceding the Distribution.

Southern Energy intends to continue to conduct its currently authorized lines of business pending the Distribution, as does Southern. Pending the Distribution, Southern and Southern Energy intend to reorganize Southern and Southern Energy's activities so that, after the Distribution, Southern will retain certain components of the lines of business it now owns through Southern Energy.[10] These consist of Energy-Related activities authorized by 17 C.F.R. § 250.58 ("Rule 58") and FUCO activities deemed to be beneficial to Southern. Southern further intends to achieve the reorganization at a minimal transaction cost through a distribution to Southern, that qualifies as tax-free

[9] Some of these benefits were recently summarized by business management experts retained by the United States Department of Justice in the Microsoft litigation. Affidavit of R. F. Greenhill and J. P. Williams, United States District Court, District of Columbia, Civil Action No. 98-1232 (http://www.usdoj.gov/atr/cases/f4600/4645.htm).

[10] Applicants believe that most, if not all, of the steps taken herein fall within the authority conferred pursuant to the 1996 Order; Part 250 of 17 C.F.R. §§ 45, 52, 57, 58, 87; and Sections 32(g) and 33(c) of the Act. Applicants note that affiliate transactions are subject to the general supervision of the Commission under Section 12(f) of the Act. To the extent activities described herein require approval pursuant to any Sections of the Act, Applicants request such approval and demonstrate herein compliance with the established standards of the Act. As shown herein, this Application merely seeks to facilitate the orderly divestiture of a non-public-utility line of business at minimal transaction costs and is therefore wholly consistent with the requirements and standards of the Act.

under Section 355 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), by Southern Energy of the Exempt Project components to be retained by Southern and through conducting the Distribution, likewise on a tax-free basis, in accordance with the requirements of the Internal Revenue Code. Accordingly, Southern Energy and Southern Company Energy Solutions, Inc. ("Solutions"), a direct subsidiary of Southern conducting Energy-Related operations pursuant to Rule 58, will each contribute energy-management business lines to a subsidiary of a newly formed subsidiary of Southern Energy ("Holdco").[11] In exchange for its contribution to Holdco, Solutions will receive up to 20% of the voting stock of Holdco. In exchange for at least 80% of the voting stock of Holdco,[12] Southern Energy will contribute the securities of two of its current Intermediate Subsidiaries, SE Finance Capital Corporation ("SE Finance") and Southern Company Capital Funding, Inc. [13] ("Capital Funding"), to Holdco. Each of these subsidiaries is an Intermediate Subsidiary of Southern Energy authorized under the 1996 Order. The Holdco group operations do not include high growth businesses and are dominated by traditional public utility assets, including several natural gas distribution systems in the Netherlands that qualify as FUCOs. As of March 31, 2000, Southern Energy's investment in SE Finance totaled $199 million (including retained earnings of $12 million). SE Finance includes an Energy-Related Company component and a FUCO subsidiary component. The Energy-Related Company

[11] Holdco will be an Intermediate Subsidiary as defined and authorized by the 1996 Order and the Existing Organizational and Operational Authority described above.

[12] The final percentages of ownership are to be determined based upon the relative value of the respective contributions to Holdco.

[13] As of March 31, 2000, Southern Energy's investment in Capital Funding was $52.7 million including retained earnings of $2.3 million). Capital Funding has no subsidiaries.

component now includes three Energy-Related subsidiaries, including Southern Energy Carbontronics, L.L.C. and two held by Southern Energy Clairton, L.L.C. Each of these Energy-Related Companies participates in alternative fuel commercialization projects. The book value of the equity investments by SE Finance in these projects as of March 31, 2000 totaled $75 million, of which $13 million was retained earnings.[14]

SE Finance also owns the securities of four FUCOs: EPZ Lease, Inc., Dutch Gas Lease, Inc., SEI Gamog Lease, Inc. and Nuon Lease, Inc. SE Finance's equity investment in these subsidiaries totaled $485 million (including $34 million of retained earnings) as of March 31, 2000. Southern has no investment or "aggregate investment" within the meaning of Rule 53 in these FUCOs.

