AGL RESOURCES INC
Form U-1
August 20, 2004

File No.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM U-1

APPLICATION/DECLARATION

UNDER

THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

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Description of Proposed Transaction.

A.

Introduction and General Request

In this Application, AGL Resources Inc. ("AGL Resources"), a registered public utility holding company under the Public Utility Holding Company Act of 1935, as amended (the "Act"), requests authority under Sections 9, 10 and 11 of the Act to acquire all of the issued and outstanding common stock of NUI Corporation ("NUI"), an exempt holding company under Section 3(a)(1) of the Act, and indirectly acquire all of NUI's subsidiary companies.[1] The proposed transaction, more fully described below, is referred hereto as the "Merger."

AGL Resources and NUI (collectively, "Applicants") also seek approval under Sections 6(a), 7, 9(a), 10, 11, 12(b), 12(c), 13(b) of the Act and Rules 43, 45, 46, and 54 for NUI and its subsidiaries to engage, after the consummation of the Merger, in the same financing and other transactions authorized by the Commission in the AGL Resources Financing Order[2] and described herein. Applicants further request authorization (a) to retain NUI's nonutility subsidiaries, (b) to reorganize NUI's direct and indirect nonutility subsidiaries without the need to seek further Commission authorization, (c) for AGL Resources to acquire NUI's interest in the Saltville Gas Storage Company, LLC pursuant to an exemption under Rule 16, and (d) for NUI Utilities, Inc. ("NUI Utilities") to pay dividends out of capital and unearned surplus in an amount up to their pre-merger retained earnings and post-merger earnings before any deduction for the impairment of goodwill. Finally, Applicants request that the Commission find that Virginia Gas Company ("VGC"), a utility holding company subsidiary of NUI, is entitled to an exemption pursuant to Section 3(a)(1) of the Act.

B.

Description of the Parties

1.

AGL Resources Inc. and its Subsidiaries

a.

AGL Resources Inc.

AGL Resources is a corporation organized under the laws of Georgia, and is an Atlanta-based energy services holding company. AGL Resources owns three gas public utility subsidiary companies: Atlanta Gas Light Company ("AGLC"), Chattanooga Gas Company ("CGC"), and Virginia Natural Gas, Inc. ("VNG"); and several directly or indirectly-owned subsidiary companies. AGLC, CGC and VNG serve more than 1.8 million customers in three states.

AGL Resources' common stock has a five dollar ($5.00) par value and is listed and traded on the New York Stock Exchange under the symbol "ATG." As of December 31, 2003 AGL Resources had 64,509,346 shares of common stock issued and outstanding. As of and for the twelve months ended December 31, 2003, AGL Resources had total assets of $3.98 billion, net utility plant assets of $2.20 billion, total operating revenues of $983.7 million, operating income of $258.3 million and net income of $127.9 million. As of December 31, 2003, AGL Resources, in conjunction with its subsidiaries, employed approximately 2,150 full-time employees.

b.

Utility Subsidiaries

(i)

Atlanta Gas Light Company

AGLC is a natural gas local distribution utility with distribution systems and related facilities serving 237 cities throughout Georgia, including Atlanta, Athens, Augusta, Brunswick, Macon, Rome, Savannah and Valdosta. AGLC also has approximately 6.0 billion cubic feet, or Bcf, of liquefied natural gas ("LNG") storage capacity in three LNG plants to supplement the supply of natural gas during peak usage periods.

The Georgia Public Service Commission regulates AGLC with respect to rates, maintenance of accounting records and various other service and safety matters. As of and for the twelve months ended December 31, 2003, AGLC had total assets of $2.45 billion, total operating revenues of $517.6 million and net income of $92.8 million. AGLC owns all of the outstanding stock of AGL Rome Holdings, Inc. AGL Rome Holdings, Inc. owned property associated with a former manufactured gas plant in Rome, Georgia, but sold that property in December 2003.

(ii)

Chattanooga Gas Company

CGC is a natural gas local distribution utility with distribution systems and related facilities serving 12 cities and surrounding areas, including the Chattanooga and Cleveland areas of Tennessee. CGC also has approximately 1.2 Bcf of LNG storage capacity in its LNG plant.

The Tennessee Regulatory Authority regulates CGC with respect to rates, maintenance of accounting records and various other service and safety matters. As of and for the twelve months ended December 31, 2003, CGC had total assets of $161.8 million, total operating revenues of $89.6 million and net income of $6.0 million.

(iii)

Virginia Natural Gas, Inc.

VNG is a natural gas local distribution utility with distribution systems and related facilities serving eight cities in the Hampton Roads region of southeastern Virginia. VNG owns and operates approximately 155 miles of a separate high-pressure pipeline that provides delivery of gas to customers under firm transportation agreements within the state of Virginia. VNG also has approximately 5.0 million gallons of propane storage capacity in its two propane facilities to supplement the supply of natural gas during peak usage periods.

The Virginia State Corporation Commission ("VSCC") regulates VNG with respect to rates, maintenance of accounting records and various other service and safety matters. As of and for the twelve months ended December 31, 2003, VNG had total assets of $708.9 million, total operating revenues of $328.7 million and net income of $25.5 million.

c.

Nonutility Subsidiaries

AGL Resources owns several nonutility subsidiaries. The Commission has previously authorized the retention of AGL Resources' nonutility subsidiaries.[3]

2.

