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FIRSTENERGY CORP
Form POS AMC
November 25, 2003

(As filed with the Securities and Exchange Commission on November 25, 2003)

File No. 70-10122

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

POS AMC

POST-EFFECTIVE AMENDMENT NO. 1

(Amendment No. 3)

to

FORM U-1

APPLICATION/DECLARATION

UNDER

THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

FirstEnergy Corp.
Ohio Edison Company and its Subsidiaries
The Cleveland Electric Illuminating Company and its Subsidiaries
The Toledo Edison Company and its Subsidiaries
Pennsylvania Power Company
American Transmission Systems, Incorporated
FE Acquisition Corp. and its Subsidiaries
FirstEnergy Properties, Inc. and its Subsidiaries
FirstEnergy Facilities Services Group, LLC and its Subsidiaries
FE Holdings, LLC
FELHC, Inc.
FirstEnergy Securities Transfer Company
FirstEnergy Nuclear Operating Company
FirstEnergy Solutions Corp. and its Subsidiaries
FirstEnergy Ventures Corp. and its Subsidiaries
Marbel Energy Corporation and its Subsidiaries
Centerior Indemnity Trust
Centerior Service Company
FirstEnergy Service Company
Jersey Central Power & Light Company and its Subsidiaries
Pennsylvania Electric Company and its Subsidiaries
Metropolitan Edison Company and its Subsidiaries
York Haven Power Company
Waverly Electric Power & Light Company
GPU Capital, Inc. and its Subsidiaries
GPU Electric, Inc. and its Subsidiaries
GPU Diversified Holdings, LLC and its Subsidiaries

GPU Power, Inc. and its Subsidiaries
GPU Telcom Services, Inc. and its Subsidiaries
GPU Nuclear, Inc.
MYR Group, Inc. and its Subsidiaries
76 South Main Street
Akron, Ohio 44308

(Names of companies filing this statement and

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address of principal executive offices)

FIRSTENERGY CORP.

(Name of top registered holding company parent of applicant)

Leila L. Vespoli Senior Vice President And General Counsel FirstEnergy Corp. 76 South Main Street Akron, Ohio 44308	Douglas E. Davidson, Esq. Thelen Reid & Priest LLP 875 Third Avenue New York, New York 10022
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(Names and addresses of agents for service)

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ITEM 1. DESCRIPTION OF PROPOSED TRANSACTION.

1.1 Background. By order dated June 30, 2003 in this proceeding (Holding Co. Act Release No. 27694) (the "Prior Order"), the Commission authorized FirstEnergy Corp. ("FirstEnergy"), a registered holding company, and its subsidiary companies ("Subsidiaries") to engage in a program of external financing, intrasystem financing, and other related transactions for the period through December 31, 2005 (the "Authorization Period"). Among other specific approvals granted, the Commission authorized FirstEnergy to provide guarantees and other forms of credit support ("FirstEnergy Guarantees") with respect to obligations of its Subsidiaries in an aggregate amount that together with guarantees and other forms of credit support ("Non-Utility Subsidiary Guarantees") provided by its non-utility subsidiaries ("Non-Utility Subsidiaries") shall not exceed \$4.0 billion outstanding at any one time, including any guarantees that are exempt under Rule 40 and guarantees that were outstanding on the effective date of the Prior Order. FirstEnergy also requested authorization to issue guarantees with respect to non-affiliated third-party obligations in the ordinary course of business, subject to the proposed \$4.0 billion overall limitation on guarantees, but requested that the Commission reserve jurisdiction over such third-party guarantees.

In accordance with the foregoing request, the next to last paragraph of the Prior Order provides, in relevant part, as follows:

IT IS FURTHER ORDERED that jurisdiction is reserved, pending completion of the record, over: . . . (4) the issuance by FirstEnergy of guarantees on behalf of its Subsidiaries for the benefit of non-affiliated third parties; . . .