Southern Energy has filed notifications of FUCO status with respect to each of these FUCO investments on Form U-57. In December 1996, SE Finance, through its wholly-owned subsidiary EPZ Lease, Inc. and its affiliates, became the sole investor in a lease and leaseback of a 339 MW cogeneration plant located in Moerdijk, Netherlands.[15] In December 1998, SE Finance, through its wholly-owned subsidiary Dutch Gas Lease, Inc. and its affiliates, became the sole investor in a sale and leaseback of a natural gas network leased by N.V. Energie Distributiemaatschappig voor Oost en Noord Nederland ("EDON"), a natural gas distribution utility which supplies natural gas to four provinces of the Netherlands. SE Finance has entered into similar natural gas distribution

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[14] These subsidiaries are included in Southern's Quarterly Reports Pursuant to Rule 58, filed on Form U-9C-3. Southern is authorized by Rule 58 to invest up to 15% of its total capitalization in Energy-Related Companies such as Southern Energy Clairton, L.L.C. and Southern Energy Carbontronics, L.L.C. Southern has in excess of $4 billion of authority available under Rule 58.

[15] N.V. Elekriciteits Produktiemaatshappij Zuid-Nederland Corporation ("EPZ"), an energy supply company in the Netherlands, is the lessee of the facility, off-taking all of the electricity and a portion of the steam.

transactions with GAMOG Gelre Flevo Holding, N.V. and GAMOG Gelre Flevo Infra B.V. (collectively "GAMOG") and with NV NUON Energie-Onderneming Voor Gelderland, Heerenveen en Flevoland ("NUON"), which distribute natural gas in several regions of the Netherlands. As noted above, Southern has made no investment in the EPZ Lease, EDON, GAMOG or NUON FUCOs and has no "aggregate investment" within the meaning of Rule 53 associated with these FUCOs.

Southern Energy recently closed debt financings totaling $477 million with respect to the operations of SE Finance. Section 5.11 of the Master Agreement (as herein defined and attached hereto as Exhibit B.1) anticipates Southern potentially making capital contributions authorized by 17 C.F.R. § 250.45(b)(4) to SE Finance (or its subsidiary SE Finance Capital Corporation) in the event of a shortfall in the scheduled debt service in each loan repayment period up to the amount of the payments due from Southern under the Southern Company Income Tax Allocation Agreement ("Allocation Agreement") if any such payment shortfall results from a change in law or regulation, a reduction in the U.S. Federal tax rate, a later Internal Revenue Service disallowance or inability of Southern to use the expected tax benefits, a phase out of the Section 29 tax credits prior to the scheduled expiration date or an amendment of the Allocation Agreement. These assurances of tax benefit sharing are in the form of limited keep-well commitments, the forms of which are included as Exhibits B.8 and B.9 hereto. Applicants propose to include these in a filing pursuant to 17 C.F.R. § 250.45(c). Southern proposes to include the maximum potential capital contributions required under these commitments as "aggregate investment" in EWGs and FUCOs for the purposes of Rule 53. As of December 31, 2000, the unamortized balances of these loans will equal

$414 million.[16]

Southern Energy will distribute its securities of Holdco to Southern in redemption of a Special Class of SEI Preferred Stock that was issued by Southern Energy to Southern. The Holdco group to be retained by Southern includes Energy-Related activities that the Commission has previously determined to be reasonably incidental and economically necessary to the operation of an integrated electric utility system and FUCO operations predominantly consisting of traditional public utility assets.[17]

Southern Energy and Southern have entered into a Master Separation and Distribution Agreement ("Master Agreement")[18] and associated ancillary agreements (the "Ancillary Agreements"), subject to their existing authority and rules, regulations and orders of the Commission.

The Ancillary Agreements appended to the Master Agreement include an Employee Matters Agreement,[19] a Tax Indemnification Agreement,[20] a Transitional

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[16] HCAR No. 26501 (April 1, 1996) authorized Southern to invest the proceeds of its securities issuances up to a total of 100% of its consolidated retained earnings.