NUI Corporation

a.

Utility Subsidiaries

NUI, a New Jersey corporation, has two public utility subsidiary companies, NUI Utilities and Virginia Gas Distribution Company ("VGDC"). Through its subsidiaries, NUI operates natural gas distribution systems and natural gas storage and pipeline businesses.

(i)

NUI Utilities, Inc.

Through its three regulated utility divisions, Elizabethtown Gas Company ("Elizabethtown Gas"), City Gas Company of Florida ("City Gas") and Elkton Gas, NUI Utilities distributes natural gas to approximately 371,000 customers in New Jersey, Florida and Maryland. Each utility subsidiary or division is subject to regulation by the public service commission in the states where it operates.

During fiscal year 2003, the operating revenues associated with the provision of distribution services by NUI Utilities was approximately $615.5 million, representing 94% of the total operating revenues of NUI. Of this amount, 73% was generated by utility operations in New Jersey, where approximately 70% of NUI Utilities' customers are located. Total utility gas volumes sold or transported by such utility operations amounted to 81.8 Bcf, of which 86% was sold or transported in New Jersey. These figures do not reflect utility operations which were discontinued in fiscal year 2003 with the sale of NUI's Valley Cities Gas and Waverly Gas.

NUI Utilities distributes gas through approximately 6,200 miles of steel, cast iron and plastic mains. The company has physical interconnections with five interstate pipelines in New Jersey and a single interstate pipeline in both Maryland and Florida. Common interstate pipelines along the company's operating system provide the company with the flexibility to manage pipeline capacity and supply, thereby optimizing system utilization.

Through its Elizabethtown Gas and City Gas divisions, NUI Utilities also has an appliance service, sales, leasing and financing businesses in New Jersey and Florida that complement its natural gas utility services in those states. The appliance group generated operating revenues of $15.4 million in fiscal year 2003 and had operating margins of $5.7 million in the same period.

Presently, NUI Utilities has a capacity management arrangement with Cinergy Marketing & Trading LLC ("CMT"), wherein CMT supplies NUI Utilities with gas at market-based prices and pays NUI Utilities a fixed fee to manage its interstate pipeline assets. NUI Utilities also makes off-system sales to non-jurisdictional customers utilizing assets under contract from interstate pipelines. Such assets include interstate pipeline and storage capacity. Off system sales margins retained by NUI Utilities totaled $1.3 million in fiscal year 2003.

(ii)

Virginia Gas Distribution Company

VGDC is an indirect wholly owned public utility subsidiary of NUI and a direct subsidiary of VGC, a holding company for certain utility and nonutility businesses.[4] VGDC distributes gas to approximately 300 customers in Virginia. During fiscal year 2003, VGDC sold approximately 240,300 Mcf of gas, of which 4% were sold to residential customers and 96% to commercial and industrial customers.

b.

Nonutility Subsidiaries

(i)

NUI Capital Corp.

NUI's nonutility businesses are carried out primarily by NUI Capital Corp. ("NUI Capital") and its subsidiaries.[5] NUI Capital's only remaining non-regulated subsidiary with substantial continuing operations is Utility Business Services, Inc. ("UBS"), a billing and customer information systems and services subsidiary. NUI's other non-regulated subsidiaries are winding down their operations. These subsidiaries include: NUI Energy, Inc. ("NUI Energy"), an energy retailer; NUI Energy Brokers, NUI's wholesale energy trading and portfolio management subsidiary;[6] OAS Group, Inc. ("OAS"), the company's digital mapping operation;[7] and TIC Enterprises, LLC ("TIC"), a sales outsourcing subsidiary that sold wireless and network telephone services.

UBS is a wholly owned subsidiary of NUI Capital. UBS provides outsourced customer information systems and services to NUI Utilities as well as investor-owned and municipal water/wastewater utilities. UBS offers customer and utility operations information systems and services, including account management, reporting, bill printing and mailing, and payment processing services. UBS presently serves 13 clients. The majority of UBS' clients are municipally-owned and operated water utilities across the United States. UBS' top three clients in terms of revenue generation are United Water, NUI Utilities and Middlesex Water. Over the past twelve months, NUI Utilities has provided approximately 36% of UBS' revenues. UBS has been profitable in every year since 1995.

(ii)

Virginia Gas Company

VGC is a natural gas storage, pipeline and distribution company with principal operations in Southwestern Virginia. In addition to owning VGDC, a gas utility described above, VGC operates two storage facilities; one a high-deliverability salt cavern facility in Saltville, Virginia (the "Saltville Storage Project") and the other a depleted reservoir facility in Early Grove, Virginia. Combined, the facilities have approximately 2.6 Bcf of working gas capacity. VGC also owns and operates a 72-mile 8" intrastate pipeline and serves as the construction and operations manager for the Saltville Storage Project as discussed below. All of VGC's businesses are regulated by the VSCC, and the Saltville Storage Project is regulated by the Federal Energy Regulatory Commission ("FERC"). VGC, which was acquired by NUI in March 2001 had operating margins of $8.7 million in fiscal year 2003.

(iii)

NUI Saltville Storage, Inc.

