staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a) (3), (5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Nazareth, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the Closed Meeting scheduled for Wednesday, September 7, 2005, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: August 31, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–17660 Filed 8–31–05; 4:58 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–28021]

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

August 30, 2005

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 September 26, 2005, to the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 26, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

FirstEnergy Corp., et al. (70–10307)

FirstEnergy Corp., (''FirstEnergy''), a registered holding company; its public utility subsidiaries: Ohio Edison Company, an Ohio corporation (''Ohio Edison''); The Cleveland Electric Illuminating Company, an Ohio corporation (''Cleveland Electric''); The Toledo Edison Company, an Ohio corporation (''Toledo Edison''); and Pennsylvania Power Company, a Pennsylvania corporation and wholly owned subsidiary of Ohio Edison, (''Penn Power''), collectively, ''Utility Subsidiaries;'' all of 76 South Main Street, Akron, Ohio 44308, have filed an application-declaration, as amended (''Application'') under sections 9(a), 10 and 12(b) of the Act and rule 45 under the Act. FirstEnergy and the Utility Subsidiaries are referred to as ''Applicants.'' FirstEnergy directly owns all of the outstanding common stock of Ohio Edison, Cleveland Electric, Toledo Edison, and indirectly through Ohio Edison owns all of the outstanding common stock of Penn Power''.[1]

Ohio Edison was organized under the laws of the State of Ohio in 1930 and owns property and does business as an electric public utility in that state. Ohio Edison also has ownership interests in certain generating facilities located in the Commonwealth of Pennsylvania. Ohio Edison engages in the generation, distribution and sale of electric energy to communities in a 7,500 square mile area of central and northeastern Ohio having a population of approximately 2.8 million.

Ohio Edison owns all of Penn Power's outstanding common stock. Penn Power was organized under the laws of the Commonwealth of Pennsylvania in 1930 and owns property and does business as an electric public utility in that state. Penn Power is also authorized to do business and owns property in the State of Ohio. Penn Power furnishes electric service to communities in a 1,500 square mile area of western Pennsylvania having a population of approximately 300,000.

Cleveland Electric was organized under the laws of the State of Ohio in 1892 and does business as an electric public utility in that state. Cleveland Electric engages in the generation, distribution and sale of electric energy in an area of approximately 1,700 square miles in northeastern Ohio having a population of approximately 1.9 million. It also has ownership interests in certain generating facilities located in Pennsylvania.

Toledo Edison was organized under the laws of the State of Ohio in 1901 and does business as an electric public utility in that state. Toledo Edison engages in the generation, distribution and sale of electric energy in an area of approximately 2,500 square miles in northwestern Ohio having a population of approximately 800,000. It also has interests in certain generating facilities located in Pennsylvania.

Requested Authorization

Applicants request authorization for certain transactions that are related to the sale of their respective interests in certain fossil-fuel and hydroelectric generating facilities owned by the Utility Subsidiaries to FirstEnergy Generation Corp. (''FE GenCo''), which is a direct wholly-owned subsidiary of FirstEnergy Solutions Corp. (''FE Solutions'') and an indirect subsidiary of FirstEnergy. FE GenCo is an ''exempt wholesale generator'' (''EWG'') under Section 32 of the Act. These asset transfers are in furtherance of FirstEnergy's Ohio and Pennsylvania corporate separation plans, which were described in FirstEnergy's Application/

[13] 17 CFR 240.11Aa3–2.

[14] 17 CFR 200.30–3(a)(29).

[1] FirstEnergy's other public utility subsidiaries are Jersey Central Power & Light Company, Pennsylvania Electric Company, Metropolitan Edison Company, York Haven Power Company, The Waverly Electric Power & Light Company and American Transmission Systems, Incorporated. These companies are not applicants in this proceeding.

[2] The Utility Subsidiaries do not propose to transfer their remaining percentage ownership interests in certain fossil-fuel units that are not now being leased by FE GenCo.

Declaration for authorization to merge with GPU, Inc. (''GPU''). See HCAR No. 27459 (October 29, 2001). Specifically, the Utility Subsidiaries request authority to acquire the secured promissory notes from FE GenCo, as described below.