[17] Applicants could achieve the same structure under the 1996 Order through Southern Energy selling its interests in Exempt Projects, retaining only those interests to be retained by the Holdco group and combining Solutions with the Holdco group, as authorized under the 1996 Order and Rule 58. In the exercise of its business judgment, Southern has determined that greater value can be achieved through a tax-free distribution of Southern Energy to its stockholders than through a sale of portions or all of its business.

[18] The Master Agreement is appended hereto as Exhibit B.1. It provided for separation of Southern and Southern Energy businesses on September 1, 2000, which was shortly before the sale of common stock by Southern Energy to the public (the "Separation Date"). Section 5.8 of the Master Agreement obligates the parties to implement the Master Agreement and the Ancillary Agreements to the fullest extent permitted by their existing authority and to cooperate to the end of achieving any further necessary authority. Section 5.11 of the Master Agreement provides for the distribution of Holdco. Section 5.12 of the Master Agreement provides that Southern will not cancel any outstanding guarantees, all of which are authorized pursuant to Southern's existing authority, and that Southern will extend credit support to Southern Company Energy Marketing through the Distribution, provided that the aggregate amount of such credit support arrangements shall not exceed $425 million and may be canceled within six months following the Distribution. The credit support provided for is within the existing performance guarantee authority of Southern pertaining to Southern Energy and its subsidiaries. The 1996 Order authorizes Southern to issue performance guarantees up to $800 million through December 31, 2003.

[19] Appended hereto as Exhibit B.3.

Services Agreement,[21] a Confidential Disclosure Agreement,[22] a Technology and Intellectual Property Ownership and License Agreement[23] and an Indemnification and Insurance Matters Agreement.[24] The Employee Matters Agreement assures that affected employees will be covered by benefit plans, but avoids redundant benefit programs. The Tax Indemnification Agreement will be separately filed pursuant to Rule 45(c) of the Act. The Transitional Services Agreement provides for the continuation on an incidental basis of certain services currently provided to Southern Energy, including financial, human resources administration and payroll, accounting and treasury, engineering and technical consulting, information technology, procurement, government relations and legal services, for a term not to exceed two years from September 1, 2000. As a result of the incidental nature of the services, neither Southern nor its subsidiaries will incur unreimbursed costs. Moreover, services will be provided to Southern Energy after the distribution at the higher of fair market value or full cost, assuring a net contribution to Southern. The Confidential Disclosure Agreement protects certain proprietary information. The Technology and Intellectual Property Ownership and License Agreement documents the intellectual property that Southern and Southern Energy are each currently authorized to use under the reciprocal use provisions of HCAR No. 26212 (December 30, 1994) and the 1996 Order and does not require any future transfers of intellectual property following the Separation Date. The Indemnification and Insurance

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[20] Appended hereto as Exhibit B.4.

[21] Appended hereto as Exhibit B.5.

[22] Appended hereto as Exhibit B.6.

[23] Appended hereto as Exhibit B.2.

Matters Agreement provides for a separation of insurance coverage and for mutual indemnification for claims based upon fault.[25]

After the Separation Date, the subsidiaries of Southern intend to restrict the services rendered to the Southern Energy group to the services enumerated in the Transitional Services Agreement, which are a subset of the currently authorized services.[26] The terms and conditions of the Master Agreement and the Ancillary Agreements, while specific to the circumstances of Southern and Southern Energy, are typical of the terms and conditions associated with corporate distributions of business units to shareholders.[27]

Until the Distribution, Southern will own at least 80 percent of the common stock of Southern Energy. Southern intends to distribute all of its voting securities of Southern Energy to Southern's stockholders within twelve months of the initial offering of Southern Energy common stock to the public, which occurred in October 2, 2000 (the "Offering").

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[24] Appended hereto as Exhibit B.7.

[25] Applicants suggest that a claims indemnification agreement of this nature incidental to a genuine transaction does not involve an upstream loan or any extension of credit and is not an "indemnity" within the meaning of Section 12 of the Act. *See Mississippi Valley Generating Company*, HCAR No. 12794 (February 9, 1955) and *The Southern Company*, HCAR No. 27134 (February 9, 2000) (both construing and applying Section 12(a) of the Act in accordance with Section 1(c) of the Act and the legislative history showing an intent to protect public utility subsidiaries).