NUI's wholly owned subsidiary, NUI Saltville Storage, Inc. ("NUISS"), is a fifty-percent member of Saltville Gas Storage Company, LLC ("SSLLC"). SSLLC is a joint venture between subsidiaries of NUI and Duke Energy Gas Transmission ("DEGT") that is developing a natural gas storage facility in Saltville, Virginia. SSLLC plans to expand the present Saltville Storage Project from its current capacity of 1 Bcf to approximately 12 Bcf in several phases. The Saltville Storage Project connects to DEGT's East Tennessee Natural Gas interstate system and its Patriot pipeline. SSLLC is subject to regulation by FERC under the Natural Gas Act.

In conjunction with the development of the Saltville Storage Project, NUI Energy Brokers entered into a twenty-year agreement with DEGT for the firm transportation of natural gas in the Patriot pipeline and a twenty-year agreement with SSLLC for the firm storage of natural gas. NUI is not using the Patriot pipeline transportation capacity at this time since it has discontinued its trading operations.

(iv)

NUI Storage, Inc.

NUI Storage, Inc. ("NUI Storage") is a wholly owned subsidiary of NUI. Through its wholly owned subsidiaries, NUI Storage has acquired options on the land and mineral rights for property located in Richton, Perry County, Mississippi that the company plans to develop into a natural gas storage facility to help serve the Southeast United States. Like its companion storage facility in Saltville, Richton is expected to offer the high-deliverability capabilities of salt dome storage for natural gas and will have access to a number of major interstate pipelines, including Destin Pipeline and its connections to Gulf South, Gulfstream, Florida Gas Transmission, SONAT, Tennessee Natural Gas and Transco. Through its connection to Destin Pipeline, Richton will have direct access to the gas supplies in the Gulf of Mexico, as well as supplies from the interconnected interstate pipelines referenced. Richton can also serve as a potential storage facility for the various proposed liquefied natural gas projects in the Gulf Coast. It is anticipated that Richton will be subject to FERC regulation.

c.

Recent Developments

In November 2003, the New Jersey Attorney General's Office ("NJAGO") subpoenaed NUI for certain documents and information related to the practices of NUI Energy Brokers. On June 30, 2004, NUI Energy Brokers entered into an agreement with the NJAGO whereby NUI Energy Brokers pled guilty to a charge of Misconduct by a Corporate Official in the third degree. This plea agreement provides that NUI Energy Brokers must pay a $500,000 fine and must cooperate fully with the NJAGO continuing investigation. NUI is a party to a separate agreement related to NUI

Energy Brokers' plea, but NUI did not plead guilty to any crimes. NUI guaranteed NUI Energy Brokers' payment of the fine and agreed to cooperate fully with the NJAGO continuing investigation and to develop, fund and operate community service programs within the Elizabethtown Gas service territory. The plea concludes the investigation by the NJAGO of NUI and its subsidiaries.

As a result of NUI and NUI Utilities' credit downgrades during 2003, negative credit rating comments and concerns raised during a routine competitive services audit of NUI Utilities operating division, Elizabethtown Gas, conducted by the NJBPU, in March 2003, the NJBPU ordered a focused audit of NUI, NUI Utilities and Elizabethtown Gas in six key areas: (1) strategic planning; (2) affiliate transactions; (3) financial structure and interaction; (4) accounting and property records; (5) corporate governance; and (6) executive compensation. The NJBPU retained The Liberty Consulting Group ("Liberty") as the auditors for the focused audit. On March 17, 2004, the NJBPU released the final report for the focused audit, which, among other things, cited weaknesses in each of the foregoing six areas. The NJBPU's review of NUI, including matters related to NUI Energy Brokers, concluded with the settlement agreement entered into on April 13, 2004, among NUI, NUI Utilities, Elizabethtown Gas and the NJBPU regarding the issues raised in the focused audit. Under the settlement agreement, NUI Utilities agreed to provide a $28 million refund to Elizabethtown Gas ratepayers and to pay a $2 million penalty to the State of New Jersey over five years.[8]

In November 2003, the SEC advised NUI that it is conducting an informal inquiry relating to NUI Energy Brokers. On March 1, 2004, the SEC requested NUI produce voluntarily certain documents in furtherance of its informal inquiry. NUI is fully cooperating with the SEC.

The capital structures of NUI and NUI Utilities as of June 30, 2004 are shown in the table below.

	NUI (6/30/04)		**NUI Utilities (6/30/04)**	
	($MM)	% of total cap	($MM)	% of total cap
Long-term debt	199	28.4%	199	34.5%

Short-term debt (including current maturities of long-term debt)	295 [(1)]	42.1%	154	26.7%
Preferred stock				
Common stock equity	207	29.5%	224	38.8%
Total capitalization	$701	100.0%	$577	100.0%

[(1)] Net of $111 million of cash at June 30, 2004.

NUI and NUI Utilities have the following ratings:

	NUI	NUI Utilities
Moody's debt rating	Caa-1	B-1
Moody's outlook	Negative	Negative
S&P corporate credit rating	--	BB
S&P outlook	--	CreditWatch with developing implications

C.

Description of the Transaction

1.

The Merger

On September 26, 2003, the Board of Directors of NUI announced its intention to pursue the sale of the company. Applicants have entered into an Agreement and Plan of Merger by and among AGL Resources Inc., Cougar Corporation[9] and NUI Corporation, dated as of July 14, 2004 ("Merger Agreement"), pursuant to which AGL Resources has agreed to acquire all the outstanding shares of NUI for $13.70 per share in cash, or $220 million in the aggregate based on approximately 16 million shares currently outstanding. AGL Resources will assume the outstanding indebtedness of NUI at closing. As of March 31st, NUI had approximately $607 million in debt and $136 million of cash on its balance sheet, bringing the current net value of the acquisition to $691 million. AGL Resources anticipates that the amount of NUI debt and cash will change prior to the time of closing.

