

(b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: April 9, 2001.

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23777]

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

April 11, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 7, 2001, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 7, 2001, the

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

The Southern Company, et al. (70-9771)

The Southern Company ("Southern"), 270 Peachtree Street, N.W., Atlanta, Georgia 30303, a registered holding company, and its wholly owned subsidiaries, Mobile Energy Services Holdings, Inc. ("Holdings") and Mobile Energy Services Company, L.L.C. ("Mobile Energy")¹ both located at 1155 Perimeter Center West, Atlanta, Georgia 30338 (collectively, "Applicants"), have filed an amended application-declaration ("Application") under sections 6(a), 7, 11(f), 11(g), 12(a), 12(b), 12(d), 12(e), 12(f) and rules 44, 45, 54, 62, 63 and 64 of the Act. The Commission issued an initial notice of the filing of the Application on October 16, 2000 (HCAR No. 27254) ("Initial Notice"). The Initial Notice described the First Amended Joint Plan of Reorganization dated September 15, 2000 ("First Plan"). This supplemental notice describes the Second Amended Joint Plan of Reorganization dated February 21, 2001 ("Second Plan"). The Second Plan supercedes the First Plan although it contains numerous similarities.

Applicants propose that the Commission issue: (1) An order under section 11(f) of the Act approving the Second Plan and certain related transactions under the Second Plan;² and (2) a report on the Second Plan under section 11(g) to accompany a solicitation of creditors and any other interest holders for approval of the Second Plan in the bankruptcy proceedings.³

The Application includes the Second Plan and the First Amended Disclosure Statement ("Amended Disclosure Statement") for Mobile Energy and Holdings. On January 14, 1999, Mobile Energy and Holdings (collectively,

¹ Mobile Energy is a wholly owned limited liability company subsidiary of Holdings to which Holdings transferred all of its assets other than its equity interest in Mobile Energy in July 1995. Mobile Energy is an electric utility company within the meaning of section 2(a)(3) of the Act.

² Section 11(f) of the Act provides, in relevant part, that "a reorganization plan for a registered holding company or any subsidiary thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court."

³ Section 11(g)(2) of the Act provides, in relevant part, that any solicitation for consents to or authorization of any reorganization plan of a registered holding company or any subsidiary company thereof shall be "accompanied or preceded by a copy of a report on the plan which shall be made by the Commission after an opportunity for a hearing on the plan and other plans submitted to it, or by an abstract of such report made or approved by the Commission."

"Debtors") filed voluntary petitions in the United States Bankruptcy Court for the Southern District of Alabama ("Bankruptcy Court") for protection under Chapter 11 of the United States Bankruptcy Code ("Bankruptcy Code"). Both entities filed as debtors in possession continuing their operations; as a result, the Bankruptcy Court has appointed no trustee or receiver. The Debtors and the Bondholder Steering Committee (explained below) filed the First Plan and Disclosure Statement Accompanying the First Plan ("Disclosure Statement") with the Bankruptcy Court on September 15, 2000. On October 12, 2000, S.D. Warren Alabama, LLC ("S.D. Warren") filed an objection ("Objection") to the Disclosure Statement.⁴

The Debtors, the Bondholder Steering Committee and S.D. Warren engaged in a series of discussions regarding the possible resolution of the Objection. The negotiations have not resulted in the resolution of the Objection. On February 21, 2001, the Second Plan and the Amended Disclosure Statement were filed with the Bankruptcy Court.

Under section 1125 of the Bankruptcy Code, the Debtors may not solicit votes for acceptances of the Second Plan until the Bankruptcy Court approves a disclosure statement that contains information of a kind, and in sufficient detail, adequate to enable creditors to make an informed judgment whether to vote for acceptance or rejection of the plan. A hearing is scheduled before the Bankruptcy Court to determine whether the Amended Disclosure Statement filed on February 21, 2001, meets the requirements of section 1125 of the Bankruptcy Code.