[26] Southern's subsidiaries are authorized under Rule 87 of the Act to provide goods and services at cost to Southern Energy and its subsidiaries in accordance with the limitations imposed by Rule 87. Southern Company Services, Inc. ("Southern Services") is further authorized pursuant to the 1996 Order and HCAR No. 26212 (December 30, 1994) to provide services at cost to SERI. Southern Energy represents less than 3% of the total service billings of Southern Services. Southern anticipates a substantial reduction in the services rendered to Southern Energy following the Separation Date and a further reduction following the Distribution.

[27] The recent separations undertaken by Delphi Automotive Systems Corp./General Motors; Williams Communication Group/The Williams Company; Palm Computing, Inc./3 Com; Conoco, Inc./Dupont; and Agilent Technologies/Hewlett-Packard are subject to terms and conditions similar to the Southern/Southern Energy separation.

1.4 Authority Sought With Respect to the Distribution and Post Distribution Authority for Southern.

Southern requests that Southern Energy retain the Existing Organizational and Operational Authority through completion of the Distribution in calendar year 2001 and that Southern be authorized to exercise the Existing Organizational and Operating Authority after the Distribution through June 30, 2005 through one or more subsidiaries, subject to the conditions and reporting requirements stated herein. Applicants request authority to expend $300 million on Development Activities through June 30, 2005. Southern is not herein requesting any extension or modification of the performance guarantee extended by the 1996 Order.

Southern further requests that the Commission take such action, if any, deemed appropriate and consistent with the Act pursuant to Section 12(f) of the Act[28] with respect to the Master Agreement and the Ancillary Agreements, taking into account that Southern Energy will, in all probability, cease to be an affiliate of Southern in 2001.

The Exempt Project operations associated with Holdco do not impose the types of capital requirements as the growth segments retained by Southern Energy. Southern anticipates that power generation requirements in the Southeast may result in the use by Southern of the EWG form of generation ownership, in lieu of ownership by public utilities that engage in the transmission, distribution and retail sale of electric energy, in order to facilitate joint ownership and to improve the liquidity of generation assets, even though the generation owned by such an EWG would serve as part of Southern's traditional public-utility operations and would function as part of Southern's integrated

[28] Section 12(f) of the Act confers plenary jurisdiction upon the Commission over affiliate transactions.

power supply. Southern anticipates that its wholesale power requirements will be satisfied in the future by a sixth operating company authorized by the FERC. An application to form this company is pending before this Commission. Accordingly, Southern further requests authority, to the extent required, to contribute the voting securities of Holdco to any such sixth operating company. Southern's investment in one or more Exempt Projects through subsidiary companies will be subject to the conditions imposed by Rules 53 and 58 of the Act and compliance with the reporting requirements established by the 1996 Order on a Southern consolidated basis. Southern's business purposes in seeking to retain this flexibility is its need to be able to respond quickly to changing energy needs and market developments. The flexibility of organizing and financing Exempt Projects afforded by the 1996 Order will be just as beneficial in the context of the development of projects that effectively serve public utility functions and that how closely to traditional integrated public utility operations as such flexibility had been in the pursuit of a high growth energy business such as had been undertaken by Southern Energy.

1.5 Reporting Requirements.

The Applicants propose that a single consolidated quarterly report be filed by Southern pursuant to Rule 24, with respect to all activities of Southern and its subsidiaries authorized in this file. This report would replace the combined report currently being filed pursuant to the 1996 Order.

Item 2. Fees, Commissions and Expenses

Applicants anticipate that the total fees, commissions and expenses in connection with the Application are $45,000.

Item 3. Applicable Statutory Provisions

Applicants submit that the transactions described in this Application are governed by Sections 12 and 13 of the Act. The Act regulates the acquisition and retention of businesses other than integrated public utility system operations, encourages the divestiture of "other" lines of business and imposes no special conditions or requirements pertaining to the divestiture of Exempt Projects or other diversified activities. Southern Energy is neither a "holding company" nor a "public-utility company" within the meaning of the Act.