1.2 Restatement of Proposal Concerning FirstEnergy Guarantees. In order to correct an unintended ambiguity, as it relates to FirstEnergy Guarantees, FirstEnergy hereby amends and restates Item 1.10.1 of the Application/Declaration in this proceeding, as amended and restated by Amendment No. 2, filed June 30, 2003, to read as follows:

1.10.1 FirstEnergy Guarantees. FirstEnergy requests authorization to provide FirstEnergy Guarantees with respect to the obligations of its

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Subsidiaries as may be appropriate or necessary to enable such Subsidiaries to carry on in the ordinary course of their respective businesses, and to provide guarantees of non-affiliated third-party obligations in the ordinary course of FirstEnergy's business, /1/ in an aggregate amount which, together with Non-Utility Subsidiary Guarantees (defined below), shall not exceed \$4.0 billion outstanding at any one time (including obligations exempt pursuant to Rule 45 and guarantees and other forms of credit support

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- 1 Guarantees of third-party obligations in the ordinary course of business were approved in Exelon Corporation, Holding Co. Act Release No. 27266 (Nov. 2, 2000). The Commission reserved jurisdiction over a similar proposal by FirstEnergy in the order approving the merger of FirstEnergy and GPU, Inc. (Holding Co. Act Release No. 27459, dated October 29, 2001) (the "Merger Order"). FirstEnergy requests that the Commission continue to reserve jurisdiction over the issuance of guarantees of non-affiliated third-party obligations in the ordinary course of FirstEnergy's business pending completion of the record.

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provided by FirstEnergy or any Non-Utility Subsidiary that are outstanding on the effective date of the order issued in this proceeding).

As part of normal business activities, FirstEnergy enters into various agreements on behalf of its Subsidiaries to provide financial or performance assurances to third parties. Such agreements include contract guarantees, surety bonds and rating-contingent collateralization provisions. As of March 31, 2003, the maximum potential future payments under outstanding guarantees and other assurances totaled \$960.2 million.

FirstEnergy Guarantees may be provided from time to time with respect to obligations of Subsidiaries that are not capable of exact quantification. In such cases, FirstEnergy will determine the exposure under such guarantee for purposes of measuring compliance with the \$4.0 billion limitation by appropriate means including estimation of exposure based on loss experience or projected potential payment amounts. If appropriate, such estimates will be made in accordance with GAAP. Such estimation will be reevaluated periodically. Any FirstEnergy Guarantees shall also be subject to the limitations of Rule 53(a)(1) or Rule 58(a)(1), as applicable. FirstEnergy may charge each Subsidiary a fee for each guarantee provided on its behalf that is not more than that obtainable by the beneficiary of the guarantee from third parties. Any guarantees or other credit support arrangements outstanding at the end of the Authorization Period will remain in place and expire or terminate in accordance with their terms.

1.3 Relief Requested. FirstEnergy requests that the Commission issue a supplemental order in this proceeding to eliminate the unintended ambiguity in the next to last paragraph of the Prior Order, so that such paragraph will read, in relevant part, as follows:

IT IS FURTHER ORDERED that jurisdiction is reserved, pending completion of the record, over: . . . (4) the issuance by FirstEnergy of guarantees of non-affiliated third-party obligations in the ordinary course of FirstEnergy's business; ...

ITEM 2. FEES, COMMISSIONS AND EXPENSES.

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The additional fees, commissions, and expenses incurred or to be incurred in connection with this post-effective amendment are estimated not to exceed \$2,000.

ITEM 3. APPLICABLE STATUTORY PROVISIONS.

Item 3.2 of the Application/Declaration is amended and restated in its entirety to read as follows:

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The proposed transactions are also subject to the requirements of Rules 53 and Rule 54. Under Rule 53(a), the Commission shall not make certain specified findings under Sections 7 and 12 in connection with a proposal by a holding company to issue securities for the purpose of acquiring the securities of or other interest in an "exempt wholesale generator" ("EWG"), or to guarantee the securities of an EWG, if each of the conditions in paragraphs (a) (1) through (a) (4) thereof are met, provided that none of the conditions specified in paragraphs (b) (1) through (b) (3) of Rule 53 exists. Rule 54 provides that the Commission shall not consider the effect of the capitalization or earnings of subsidiaries of a registered holding company that are EWGs or "foreign utility companies" ("FUCOs") in determining whether to approve other transactions if Rule 53(a), (b) and (c) are satisfied.