Applicants state the purposes of the transactions described in the Second Plan are to: (1) Permit Mobile Energy and Holdings to reorganize and emerge from bankruptcy; (2) maximize the recovery of Mobile Energy's bondholders on their capital investment; (3) eliminate the direct and indirect equity ownership of Southern in Mobile Energy and Holdings; and (4) allow Mobile Energy to operate as a qualifying facility ("QF") under the Public Utility Regulatory Policies Act of 1978 ("PURPA") after the effective date of the Second Plan, which will cause Mobile Energy and Holdings to no longer be subject to the Act. Certain transactions contemplated by the Second Plan require Commission authorization. The jurisdictional aspects

⁴ The facilities at issue are located inside a large pulp, paper and tissue manufacturing complex in Mobile, Alabama ("Industrial Complex"). S.D. Warren owns the paper mill located inside the Industrial Complex.

of the Second Plan are summarized below.

I. Background

Some of the facilities now owned by Mobile Energy were originally constructed by the Scott Paper Company ("Scott") in the early 1960s. Scott sold the energy facilities, black liquor recovery equipment, and related assets, permits and agreements ("Energy Complex")⁵ to Holdings.⁶ Mobile Energy was formed as a limited liability company in July 1995 then acquired ownership from Holdings of the Energy Complex. In late 1995 Scott was merged into a subsidiary of Kimberly Clark Corporation ("KC") and the resulting entity was renamed Kimberly Clark Tissue Company ("KCTC"). Mobile Energy owns and operates the Energy Complex which together with the tissue mill, the pulp mill (both owned by KC),⁷ and the paper mill (owned by S.D. Warren), comprise the Industrial Complex. In 1998, KCTC notified Mobile Energy that KCTC would close its pulp mill and terminate its contract to purchase energy services from Mobile Energy. The consequences from the anticipated loss of the KCTC pulp mill contract and operations triggered the filing by Mobile Energy and Holdings of cases under Chapter 11 of the Bankruptcy Code.

II. Overview of the Plan

Applicants request authorization for the solicitation regarding the Second Plan under sections 11(f) and 11(g) of the Act, and authorization under section 12(e) to solicit consents and approvals from the holders of the securities of Mobile Energy and Holdings, along with other ancillary and related authorizations to implement the Second Plan.

Mobile Energy intends to continue to operate its existing assets to provide services to KC's tissue mill and S.D. Warren's paper mill as part of on-going operations. As was the case under the First Plan, the pre-petition shares of common stock issued by Holdings and held by Southern will not receive any distributions under the Second Plan,

and the shares will be canceled and extinguished on the effective date of the Second Plan. As a result, Southern's pre-petition shares in Holdings would no longer have any claim to voting rights, dividends or in fact any rights with respect to Holdings. The existing bondholders will hold the entire equity interest in the recognized Holdings. Holdings will continue to own 100% of the equity ownership of Mobile Energy. The Second Plan contemplates that after Southern is divested of its ownership of Mobile Energy, Mobile Energy will qualify as a QF under PURPA, rendering it not a public utility under the Act, and Holdings and its owners will not be subject to regulation as a public utility holding company.⁸

Applicants state, upon implementation of the Second Plan, and termination of the ownership interests of Southern and its affiliates in the Debtors, Southern and its affiliates will have substantially reduced obligations going forward with respect to Mobile Energy and Holdings. For instance, Southern guaranteed certain of Mobile Energy's obligations to its existing customers in 1995, and these guarantees will remain in place but Mobile Energy will indemnify Southern against any liability under those guarantees.

III. Bondholder Steering Committee

An ad hoc committee of holders of Debtors' tax-exempt bonds and first mortgage bonds established the Bondholder Steering Committee, which is comprised of certain holders of existing securities as constituted from time to time. The Bondholder Steering Committee includes First Union National Bank as indenture trustee for each of the two bond issuances as an ex officio member. The indenture trustee represents all of the bondholders.

At certain times, the Bondholder Steering Committee has been comprised of Credit Suisse First Boston Corporation ("CSFB"), Miller Anderson & Sherrerd, LLP, and Pan American Life Insurance Company (each of which holds first mortgage bonds); Franklin Advisors, Inc. and Van Kampen Investment and Advisory Group. (each of which holds tax-exempt bonds); and First Union National Bank (ex officio), as trustee. Franklin Advisors, Inc. resigned from the Bondholder Steering Committee in February 2001. The Bondholder Steering Committee, which collectively represents more than 70% of the current outstanding bondholders

of the Debtors, supports confirmation of the Second Plan.