Sections 12 and 13 of the Act are aimed at regulating and prohibiting transactions that are "detrimental" to subsidiaries and "unduly" advantageous to holding companies. House Rep. No. 1318, 74th Cong., 1st Sess. (June 24, 1935). Southern seeks to facilitate the speedy and efficient effectuation of the Distribution and to avoid any adverse impact on the system retained by Southern. The authority sought herein has no effect upon public utility company subsidiaries of Southern and only authorizes an efficient means of Southern divesting Exempt Project lines of business that do not involve public utility company operations. Accordingly, the Application does not impinge upon the substantive interests that underpin Sections 12 and 13 of the Act.

To the extent these transactions are subject to Sections 6 and 9 of the Act, Applicants request such approval and demonstrate compliance with the applicable standards of the Act, including Sections 7, 10 and 11 of the Act.[29] With respect to the

[29] In adopting and amending Rule 52 of the Act, the Commission preserved its authority to prevent unauthorized diversification through securities issuances, but recognized that it is no longer necessary for the Commission to regulate the terms, conditions or "quality" of securities issuances by non-public-utility subsidiaries and affirmatively relied on the disclosure of securities markets to protect the interests of investors and consumers. HCAR No. 26311 (June 20, 1995), 60 F.R.33634, 33636 (prior Commission approval "no longer necessary"), *cited with approval*, HCAR No. 26826 (February 26, 1998) at fn. 22.

retained businesses, Applicants are seeking authorizations as have customarily been extended to registered holding companies, consistent with the 1996 Order. *See e.g.*, *Energy East Corp.*, HCAR No. 27228 (September 12, 2000); *Entergy Corporation*, HCAR No. 27039 (June 22, 1999); *Cinergy Corp.*, HCAR No. 26662 (February 7, 1997).

Applicants represent that the transactions proposed herein will have no effect upon the capitalization of the existing public utility company subsidiaries of Southern, all of which maintain a common equity component of their capitalization in excess of thirty percent. Southern further represents that the Distribution will not cause the common equity component of its consolidated capitalization to fall below thirty percent.[30]

3.1 Satisfaction of Standards Enumerated by Sections 10 and 11 of the Act

To the extent this Application is subject to Sections 10 and 11 of the Act, the Application readily satisfies those standards because (a) the Application is consistent with the integration provisions of the Act in that it proposes a divestiture of non-utility business operations, (b) the Application does not propose "interlocking relations or the concentration of control of public utility companies," (c) the Application does not propose any acquisition of public utility assets directly or indirectly through the acquisition of securities or any acquisition of a business not previously retained by Southern, and (d) the Application does not involve minority interests in public utility companies or other attributes that would "unduly complicate" the capital structure of

[30] A principal business purpose of the Distribution is to de-couple the high growth business of Southern Energy from Southern's traditional business in order to permit Southern to maintain a traditional capital structure to the extent permitted by the service requirements of its integrated public utility system.

Southern.[31]

As noted above, this Application facilitates a divestiture of a business line that Southern could sell in part or in its entirety without the need for authorization under the Act and the continued retention of Exempt Projects previously authorized by the Commission. The divestiture of the majority of Southern Energy's Exempt Project operations in order to enhance Southern's focus on the operations of its integrated utility system business is wholly consistent with the economical operation of an integrated electric utility system.

3.2 Indemnification for Claims Subject to Section 12(f).

Applicants contend that none of the indemnification provisions of the Ancillary Agreements is an "extension of credit or indemnity" within the meaning of the Act and are consistent with the standards of the Act, including Section 12(f) of the Act.[32] Section 12 of the Act undertakes to regulate extensions of credit among subsidiaries and their registered holding company systems. An indemnification agreement incidental to a lawful transaction between affiliates would be subject to such conditions as the Commission might prescribe in the public interest pursuant to Section 12(f) of the Act. When a party contractually agrees to bear responsibility for a portion of a transaction, the resulting indemnification for claims does not constitute an extension of credit and is not therefore an "indemnity" agreement within the meaning of Section 12(a) of the Act.

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[31] The retained businesses are all Exempt Projects and Energy-Related Companies as previously authorized. The Commission approved an equivalent business structure in the 1996 Order.