The Utility Subsidiaries own, individually or together as tenants in common, interests in the following fossil-fuel and hydroelectric generating plants: [2]

Plant	Location	MW	Ownership (percent)
Ashtabula 5	Ashtabula, OH	244	Cleveland Electric 100.
Bay Shore 1–4	Toledo, OH	631	Toledo Edison 100.
Bay Shore Peaking		17	
R.E. Burger 3–5	Shadyside, OH	406	Ohio Edison 100.
R.E. Burger Peaking	Shadyside, OH	7	Ohio Edison 85.6. Penn Power 14.4.
Eastlake 1–5	Eastlake, OH	1,233	Cleveland Electric 100.
Eastlake Peaking		29	
Lakeshore 18	Cleveland, OH	245	Cleveland Electric 100.
Lakeshore Peaking		4	
Bruce Mansfield 1	Shippingport, PA	780	Ohio Edison 60. Penn Power 33.5.
Bruce Mansfield 2	Shippingport, PA	780	Ohio Edison 43.06. Penn Power 9.36. Cleveland Electric 1.68.
Bruce Mansfield 3	Shippingport, PA	800	Ohio Edison 49.34. Penn Power 6.28.
W.H. Sammis 1–6	Stratton, OH	1,620	Ohio Edison 100.
W.H. Sammis 7	Stratton, OH	600	Ohio Edison 48. Penn Power 20.8. Cleveland Electric 31.2.
W.H. Sammis Peaking	Stratton, OH	13	Ohio Edison 85.6. Penn Power 14.4.
Edgewater Peaking	Lorain, OH	48	Ohio Edison 86. Penn Power 14.0.
Richland Peaking 1–3	Defiance, OH	42	Toledo Edison 100.
Seneca	Warren, PA	435	Cleveland Electric 100.
West Lorain Peaking Unit 1	Lorain, OH	120	Ohio Edison 100.
Mad River Peaking	Springfield, OH	60	Ohio Edison 85.6. Penn Power 14.4.
Stryker Peaking	Springfield, OH	18	Toledo Edison 100.

Currently, the Utility Subsidiaries lease all of the fossil and hydroelectric generating plants listed in the table above to FE GenCo, which, as indicated, has previously been certified by the Federal Energy Regulatory Commission (''FERC'') as an EWG.[3] FE GenCo leases and operates these plants pursuant to the terms of a Master Facility Lease (''Master Lease''), dated as of January 1, 2001 (incorporated by reference as Exhibit B–1 to the Application). Applicants state that the Master Lease, which became effective on January 1, 2001, and has a term of twenty years, was intended as the first step in the eventual transfer of ownership of the leased plants to FE GenCo. Pursuant to Section 12 of the Master Lease, FE GenCo has an option to purchase the leased generating plants for the purchase price per unit listed in Exhibits A through D to the Master Lease. Section 12 of the Master Lease further provides that, upon exercise of the purchase option, FE GenCo may pay the purchase price either in cash or by executing a promissory note, secured by a lien on the transferred assets.

Each of the Utility Subsidiaries and FE GenCo has entered into a Fossil Purchase and Sale Agreement (''Fossil PSA''), filed with this Application as Exhibits B–2 through B–5. Under the Fossil PSAs, FE GenCo has agreed to purchase each Utility Subsidiary's fossil units (and, in the case of Cleveland Electric, one hydroelectric generating facility), and to assume certain liabilities relating to the purchased units, for an amount equal to the aggregate purchase price for all units owned by the selling Utility Subsidiary, as set forth in Exhibits A through D of the Master Lease, as follows: Ohio Edison—$980 million; Penn Power—$125 million; Cleveland Electric—$408 million; and Toledo Edison—$88 million. As consideration for the purchased units, FE GenCo would deliver to the selling Utility Subsidiary its secured promissory note (''FE GenCo Note''), filed with the Application as Exhibits B–10 through B–13. Each FE GenCo Note would be secured by a lien on the units purchased, bear interest at a rate per annum based on the average weighted cost of long-term debt of the Utility Subsidiary to which the FE GenCo Note is issued, and mature twenty years after the date of issuance. FE GenCo may prepay the FE GenCo Note at any time, in whole or in part, without penalty.

The calculation of the average weighted cost of long-term debt of each of the Utility Subsidiaries as of March 31, 2005 is shown in Exhibit I to the Application. The actual interest rate on the FE GenCo Notes would be calculated in the same manner as of the end of the quarter next preceding the closing date.