2.

Financing the Merger

The purchase of NUI shares will be funded primarily through the issuance of AGL Resources common stock at or prior to closing. AGL Resources also must refinance a substantial portion of NUI and NUI Utilities' outstanding debt upon closing, due to "change in control" provisions included in these financings. AGL Resources expects to maintain its strong investment-grade ratings and its current dividend policy post-acquisition. As a result of the announcement of the acquisition, however, the outlooks on AGL Resources' credit ratings have changed. Moody's recently affirmed AGL Resources' ratings, but changed its rating outlook to negative from stable. Both Standard & Poor's and Fitch changed AGL Resources' credit ratings to "on watch" status with negative outlooks. These rating agencies have indicated their actions are the result of the execution risks in consummating, financing and integrating the NUI acquisition, and concerns regarding issues and risks associated with NUI's business. This placement of AGL Resources on credit "watch" by the major credit rating agencies is customary, and this action is not expected to result in any adverse ratings actions. AGL Resources can readily finance this acquisition without significant pressure on the balance sheet or on its credit rating. AGL Resources expects to maintain its strong investment-grade rating and its current dividend policy post-acquisition. After the Merger, AGL Resources' ratio of equity to total capitalization will remain well above 30%.[10]

AGL Resources may elect to finance the cash portion of the purchase price through the issue of common stock at or prior to closing if market conditions are favorable. This approach has been used in other recent acquisitions in the utility industry.[11] The Financing Order provides sufficient authority for AGL Resources to proceed in this fashion because, in the unlikely event that AGL Resources were to sell common stock and not close the NUI acquisition, the proceeds of the stock issuance would be used only for permitted corporate purposes. AGL Resources currently is authorized to issue equity and debt securities in an aggregate amount outstanding at any one time not to exceed $5 billion through March 31, 2007. AGL Resources is not requesting additional financing authorization to finance the purchase price.

3.

Conditions

The transaction is subject to the approval of NUI's shareholders; the Securities and Exchange Commission; the Federal Communications Commission ("FCC"); the state regulatory agencies of New Jersey, Maryland and Virginia; and any necessary approval or the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. These approvals are further discussed in Item 4, below.

The consummation of the transaction is further subject to the following conditions: (i) NUI shall have received orders approving the transaction from the above referenced state utility commissions that contain certain terms specified by AGL Resources, except as would not have a material adverse effect on NUI, NUI Utilities, or AGL Resources; (ii) neither NUI nor any of its subsidiaries shall have been indicted or criminally charged for a felony criminal offense by any Governmental Entity (with the express exception of NUI and NUI Energy Brokers with respect to the matters specified in the Settlement with the NJAGO) relating to the matters that are the subject of the NJBPU Settlement Order and the Stipulation and Agreement referred to therein, the NJAGO Settlement or the Stier Anderson Report (as those terms are defined in the Merger Agreement, see Exhibit B-1 hereto), and NUI and its subsidiaries shall not have received any notice of non-compliance in any material respect with the NJAGO Settlement, and there shall have been no revocation of or material changes to the terms of the NJAGO Settlement; (iii) neither NUI nor its subsidiaries shall be the subject of an active investigation with respect to the matters that are the subject of the NJBPU Settlement Order and the Stipulation Agreement referred to therein, the NJAGO Settlement or the Stier Anderson Report, which, individually or in the aggregate, would reasonable be expected to have a material adverse effect on NUI or NUI Utilities; and (iv) no other material adverse effect as defined in the Merger Agreement has occurred.

AGL Resources has the right to terminate the Merger Agreement if NUI does not have necessary interim financing in place by September 30, 2004. AGL Resources' right to terminate the Merger Agreement pursuant to this provision expires on October 15, 2004, or in the event a regulatory approval of such financing is subject to appeal, October 25, 2004. AGL Resources may also terminate the agreement if NUI and NUI Utilities do not have certain other financing facilities in place or drawn, or there is a payment default or an acceleration of indebtedness.

Lastly, the Merger Agreement may be terminated (i) by NUI in order for NUI to pursue a superior acquisition proposal; (ii) by AGL Resources based upon the board of directors of NUI withdrawing its recommendation of the Merger Agreement or recommending a superior acquisition proposal to the shareholders of NUI; (iii) by either party due to the consummation of the merger not occurring by April 13, 2005 (which is subject to a 90 day extension to obtain regulatory approvals); (iv) by either party due to the shareholders of NUI failing to approve the Merger

Agreement; or (v) by AGL Resources based upon the existence of a material, uncured breach of the Merger Agreement by NUI, provided that in the cases of clauses (iii)-(v) above, a termination fee (as described below) is payable only if and when NUI enters into a definitive agreement with respect to an alternative acquisition proposal within 12 months of such termination. In the event of a termination of the Merger Agreement pursuant to the circumstances provided in (i) and (ii), NUI will have to pay AGL Resources a termination fee of $7.5 million. The Merger Agreement also contains other customary termination rights, which do not result in the payment of a termination fee.

4.