FirstEnergy currently meets all of the conditions of Rule 53(a), except for clause (1). In the Merger Order, the Commission, among other things, authorized FirstEnergy to invest in EWGs and FUCOs so that FirstEnergy's "aggregate investment," as defined in Rule 53(a) (1), in EWGs and FUCOs does not exceed \$5 billion, which \$5 billion amount is greater than the amount which would be permitted by clause (1) of Rule 53(a) which, based on FirstEnergy's "consolidated retained earning," also as defined in Rule 53(a) (1), of \$1.6 billion as of September 30, 2003, would be \$800 million. The Merger Order, as modified by the Prior Order, also specifies that this \$5 billion amount may include amounts invested in EWGs and FUCOs by FirstEnergy and GPU at the time of the Merger Order ("Current Investments") and amounts relating to possible transfers to EWGs of certain generating facilities owned by certain of FirstEnergy's operating utilities ("GenCo Investments"). FirstEnergy has made the commitment that through December 31, 2005, its aggregate investment in EWGs and FUCOs other than the Current Investments and GenCo Investments ("Other Investments") will not exceed \$1.5 billion (the "Modified Rule 53 Test"). FirstEnergy requests that the Commission continue to reserve jurisdiction over Other Investments that exceed such \$1.5 billion amount.

As of September 30, 2003, and on the same basis as set forth in the Merger Order, FirstEnergy's "aggregate investment" in EWGs and FUCOs was approximately \$1.06 billion, /2/ an amount significantly below the \$5 billion amount authorized in the Merger Order, as modified by the Prior Order. Additionally, as of September 30, 2003, "consolidated retained earnings" were \$1.6 billion. By way of comparison, FirstEnergy's consolidated retained earnings as of December 31, 2001 were \$1.52 billion.

In any event, even taking into account the capitalization of and earnings from EWGs and FUCOs in which FirstEnergy currently has an

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interest, there would be no basis for the Commission to withhold approval of the transactions proposed herein. With respect to capitalization, since the date of the Merger Order, there has been no material adverse impact on FirstEnergy's consolidated capitalization resulting from FirstEnergy's

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- 2 This \$1.1 billion amount represents Current Investments only. As of September 30, 2003, FirstEnergy had no GenCo Investments.

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investments in EWGs and FUCOs. As of September 30, 2003, FirstEnergy's consolidated capitalization consisted of 38.7% common equity, 1.7% cumulative preferred stock, 1.3% subsidiary - obligated mandatorily redeemable preferred securities, 57.1% long-term debt and 1.2% notes payable. As of December 31, 2001, those ratios were as follows: 30.3% common equity, 3.1% cumulative preferred stock, 2.2% subsidiary-obligated mandatorily redeemable preferred securities, 60.9% long term debt and 3.5% notes payable. Additionally, the proposed transactions will not have any material impact on FirstEnergy's capitalization. Further, since the date of the Merger Order, FirstEnergy's investments in EWGs and FUCOs have contributed positively to its level of earnings, other than for the negative impact on earnings due to FirstEnergy's writedowns of its investments in Avon Energy Partners Holdings ("Avon") and GPU Empresa Distribuidora Electrica Regional S.A. ("Emdersa")./3/

Further, since the date of the Merger Order, and, after taking into account the effects of the Merger, there has been no material change in FirstEnergy's level of earnings from EWGs and FUCOs.

The Utility Subsidiaries remain financially sound companies as indicated by their investment grade ratings from the nationally recognized rating agencies for their senior unsecured debt. The following chart includes a breakdown of the senior, unsecured credit ratings for those Utility Subsidiaries that have ratings:

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- 3 At the time of the Merger Order, FirstEnergy identified certain former GPU EWG and FUCO investments for divestiture within one year. Among those identified were Avon, a holding company for Midlands Electricity plc, an electric distribution business in the United Kingdom and Emdersa and affiliates, an electric distribution business in Argentina. In May 2002, FirstEnergy sold 79.9% of its interest in Avon, and in the fourth quarter of 2002, recorded a \$50 million charge (\$32.5 million net of tax) to reduce the carrying value of its remaining 20.1% interest. Additionally, FirstEnergy did not reach a definitive agreement to sell Emdersa as of December 31, 2002, and therefore, the Emdersa assets could no longer be treated as "assets pending sale" on the FirstEnergy consolidated balance sheets. On November 1, 2002, FirstEnergy began consolidating the results of Emdersa's operations in its financial statements. In the fourth quarter of 2002, FirstEnergy recorded a one-time, after-tax charge of \$88.8 million (comprised of \$104.1 million in currency transaction losses arising principally from U.S. dollar denominated debt, offset by \$15.3 million of operating income). In addition to the currency transaction losses, FirstEnergy recognized a currency translation adjustment in other comprehensive income of \$91.5 million as of December 31, 2002. These accounting charges, in the aggregate, resulted in a \$212.8 million decrease in FirstEnergy's consolidated capitalization of \$21.55 billion as of December 31, 2002, which amount includes short-term borrowings.