[32] The term "indemnity" has two general meanings. "Indemnity," 31 *Corpus Juris* 417, ¶ 1 (1923). One is giving security. The other is satisfying a claim. 31 *Corpus Juris* 417, ¶ 1. *See also* "Indemnify," 31 C. J. 416 ("The word appears to be used in two general senses: first in the sense of giving security; and, second, in the sense of compensating for actual damage.") The singe sentence prohibition of section 12(a) prohibits

Section 12(a) absolutely prohibits a registered holding company from borrowing money or receiving an extension of credit or indemnity from a public utility in the same system or from a subsidiary of the holding company. Section 12(a) seeks to protect money raised on the credit of an operating company in order to prevent the "milking" of the operating company. Southern submits that Section 12(a) does not apply to the proposed indemnities because, in substance, the indemnities do not constitute the type of indemnity prohibited by Section 12(a). Furthermore, none of the purposes identified by the legislative history of the Act generally, or in Section 12 of the Act in particular, would be served by prohibiting Southern and Southern Energy from establishing clear contractual responsibilities for their undertakings and for claims arising from those undertakings. Southern Energy is not a public-utility operating company or public-utility holding company. Therefore, its indemnification of Southern is not an example of the evil against which the prohibition was directed.

With respect to the construction of Section 12(a), the Commission has recognized that the creation of *bona fide* reciprocal obligations does not give rise to the extensions of credit that the Act was intended to prohibit. *Mississippi Valley Generating Co. v. United States*, 175 F. Supp. 505, 520-21 (Ct. Claims 1959), *affirming Mississippi Valley Generating Company*, HCAR No. 12794 (1955).

Applicant's construction of Section 12 is consistent with Section 1(c) of the Act and the legislative history of the Act. The legislative history of the Act indicates a concern with public-utility subsidiaries and subsidiary public-utility holding companies

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an "indemnity" in the sense of security for a borrowing or an "extension of credit," and does not address payment of a *bona fide* damage claim.

("sub-holding companies") lending their credit to a holding company. Although Section 12(a) literally covers all subsidiaries, the legislative history of Section 12(a) indicates that "subsidiaries" were included within the prohibition of upstream loans to holding companies in order to capture both public utility operating companies and sub-holding companies that were their parents, and not non-public utility company operations. Report of National Power Policy Committee on Public Utility Holding Companies, 74th Cong. 1st Sess., H. Rep. No. 137 (March 12, 1935) ("Holding companies should immediately be prevented from borrowing from sub-holding companies or from operating companies in the same holding company system."). *See also* 74th Cong. 1st Sess. Cong. Record, June 27, 1935, at 10323 ("Loans by operating companies are sometimes called upstream loans."); House. Rep. No. 1318, 74th Cong. 1st Session, June 24, 1935 (characterizing the "flat prohibition" of Section 12(a) as applying to public utility company "upstream loans" and stating that "[r]egulation of intercompany transactions is provided to prevent the milking of operating companies for undue advantage to the controlling holding companies... Section 12 covers other intercompany transactions detrimental to operating companies"); 74th Cong. Com. Interstate Commerce, Hearings on S. 1725 (April 26-29, 1935), at 59 ("flat prohibition" of "upstream loans" applies to "public-utility companies"). Section 1(b) of the Act reflects this legislative history through its findings in subsections 1(b)(2) and 1(b)(3) of abusive transactions harmful to "subsidiary public-utility companies." Section 1(c) of the Act, in turn, directs the Commission to interpret the Act "to meet the problems and eliminate the evils as enumerated in this section." Southern Energy is neither a public utility operating company nor a sub-holding

company. Southern Energy derives no credit from the public utility subsidiaries of Southern.

None of the purposes of the Act would be served by construing the prohibition of extensions of credit by subsidiaries of a registered holding company in favor of the holding company to prohibit Southern Energy from indemnifying Southern for claims arising from activities for which Southern Energy has accepted responsibility. Section 12(a) was implemented to prohibit "upstream loans" -- loans from an operating utility to its registered holding company. It was enacted to stop "the further milking of operating companies in the interest of controlling holding-company groups." 74th Congressional Committee Interstate Commerce, Hearings on S. 1725, at 59 (April 26-29, 1935). The indemnity by Southern Energy is not an "upstream loan" as conceived by the legislative history, therefore this is not the type of transaction that Section 12(a) was designed to prevent. The present Application is not a case of the holding company obtaining any type of financing from a public utility operating company or sub-holding company. It simply involves the reimbursement of Southern by Southern Energy for any claims *caused* by Southern Energy.