Management and Operations Following the Merger

Pursuant to the Merger Agreement, AGL Resources has agreed to acquire NUI in a reverse triangular merger in which, at closing, a newly created subsidiary of AGL Resources will merge with and into NUI. Upon the consummation of the Merger, NUI will be a wholly owned direct subsidiary of AGL Resources.[12] Exhibit K-1 sets forth the organizational structure of the combined company after the Merger, simplified to show only major subsidiaries.

Upon closing, Craig Matthews, NUI's current CEO, will leave the company. AGL Resources is evaluating the appropriate composition of NUI's senior management after closing as a part of the work of a combined AGL Resources and NUI transition team. The members of the NUI and NUI Utilities Boards of Directors will resign and new directors will be selected from the management of AGL Resources and its subsidiaries. The AGL Resources Board of Directors intends to add a New Jersey resident of significant professional stature and business qualification to the AGL Resources Board. Since the closing the VNG acquisition, AGL Resources has sought to have at least one Virginian business leader on its Board.[13]

AGL Resources is still evaluating personnel to fill key management positions and roles at NUI. AGL Resources intends to manage and govern NUI and NUI Utilities in the same manner in which it currently manages its other utilities. At the corporate level, it is clear that there is some overlap among employees at AGL Resources, NUI and NUI Utilities, particularly in the "corporate services" area, including accounting, finance, legal, and public relations. AGL Resources and NUI have established an integration team that will identify redundancies that should be addressed as AGL Resources integrates NUI's corporate management into AGL Resources' existing management structure.

5.

Benefits of the Merger

The acquisition will strengthen AGL Resources' position as a preeminent operator of natural gas utility assets in the Eastern United States by incrementally expanding its base of strong urban utility operations. With this acquisition, AGL Resources will expand its geographic footprint along the East Coast, reaching from Florida to New Jersey; and increase its customer base by approximately 20 percent to a total of more than 2.2 million customers. In addition, the acquisition will allow AGL Resources to modernize operations and upgrade service quality to NUI's customers; acquire strategic natural gas storage assets and pipeline connections; and enhance its asset management capabilities. AGL Resources expects to see earnings accretion within the first full year after closing, based on its experience integrating VNG.

AGL Resources expects to improve NUI's business to a level on par with its other utility subsidiaries for the benefit of all of its stakeholders. The Merger will provide an incremental opportunity for AGL Resources to build on its track record for running utility operations and enhance shareholder value.

a.

Benefits from AGL Resources' Financial Strength

As an investment-grade company, AGL Resources brings financial strength and resources to the transaction. In 2003, AGL Resources had an enterprise value of $3 billion and total operating revenues of almost $1 billion. AGL Resources' Senior Notes are currently rated Baa1/BBB+/A- by Moody's, Standard & Poor's and Fitch, respectively. AGL Resources was one of the few energy companies to receive a credit rating upgrade (by Fitch Ratings) in 2003. Recently, Platts Global Energy named AGL Resources its "2003 Gas Company of the Year."

The most significant benefit of the Merger is the increased financial stability for NUI's utilities as a result of AGL Resources' financial strength. That strength will support NUI's utility customer growth and related capital requirements as well as the significant working capital necessary to purchase and deliver natural gas at today's higher commodity prices.

Because of NUI's weakened credit ratings, it must prepay gas commodity and demand charges at a significant cost. In addition, NUI is incurring significant bank fees and high interest rates because of its poor credit ratings. Being a part of an investment grade company will, in the short run, significantly reduce the interest rate at which NUI Utilities currently borrows and will also allow NUI Utilities access to capital in the future at attractive prices, clearly a benefit in the long run.

The Merger should reduce the possibility of a liquidity crisis at NUI and NUI Utilities that could be triggered if a payment default or acceleration of indebtedness were to occur under the terms of their financing. As indicated above, under the terms of the Merger Agreement, AGL Resources would not be obligated to complete the acquisition if either a payment default or acceleration of indebtedness were to occur.

AGL Resources will need to refinance much of NUI and NUI Utilities' debt at closing -- an amount that, depending on the date of the closing, could exceed $530 million. This debt includes the approximately $405 million that is currently outstanding under NUI and NUI Utilities' current credit facilities, which terminate at closing; up to $95 million of any additional borrowings that may be outstanding at closing under NUI and NUI Utilities' new credit facilities ("Seasonal Bridge"), which terminate at closing; and up to $30 million payable by NUI Utilities after closing under the Settlement Agreement with the NJBPU.[14]

AGL Resources intends to finance the repayment of NUI and NUI Utilities' indebtedness at closing by issuing unsecured indebtedness to external creditors and then loaning the proceeds of the issuance to NUI and NUI Utilities through long-term intercompany debt (the "Intercompany Notes").[15] NUI and NUI Utilities will use the funds borrowed under the Intercompany Notes to repay indebtedness to third party lenders under the Credit Agreement and Seasonal Bridge, and under its Settlement Agreement with the NJBPU. AGL Resources anticipates that the principal of the Intercompany Notes will equal the amount that NUI and NUI Utilities require for repayment of indebtedness under these facilities and will otherwise be on no less favorable terms (*e.g.*, weighted average interest rate, maturities, placement costs) than those upon which AGL Resources financed the repayment in the marketplace. AGL Resources expects that the Intercompany Notes will refinance NUI and NUI Utilities' existing indebtedness on terms that are more favorable to NUI and NUI Utilities than those that are currently provided under the Credit Agreement and Seasonal Bridge.