Subsidiary	Standard & Poors/4/	Moody's/5/	Fitch/6/
Ohio Edison	BBB-	Baa2	---
Cleveland Electric	BBB-	Baa3	---
Toledo Edison	BBB-	Baa3	BB
Penn Power	BBB-	Baa2	---
JCP&L	BBB	---	---
Met-Ed	BBB	---	---
Penelec	BBB	A2	BBB+

FirstEnergy satisfies all of the other conditions of paragraphs (a) and (b) of Rule 53. With respect to Rule 53(a)(2), FirstEnergy maintains books and records in conformity with, and otherwise adheres to, the requirements thereof. With respect to Rule 53(a)(3), no more than 2% of the employees of FirstEnergy's domestic public utility companies render services, at any one time, directly or indirectly, to EWGs or FUCOs in which FirstEnergy directly or indirectly holds an interest. With respect to Rule 53(a)(4), FirstEnergy will continue to provide a copy of each application and certificate relating to EWGs and FUCOs and relevant portions of its Form U5S to each regulator referred to therein, and will otherwise comply with the requirements thereof concerning the furnishing of information. With respect to Rule 53(b), none of the circumstances enumerated in subparagraphs (1), (2) and (3) thereunder have occurred.

ITEM 4. REGULATORY APPROVALS.

(No change)

ITEM 5. PROCEDURE.

FirstEnergy requests that the Commission issue a supplemental order in this proceeding to correct the Prior Order, in the manner proposed in Item 1.3 above, as soon as practicable.

ITEM 6. EXHIBITS AND FINANCIAL STATEMENTS.

The following additional financial statements are provided herewith:

FS-17 FirstEnergy Consolidated Balance Sheets as of June 30, 2003, and Consolidated Statements of Income, Statement of Retained Earnings, and Consolidated Statements of Cash Flows for the six months ended June 30, 2003. (Incorporated by reference to FirstEnergy Form 10-Q for the period ended June 30, 2003) (File No. 333-21011)

 4 Standard & Poor's Rating Services

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5 Moody's Investors Service, Inc.

6 Fitch, Inc.

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ITEM 7. INFORMATION AS TO ENVIRONMENTAL EFFECTS.

(No change)

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SIGNATURES

Pursuant to the requirements of the 1935 Act, the undersigned companies have duly caused this post-effective amendment be signed on their behalves by the undersigned thereunto duly authorized.

FirstEnergy Corp.
Ohio Edison Company
The Cleveland Electric Illuminating Company
The Toledo Edison Company
Pennsylvania Power Company
American Transmission Systems, Incorporated
FE Acquisition Corp.
FirstEnergy Properties, Inc.
FirstEnergy Facilities Services Group, LLC
FE Holdings, LLC
FELHC, Inc.
FirstEnergy Securities Transfer Company
FirstEnergy Nuclear Operating Company
FirstEnergy Solutions Corp.
FirstEnergy Ventures Corp.
Marbel Energy Corporation
Centerior Indemnity Trust
Centerior Service Company
FirstEnergy Service Company
Jersey Central Power & Light Company
Pennsylvania Electric Company
Metropolitan Edison Company
York Haven Power Company
Waverly Electric Power & Light Company
GPU Capital, Inc.
GPU Electric, Inc.
GPU Diversified Holdings, LLC
GPU Power, Inc.
GPU Telcom Services, Inc.
GPU Nuclear, Inc.
MYR Group, Inc.

By: /s/ Harvey L. Wagner

Name: Harvey L. Wagner

Title: Vice President and Controller

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Date: November 25, 2003