Under each Fossil PSA, FE GenCo has also agreed that, upon request of the selling Utility Subsidiary, it would assume the selling Utility Subsidiary's liabilities and obligations with respect

[2] The Utility Subsidiaries do not propose to transfer their remaining percentage ownership interests in certain fossil-fuel units that are not now being leased by FE GenCo.

[3] FE GenCo was approved by the FERC as an EWG on April 6, 2001. *FirstEnergy Generation Corp.*, 95 FERC ¶ 62,018 (2001).

to certain outstanding pollution control revenue bonds (''PCRBs'') that were issued to finance pollution control equipment related to the purchased plants.[4] If PCRB obligations are assumed by FE GenCo at or prior to closing, then the principal amount of the assumed obligations would reduce the principal amount of the applicable FE GenCo Note delivered by FE GenCo at closing. If FE GenCo assumes PCRB obligations after closing, the principal amount assumed would represent a payment of principal on the applicable FE GenCo Note delivered at closing.

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

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4839 Filed 9–2–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52349; File No. SR–Amex–2005–048]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change Establishing a De Minimis Exception to the 80/20 Test

August 26, 2005.

I. Introduction

On April 28, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking to amend Amex Rule 944 to provide a *de minimis* exception to the limitation on principal order access imposed by the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'')[3] and related rules.

The proposed rule change was noticed for comment in the **Federal Register** on July 27, 2005.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description

The purpose of this proposed rule change is to implement proposed Joint Amendment No. 17 to the Linkage Plan. Joint Amendment No. 17, together with this proposed rule change, would establish a *de minimis* exception to the ''80/20 Test'' set forth in Section 8(b)(iii) of the Linkage Plan and Amex Rule 944.

Section 8(b)(iii) of the Linkage Plan provides that Eligible Market Makers should send Principal Orders[5] through the Linkage on a limited basis and not as a primary aspect of their business. The 80/20 Test implements this policy in the Linkage Plan and Amex Rule 944 by prohibiting a specialist or registered options trader (''ROT'') from sending Principal Orders in an eligible option class if, in the last calendar quarter, the specialist or ROT's Principal Order contract volume is disproportionate to the specialist or ROT's contract volume executed against customer orders in its own market.

The Exchange believes that applying the 80/20 Test has resulted in anomalies for ROTs with limited volume in an eligible option class. In particular, if a ROT has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the ROT failing to meet the 80/20 Test. This would then prohibit the ROT from using the Linkage to send Principal Orders in that options class for the following calendar quarter. The Exchange believes that it is not the intention of the Participants to the Linkage Plan to prohibit ROTs with limited volume from sending Principal Orders through the Linkage in these circumstances since such trading clearly is not ''a primary aspect of their business.''

Accordingly, the proposed rule change seeks to establish a *de minimis* exception from the 80/20 Test in Amex Rule 944 for specialists and ROTs that have total contract volume of less than 1,000 contracts in an option class for a calendar quarter.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[7] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission believes that the proposed rule change will increase the availability of Linkage to members of the Participants by limiting the applicability of the 80/20 Test in situations where market makers have minimal trading volume in a particular options class.

The Commission recognizes that the Exchange does not believe that it is necessary to bar market makers with limited volume from sending Principal Orders through the Linkage, as such trading does not raise concerns that a member is sending such orders as ''a primary aspect of their business.'' The Commission believes that the *de minimis* exemption from the 80/20 Test proposed by the Exchange for market makers that have a total contract volume of less than 1,000 contracts in an options class for a calendar quarter should ensure that specialists and ROTs with relatively low volume in a particular options class can send a reasonable number of Principal Orders without being barred from using the Linkage by application of the 80/20 Test in the following calendar quarter.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Amex–2005–048) is approved.

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[4] Currently, the Utility Subsidiaries have outstanding obligations in respect of PCRBs in approximately the following principal amounts: Ohio Edison—$471 million; Penn Power—$63 million; Cleveland Electric—$362 million; and Toledo Edison—$69 million.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by Amex, Chicago Board Options Exchange, Inc., and International Securities Exchange, Inc. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Philadelphia Stock Exchange, Inc., Pacific Exchange, and Boston Stock Exchange, Inc. joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[4] *See* Securities Exchange Act Release No. 52067 (July 20, 2005), 70 FR 43470.

[5] A ''Principal Order'' is an order for the principal account of an eligible market maker that does not relate to a customer order the market maker is holding. See Section 2(16)(b) of the Linkage Plan.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).