The Merger will not jeopardize AGL Resources' financial condition. AGL Resources plans to issue a substantial amount of equity to finance the acquisition and maintain a balanced, post-Merger capital structure. In addition, the NUI and NUI Utilities debt that AGL Resources proposes to refinance will be significantly less costly and, therefore, more supportable by the acquired companies. NUI Utilities is also one-fourth to one-fifth the current size of AGL Resources, depending on the measure used,[16] so AGL Resources financial structure should not be subjected to unreasonable financial stress as a consequence of the Merger. Lastly, NUI Utilities is fundamentally a sound public utility company that is expected to contribute positively to the earnings of AGL Resources.

Moody's recently affirmed AGL Resources' credit rating following the public announcement of the acquisition. Moody's indicated that its negative outlook reflects the execution risks in consummating, financing, and integrating this transaction. Moody's concluded, however, that the terms of the Merger Agreement protect AGL Resources from certain of NUI's outstanding contingencies as they allow AGL Resources to abandon the purchase should NUI be unable to satisfy AGL Resources concerns with regard to certain matters.

Moody's negative outlook (as opposed to a review for possible downgrade) denotes its expectation that the strains in AGL Resources' credit profile brought from this purchase will be temporary and AGL Resources will recover over an 18-24 month time horizon. Moody's affirmed AGL Resources' ratings and noted its expectation that the company's financial resources and financial flexibility should enable AGL Resources to absorb a temporary near-term strain of acquiring a smaller, financially weaker entity.

b.

Benefits From AGL Resources' Utility Experience

AGL Resources has been operating natural gas local distribution systems for almost 150 years and has a strong track record of well-run utility operations. AGL Resources' business model will produce efficiencies in the delivery of superior service to NUI's customers. Because of its own geographic scope, AGL Resources will be able to integrate all four of NUI's utility distribution areas into its system without disruption, thereby providing a smooth transition for customers in all states where NUI is doing business.

Upon closing, AGL Resources will be the largest local distribution company, in terms of number of customers, along the east coast of the United States. This scale allows the company to continue its strategy of investment in modernizing technologies, which improve customer service and provide other benefits for ratepayers. AGL Resources intends to improve NUI's financial condition and to implement operational and infrastructure improvements in NUI's utility operations. The relatively small scale of these operations has prevented NUI from investing in some of the available technology platforms that can improve customer service and efficiency. AGL Resources' utility businesses use state-of-the-art technology and field-tested best practices to provide superior service. The integration of this technology and best practices into NUI's utility operations will benefit customers and enhance service to NUI's customers. AGL Resources is confident that it will be able to improve upon NUI's utility customer service, safety and reliability record over time.

The Merger will have benefits for AGL Resources' current utility businesses as well. For example, Elizabethtown Gas is located in a region where there is strong base usage and where gas is the preferred energy alternative. NUI is also positioned in the geographic area where AGL Resources conducts wholesale asset management operations. Additionally, the increase to the number of AGL Resources' utility customers means that AGL Resources will be able to allocate its corporate overhead over a larger number of ratepayers. This circumstance should lead to better use of pipeline capacity and storage for which NUI Utilities is already contracted but which is not being utilized, thus yielding benefits now and in the future.

D.

Financing Authority

On April 1, 2004, the Commission issued an order authorizing AGL Resources and its utility and nonutility subsidiaries to engage in various financing transactions.[17] The authorization period of the Financing Order extends from April 1, 2004 through March 31, 2007 ("Authorization Period"). AGL Resources seeks approval pursuant to Sections 6(a), 7, 9(a), 10, 12(b), 12(c), and 13(b) of the Act and Rules 43, 45, 46 and 54 for NUI and its subsidiaries to, after the consummation of the Merger, undertake any of the transactions in which current subsidiaries of AGL Resources may engage under the Financing Order during the Authorization Period. NUI and its subsidiaries would be subject to the same financing limitations and conditions as set forth in the Financing Order.

In particular, Applicants propose to extend to NUI and its existing subsidiaries authority concerning:

- Utility subsidiary short-term debt
- Authorization and operation of the money pools
- Guarantees
- Hedging
- Changes in capital stock of wholly-owned subsidiaries
- Financing entities
- Restructuring and reorganization
- Intermediate subsidiaries
- Payment of dividends out of capital and unearned surplus

These items are discussed in greater detail in Item 3, below.

E.

Affiliate Transactions

On October 5, 2000, the Commission issued an order which, among other things, approved the formation of a system service company and authorized certain intrasystem transactions.[18] NUI proposes that it and its subsidiaries would enter into a services agreement with AGL Services Company ("AGL Services") pursuant to the Commission-approved form of services agreement, a copy of which is attached herein as Exhibit L-1.

1.

Gas Procurement and Asset Management Arrangement

NUI Utilities also proposes to enter into a three year gas procurement and asset management arrangement with a subsidiary of AGL Resources, Sequent Energy Management ("Sequent"). Sequent provides gas procurement and transportation and storage capacity asset management services to AGLC, VNG and CGC pursuant to arrangements with the respective state commissions with jurisdiction over these public utility subsidiaries. Under these arrangements, Sequent provides commodity gas, including related procurement services, and also acts as agent for the utilities in connection with transactions for gas transportation and storage capacity. These transactions are exempt from regulation under Section 13(b) of the Act by virtue of Rules 80 and 81. The rules exempt transactions in natural gas from the definition of goods under the Act and provide that transportation and similar services, the sale of which is normally subject to public regulation are exempted from the provisions of Section 13. Gas transportation and storage services are subject to the regulation of the FERC. Sequent proposes to provide similar services to NUI Utilities and VGDC subject to the approval of the NJBPU and VSCC.