In similar situations, the Commission has considered the substance of a transaction over its form.[33] In *Mississippi Valley Generating Company, supra*, the Commission recognized that, even though the registered holding companies were the lead parties in the proposed transactions and the public utilities were providing financial support, effectively in a form of an indemnity, for the undertaking, in reality the public

[33] In *The Southern Company*, HCAR No. 27134 (February 9, 2000), the Commission recently applied this principle in order to approve a financing subsidiary structured to permit Southern to engage in trust preferred and debt financing.

utilities were obligating themselves to external parties, and the substance of the transaction therefore did not violate Section 12(a):

> It is proper under the Act for construction projects and operations to be planned and carried forward on a basis meeting the purposes of the system as a whole, and for the holding company to make contracts in furtherance of such coordinated operations with the intent that the operating aspects of such contracts shall be carried out by the system operating companies. The creation of the attendant reciprocal benefits and undertakings involved in such arrangements does not in our view automatically result in an indemnity of the holding company within the meaning of Section 12(a).

Mississippi Valley Generating Company, HCAR 12794 (1954) (text at footnotes 65-69, footnotes omitted) (emphasis supplied).

Southern is not receiving an "extension of credit" or borrowing money raised on the credit of an operating subsidiary. Southern will merely receive reimbursement of any money paid by it to a third party from claims caused by Southern Energy. The indemnity provisions are typical of business unit distribution transactions.[34]

3.3 Rule 44

Section 12 of the Act also prohibits the direct or indirect disposition of public-utility assets or securities of public utilities without Commission approval. Southern Energy does not own or operate any public utility assets. Southern Energy owns a 1% equity interest in Mobile Energy Services Company, a public utility company that is pending reorganization. The shares have a book value of zero and a fair market value of zero. The indirect disposition is authorized under 17 C.F.R. § 250.44.

3.4 Ancillary Services

[34] *See, e.g.*, the examples cited in fn. 22, *supra.*

Southern proposes that the authority to provide the ancillary services provided herein shall expire in accordance with the terms of the Master Agreement on or before September 1, 2002.[35] Southern proposes to provide ancillary services on a wholly incidental basis and only as required to permit an orderly separation of the businesses without extraordinary losses or transition costs. To the extent Section 11 of the Act applies to this transaction, the wholly incidental nature of these services and the limitation of the authority to effectuating an economical divestiture of a non-public-utility business assures consistency with the applicable standards pertaining to the retention of interests in businesses other than integrated public-utility operations only to the extent reasonably incidental or economically necessary to integrated public-utility system operations.

3.5 Rule 54 Discussion

The Distribution will result in Southern substantially decreasing its "aggregate investment" in EWGs. Southern currently has no "aggregate investment" in the FUCOs to be retained through Holdco and currently owns no interests in EWGs or FUCOs other than through Southern Energy. As proposed herein, Southern will incur an "aggregate investment" of approximately $414 million in FUCOs as a result of the Distribution. Other than these effects of the Distribution, the authority sought herein has no effect upon Southern's investment, direct or indirect, in EWGs or FUCOs. Southern anticipates a

[35] Southern is not seeking authorization to acquire any material interest in another business or to maintain any material operations other than energy-related services as currently authorized. Following the Distribution, Southern will principally provide engineering and technical services to Southern Energy through Solutions or any other Rule 58 subsidiary authorized to provide energy-related engineering and technical services to third parties. The costs associated with Southern Services providing support services (other than energy-related engineering and technical services) is estimated to be less than 1% of the annual billings of Southern Services. To the extent the Commission deems the transaction to be subject to Section 11 of the Act, the transaction should be found consistent with the standards of the Act because it minimizes the costs incidental to divestiture of a non-public-utility company business and therefore is both necessary and merely incidental to the operation of the integrated public utility system.