IV. Key Elements of the Second Plan

Mirant Services L.L.C. ("Mirant Services"), previously known as Southern Energy Resources, Inc., operated Mobile Energy's facilities through March 31, 2001. Mobile Energy solicited proposals from third parties to act as operator of the Energy Complex after March 31, 2001. Mobile Energy selected Operational Energy Corporation ("OEC"), an affiliate of Enron, as the interim operation and maintenance ("O&M") operator after March 31, 2001, both in an effort to pursue reduced O&M costs and consistent with contractual obligations with Mirant. Applicants contemplate OEC, as the new operator, will implement further cost reductions.

In addition, Mirant Corporation ("Mirant"), previously known as Southern Energy, Inc., will assign certain contract rights and obligations to Mobile Energy related to a combustion turbine ("CT") being manufactured for it by General Electric Company ("GE") and under a long term services agreement related to that turbine with General Electric International Inc. ("GEII"), provided that Mobile Energy makes certain payments to Mirant at scheduled project milestones. Mirant will remain liable if Mobile Energy does not meet those obligations.

The Second Plan focuses upon maintaining and furthering operating cost reductions in the context of continuing to provide services to those mills presently operating in the Industrial Complex (KC's tissue mill and S.D. Warren's paper mill), under two Energy Services Agreements ("ESAs"). In order to assess the merits of the business strategy incorporated in the Second Plan, two sets of projections have been prepared ("Continued Operations Projections" and "Curtailed Operations Projections"). Both sets of projections take into account existing O&M realities and cost reductions Mobile Energy expects to achieve by OEC. The Continued Operations Projections presumes the continued operations of both the tissue mill and the paper mill at current levels. The Curtailed Operations projections presumes that (1) S.D. Warren terminates the paper mill ESA and closes the paper mill; and (2) KC curtails tissue mill operations as suggested to the Debtors by KC representatives. Applicants note that both sets of projections show positive cash flows and thus value to the bondholders, who will be the future owners of equity interests in Holdings under the Second Plan. Applicants

⁵ The Energy Complex is currently comprised of four power boilers, one recovery boiler, four turbine generators, two black liquor evaporator sets, various related waste treatment facilities, fuel and "liquor" storage, station control facilities and associated feedwater systems, air emissions controls, and other auxiliary systems.

⁶ On Dec. 13, 1994 the Commission authorized Southern to organize Holdings as a new subsidiary and acquire all of its common stock (HCAR No. 26815).

⁷ KC is the successor to KCTC by assignment. All assets and liabilities of KCTC were assigned to KC on or about December 31, 2000. KCTC was then dissolved.

⁸ Applicants state Mobile Energy's application with the Federal Energy Regulatory Commission seeking certification as a QF is still pending and will be modified.

further note both sets of projections also show greater value to the bondholders under the Second Plan than they would receive in liquidation.

V. The Cogeneration Development Agreement

The Second Plan contemplates the development of a 165-megawatt gas fired cogeneration facility within the Industrial Complex ("Cogen Project"). Power produced by the Cogen Project would primarily be sold through the regional power transmission system to wholesale customers, providing the Debtors with additional income for the benefit of creditors. The development of the Cogen Project will occur under the MESC Cogeneration Development Agreement dated February 9, 2000, between Mobile Energy, Holdings, Mirant, and Mirant Services, as amended by Amendment No. 1 dated August 11, 2000 ("Cogeneration Development Agreement"). The Cogeneration Development Agreement provides, among other things, that: (1) None of Mirant, Mirant Services, or any affiliate will make any additional equity investment in Mobile Energy or the Cogen Project; (2) Southern's ownership of Holdings will terminate and the bondholders will acquire 100% of the ownership of Holdings under the terms of the plan; (3) Mirant Services will waive the \$10 million Equity Option Fee (as defined in the Cogeneration Development Agreement); (4) Mobile Energy will terminate the operating agreement no later than March 31, 2001, and Mobile Energy will pay one-half the actual cost of a retention and severance program implemented by Mirant Services for its workers at Mobile Energy's facilities, up to a total of \$2 million; (5) the Cogen Facility Mobile Energy Operating Agreement will terminate; (6) Mobile Energy will retain an option to purchase the GE combustion turbine provided by Mirant to the Debtors under the Cogeneration Development Agreement, including the rights in related agreements, upon Mobile Energy's satisfaction of the MESC Transfer Obligations (as defined in the Cogeneration Development Agreement) other than the payment of the \$10 million Equity Option Fee;⁹ (7) Mobile Energy will pay Mirant \$2.9 million upon the earlier of the exercise of such option, the effective date of a plan, or July 31, 2001; (8) Mobile Energy will be allowed to use the \$2.1 million held by Holdings in its tax sharing account; (9) Southern will pay to the