The asset management model that Sequent employs provides for revenue sharing between the asset manager and the utility's ratepayers. As noted above, Sequent currently manages the assets of AGL Resources' public utilities and under these arrangements, Sequent contributed approximately $9.9 million to customers in 2003.

2.

Billing Services

NUI Utilities currently has an Agreement for Billing Services, dated February 18, 2004, with NUI's nonutility subsidiary, UBS under which UBS provides NUI Utilities with certain billing related services using NUI Utilities' customer information system and certain other data center services on UBS' mainframe computer, including operating systems related to NUI Utilities' work order management, leak management, meter management, time entry and field services. The agreement is effective until March 31, 2007, but may be terminated by NUI Utilities with 180 days prior written notice. This agreement has been approved by the NJBPU.

UBS charges NUI Utilities market rates for the provision of these services. After closing, AGL Resources is willing to cause UBS and NUI Utilities to amend the agreement to require the services to be provided to NUI Utilities at UBS' cost. Prior to implementing such amendment, however, AGL Resources must determine whether a change in the pricing standard to terms more favorable to NUI Utilities would trigger contractual obligations to provide cost-based pricing to UBS' unaffiliated customers. In addition, if NJBPU approval of the amended contract is required, AGL Resources will need to seek such authorization before restructuring the contract between UBS and NUI Utilities. AGL Resources therefore requests a temporary exception to the "at cost" provisions of Section 13(b) of the Act and the rules thereunder to provide adequate time to restructure this contract.

3.

Construction and Management Services

VGC provides construction and operations management services to SSLLC. Applicants request that the Commission exempt such services from Section 13(b) and the rules thereunder because SSLLC will be exempt under Rule 16, upon the issuance of the authorization requested herein, and, accordingly, will not be treated as a subsidiary of a registered holding company under the Act.

F.

Tax Allocation Agreement

On December 23, 2003, the Commission issued a Supplemental Order authorizing AGL Resources' tax allocation agreement.[19] AGL Resources proposes to add NUI and its subsidiaries to the existing tax allocation arrangements approved by the Commission for the AGL Resources system.

G.

Rule 16 Exemption

As discussed in Item 3 below, SSLLC seeks to rely on an exemption under Rule 16 from the obligations, duties and liabilities imposed upon it under the Act as a subsidiary or affiliate of a registered holding company. Accordingly, Applicants request that the Commission authorize AGL Resources to acquire NUI's interest in SSLLC under Sections 9(a)(1) and 10.

H.

Section 3(a)(1) Exemption Request for VGC

As discussed in Item 3 below, Applicants also request that the Commission issue an order pursuant to Section 3(a)(1) of the Act providing that VGC, a Virginia corporation with a Virginia utility subsidiary operating solely in Virginia, and each of its subsidiary companies as such, will be exempt from all provisions of the Act, except Section 9(a)(2).

Item 2.

Fees, Commissions and Expenses.

Applicants estimate the fees associated with the completion of the transaction to be as follows (amounts in $ millions):

($ millions)	AGL Resources[1]	NUI	Total
Legal	3.3	5.3	8.6
Accounting	0.6	0.2	0.8
Bankers	4.0	10.2	14.2
Total	$7.9	$15.7	23.6

(1) The amounts shown do not include the costs associated with refinancing NUI's debt or the issuance of equity by AGL Resources. Such costs are subject to the terms of the Financing Order.

Item 3.

Applicable Statutory Provisions.

A.

Applicable Provisions

Sections 6(a), 7, 9(a), 10, 11, 12(b), 12(c), and 13(b) of the Act and Rules 43, 45, 46, and 54 thereunder are considered applicable to the proposed transactions.

To the extent that the proposed transactions are considered by the Commission to require authorizations, exemption or approval under any section of the Act or the rules and regulations thereunder other than those set forth above, request for such authorization, exemption or approval is hereby made.

B.

Legal Analysis

1.

Sections 9(a), 10 and 11

Section 9(a)(2) of the Act makes it unlawful, without approval of the Commission under Section 10, "for any person ... to acquire, directly or indirectly, any security of any public utility company, if such person is an affiliate ... of such company and of any other public utility or holding company, or will by virtue of such acquisition become such an affiliate." Under the definition set forth in Section 2(a)(11)(A) of the Act, an "affiliate" of a specified company means "any person that directly or indirectly owns, controls, or holds with power to vote, 5 per centum or more of the outstanding voting securities of such specified company."

AGL Resources is the owner of 100% of the voting stock of three public utility companies, AGLC, CGC and VNG. Because AGL Resources will, as a result of the Merger, own more than five percent of the outstanding voting securities of more than one public utility company, AGL Resources must obtain the approval of the Commission for the Merger under Sections 9(a)(2) and 10 of the Act. The statutory standards to be considered by the Commission in determining whether to approve the proposed Merger are set forth in Sections 10(b), 10(c) and 10(f) of the Act.

As described below, the Merger complies with all of the applicable provisions of Section 10 of the Act.

a.