significant decrease in the services rendered to Southern Energy following the Offering and a further decrease following the Distribution. Southern will maintain compliance with all conditions of Rule 53 except to the extent Southern otherwise receives authority to invest the proceeds of its securities issuances in EWGs or FUCOs. [36]

[36] Southern is currently authorized to invest the proceeds of financings in EWGs and FUCOs up to an "aggregate investment" equal to 100% of consolidated retained earnings calculated in accordance with Rule 53, and is accordingly exempted from compliance with the condition established by 17 C.F.R. § 53(a)(1), that its investment in EWGs and FUCOs not exceed 50% of consolidated retained earnings.

3.6 Reporting

As stated above, Southern proposes to continue to comply with the reporting requirements established by the 1996 Order on a Southern consolidated basis. Southern will include all services provided to Southern Energy prior to the Distribution within the calculation required by Rule 53(a)(3). After the Distribution, except for services rendered at market-based terms and conditions by Holdco, Solutions or an equivalent Energy-Related subsidiary, Southern will include all services provided by it to Southern Energy within the calculation required by Rule 53(a).

Item 4. Regulatory Approval

FERC has exercised jurisdiction to approve the Distribution as an indirect disposition of jurisdictional assets, and has approved the Distribution. *Southern Company* 92 FERC ¶ 62,260 (September 26, 2000). No state commission and no other federal agency other than this Commission has jurisdiction over the transactions proposed herein.

Item 5. Procedure

Applicants hereby request that the Commission's order be issued as soon as the rules allow. Applicants hereby waive a recommended decision by a hearing officer or other responsible officer of the Commission, consent that the Division of the Investment Management may assist in the preparation of the Commission's decision and/or order in this matter, unless such Division opposes the transactions proposed herein, and request that there be no 30-day waiting period between the issuance of the Commission's order and the date on which it is to become effective.

Item 6. Exhibits and Financial Statements

(a) Exhibits

A Not Applicable

B Master Separation and Distribution Agreement and Ancillary Agreements

B.1 Master Separation and Distribution Agreement (Designated in Registration No. 333-35390 as Exhibit 10.1)

B.2 Technology and Intellectual Property Ownership and License Agreement (Designated in Registration No. 333-35390 as Exhibit 10.4)

B.3 Employee Matters Agreement (Designated in Registration No. 333-35390 as Exhibit 10.6)

B.4 Tax Indemnification Agreement (Designated in Registration No. 333-35390 as Exhibit 10.7)

B.5 Transitional Services Agreement (Designated in Registration No. 333-35390 as Exhibit 10.2)

B.6 Confidential Disclosure Agreement (Designated in Registration No. 333-35390 as Exhibit 10.5)

B.7 Indemnification and Insurance Matters Agreement (Designated in Registration No. 333-35390 as Exhibit 10.3)

B.8 Form of Tax Benefits Allocation Keep Well Agreement (Previously Filed)

B.9 Form of Tax Benefits Allocation Keep Well Agreement (Previously Filed)

C. Registration Statement on Form S-1, as amended (Registration No. 333-35390) (Filed Electronically on April 21, 2000, July 18, 2000, August 18, 2000, September 7, 2000, September 22, 2000, September 25, 2000 and September 26, 2000)

D. Not Applicable

E. Opinion of Counsel (To be filed by amendment)

(b) Financial Statements (Not applicable)

Item 7. Information as to Environmental Effects

No other federal agency is preparing an environmental impact statement with respect to the proposed transactions. In light of the nature of the proposed transaction, the Commission's action in this matter will not constitute any major federal action significantly affecting the quality of the human environment.

SIGNATURE

Pursuant to the requirements of the Public Utility Holding Company Act of 1935, the undersigned companies have duly caused this amendment to be signed on their behalf by the undersigned thereunto duly authorized.

Dated: October 13, 2000

THE SOUTHERN COMPANY

By:_____
Tommy Chisholm
Secretary

SOUTHERN ENERGY, INC.

By:_____
Elizabeth B. Chandler
Secretary

SOUTHERN ENERGY RESOURCES, INC.

By:_____
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