collateral agent, and release any claims Southern may have to, the \$2.7 million that is subject to dispute under the maintenance Plan Funding Subaccount Southern Guaranty Agreement; and (10) Mobile Energy will agree to indemnify Southern from Southern's obligations under the Mill Owner Maintenance Reserve Account Agreement, the Environmental Guaranty, and for certain income taxes on taxable income of Mobile Energy and Holdings in excess of Southern's excess loss account related to its investment in Holdings and payments under the Long Term Service Agreement for Combined Cycle Generating Plant at MESC Electric Generating Plant. Southern, Mirant Services and Mirant will continue to hold a first priority lien on the Debtors' assets and those of any affiliate set up to own the Cogen Project to secure performance of all obligations that may be owed to Southern, Mirant Services and Mirant under the Cogeneration Development Agreement.

VI. Treatment of Claims Under the Second Plan

Generally, the bondholders under the Second Plan will receive shares in reorganized Holdings ("New Common Stock") in exchange for their claims, including their outstanding bonds. Otherwise, the treatment of claims under the Second Plan is comparable to the treatment of claims in the First Plan.

A. Unsecured Creditors; Others

Under the Second Plan, the claims of the general unsecured creditors and the claims of all other creditors, except Southern and its affiliates will be paid in full. The claims of unsecured creditors are approximately \$431,000 without consideration of proof of claims (some of which claims have not been quantified by the claimants) from the mill owners against the Debtors. Debtors are contesting the mill owners' proof of claims.

B. First Mortgage Bonds

Mobile Energy issued the first mortgage bonds on August 1, 1995, in the principal amount of \$255,210,000 due January 1, 2017 and bearing annual interest at 8.665%. Each holder of a First Mortgage Bondholder Claim shall receive in complete settlement satisfaction and discharge of their First Mortgage Bondholder Claims, a pro rata share of 72.594% of the New Common Stock.

C. Tax Exempt Bonds

In December 1983, the Industrial Development Board of Mobile, Alabama ("IDB") issued tax-exempt bonds ("1983

Tax Exempt Bonds") to finance the construction of the No. 7 Power Boiler and certain auxiliary systems. In December 1984 ("1984 Tax Exempt Bonds"), the IDB issued tax-exempt bonds to refund the 1983 Tax Exempt Bonds.

Refunding of the 1984 Tax Exempt Bonds occurred in 1995 by means of tax-exempt bonds in the original principal amount of \$85,000,000 scheduled to mature January 1, 2020 ("Tax-Exempt Bonds"). Under the Second Plan, each holder of a Tax-Exempt Bondholder Claim shall receive in complete settlement, satisfaction and discharge of their Tax-Exempt Bondholder Claims, a pro rata share of 27.406% of the New Common Stock.

D. Southern's and Its Affiliates' Claims

Under the Second Plan, Southern and its affiliates will receive the treatment provided in the Cogeneration Development Agreement, described above, in full satisfaction of their claims. Generally, Southern's claims receive one of two different types of treatment in the Second Plan. The estimated recovery for Southern's pre-petition claims is approximately 0.3%. As a reflection of that level of recovery, Southern recorded an expense of approximately \$69 million in the third quarter of 1999 to write down its equity investment in Holdings to zero. An additional expense of approximately \$10 million was recorded in the third quarter of 2000 to reflect additional liabilities under the Cogeneration Development Agreement. Applicants state no further material impact on the consolidated capitalization is expected as a result of the implementation of the Second Plan. Southern's post-petition claims will receive 100% payment under the Second Plan.

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

Jonathan G. Katz,
Secretary.

[FR Doc. 01-9503 Filed 4-16-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24936; File No. 812-12314]

Equitable Life Assurance Society of the United States, et al.

April 10, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to section 26(b) of the

⁹On Dec. 29, 2000, Mobile Energy exercised the option and notified Mirant that it intended to purchase the CT.