Section 10(b)(1)

The Commission may not approve the Merger if it determines, pursuant to Section 10(b)(1), that such acquisition will tend towards interlocking relations or the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors, or consumers. For the reasons given below, there is no basis in this case for the Commission to make either of those negative findings concerning the Merger.

By its nature, any merger results in new links between theretofore unrelated companies.[20] These links, however, are not the types of interlocking relations targeted by Section 10(b)(1), which was primarily aimed at preventing business combinations unrelated to operating efficiencies.[21] The Merger will not result in an undue concentration of control of public utility companies.

Upon closing, Craig Matthews, NUI's current CEO, will leave the company. AGL Resources is evaluating the composition of NUI's senior management as a part of the work of a combined AGL Resources and NUI transition team. The members of the NUI and NUI Utilities Boards of Directors will resign. After the consummation of the acquisition, each of NUI's and NUI Utilities Boards of Directors will be comprised of officers of AGL Resources, much like the current boards of AGL Resources' other utility subsidiaries, AGLC, VNG and CGC. AGL Resources' Board of Directors will also be considering revisions to the charter of its Environmental and Corporate Responsibility Committee to contemplate oversight of the post-acquisition integration of the NUI utility subsidiaries, with proper recognition of the public interest considerations of the states in which the acquired utilities operate. In addition, it is the practice of AGL Resources' Board of Directors to hold one board meeting a year outside of Georgia and invite public and community officials to meet with board members so that they may hear first-hand how AGL Resources is doing in the local area.

AGL Resources is still evaluating personnel to fill key management positions and roles at NUI. AGL Resources intends to manage and govern NUI and NUI Utilities in the same manner in which it currently manages its other utilities. At the corporate level, it is clear that there is some overlap among employees at AGL Resources, NUI and NUI Utilities, particularly in the "corporate services" area, including accounting, finance, legal, and public relations. AGL Resources intends to work closely with NUI management to develop a framework to address any redundancies that become apparent as AGL Resources integrates NUI's corporate management into AGL Resources' existing management structure.

In addition, the Merger will not create a "huge, complex and irrational" system.[22] In applying Section 10(b)(1) to utility acquisitions, the Commission must determine whether the acquisition will create "the type of structures and combinations which the Act was specifically directed [to prohibit]."[23] The transaction is not undertaken specifically for the purpose of extending AGL Resources' control over regulated public utilities as such. As indicated above, the acquisition will allow AGL Resources to modernize operations and upgrade service quality to NUI's customers; acquire strategic natural gas storage assets and pipeline connections; and enhance its asset management capabilities.

<u>Size</u>: With this acquisition, AGL Resources will expand its geographic reach along the east coast, reaching from Florida to New Jersey, and increase its customer base by approximately 20 percent to a total of more than 2.2 million customers. This is in line with existing holding company systems.[24]

<u>Efficiencies and economies</u>: As described above, AGL Resources anticipates it will be able to absorb all four of NUI's utility operations into its system without disruption, and it will implement best practices and technology enhancements to provide service in a more efficient and economic manner. AGL Resources expects the Merger to produce efficiencies associated with more economical gas purchasing, information technology initiatives, improved transmission capacity and storage utilization, and general and administrative expense reductions. AGL Resources has analyzed performance metrics at NUI and NUI Utilities and compared them to the performance of AGL Resources and its subsidiaries. Based on this analysis, AGL Resources is confident that the Merger will produce economies and efficiencies.

Competitive effects: The Merger does not reduce competition in any relevant market. Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") and rules thereunder, the Merger may not be consummated until AGL Resources and NUI each have filed Notification and Report Forms with the United States Department of Justice ("DOJ") and Federal Trade Commission ("FTC") describing the effects of the transaction on competition in the relevant market, and the required waiting period has expired. On August 5, 2004, AGL Resources and NUI filed such pre-merger notifications with the DOJ and FTC. Accordingly, unless the DOJ and/or FTC request additional information, the waiting period will expire on or before September 7, 2004.

b.

Section 10(b)(2)

The Commission may not approve the Merger if it determines, pursuant to Section 10(b)(2), that the consideration (including the fees and expenses associated with the transaction) to be paid by AGL Resources is not reasonable or does not bear fair relation to the investment in and the earning capacity of the utility assets underlying the securities being acquired. For the reasons given below, there is no basis in this case for the Commission to make either of these negative findings concerning the consideration being offered by AGL Resources.

The process by which AGL Resources and NUI reached agreement on the Merger demonstrates that the requirements of Section 10(b)(2) have been satisfied. The negotiation between NUI and AGL Resources was at arms-length and the consideration agreed to by the parties was the product of a competitive process.

In 2003, as a result of the negative impact on NUI resulting from its credit downgrades and adverse business conditions, the NUI Board of Directors established a Special Committee to assess the company's alternatives. After considering a number of strategic alternatives, on September 26, 2003, the Board of Directors of NUI concluded that the sale of the company was in the best interests of its shareholders and other key stakeholders, including its customers, and announced its intention to pursue the sale of the company. Thereafter, NUI began a public auction process. A detailed account of the auction process and related events is available as part of the NUI Corporation Proxy Statement, Exhibit B-2.

Once the decision to pursue a sale was made, the NUI Board of Directors engaged Credit Suisse First Boston LLC and Berenson & Company, LLC to act as its financial advisors through the sale process. These advisors issued opinions that the consideration was fair, from