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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–3538 Filed 2–18–04; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27802]**

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

February 12, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission under 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 March 8, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 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 March 8, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

### Metropolitan Edison Company (70–10192)

Metropolitan Edison Company (''Met-Ed'') and Pennsylvania Electric Company (''Penelec''), each at 76 South Main Street, Akron, Ohio, 44308, and direct wholly-owned public-utility subsidiaries of FirstEnergy Corp. (''FirstEnergy''), a registered holding company, and Pennsylvania Power Company (''Penn Power''), 76 South Main Street, Akron, Ohio, 44308, an indirect wholly-owned public-utility subsidiary of FirstEnergy, have each filed an application/declaration under sections 6(a), 7, 9(a)(1), 10, and 12(b) of the Public Utility Holding Company Act of 1935, as amended (''Act'') and rules 43, 45, 46 and 54 under the Act. Met-Ed, Penelec and Penn Power are referred to individually as an ''Applicant,'' and collectively as the ''Applicants.''

The Applicants seek authority to form and acquire all of the membership interests in separate Delaware limited liability companies (each an ''SPE'' and collectively ''SPEs'') to which Met-Ed, Penelec and Penn Power will sell their respective customer accounts receivables (''Receivables''). Each of the SPEs will be organized under Delaware law as a single-member limited liability company. Each SPE will have nominal capital (except as described below) and will conduct no business operations or own any assets other than the Receivables purchased from, or contributed by, its parent. The purpose in forming the SPEs is to isolate the Receivables from the Applicants who have originated them, so that under the Financial Accounting Standards Board Statement No. 140 (''FASB 140''),[1] the sale of the Receivables to the SPEs qualifies for treatment as a true sale of assets by the Applicants rather than as a loan secured by the Receivables. This will allow the Receivables to be removed as assets from the books of the Applicants. The Applicants will not have any obligation to repurchase Receivables that they have sold.

Each Applicant will enter into a substantially identical Receivables Sale Agreement (''RSA'') with its respective SPE. Each SPE, in turn, will enter into a Receivables Purchase Agreement (''RPA'') under which the SPE will fund its purchase of Receivables by selling, on a revolving basis, undivided ownership interests in the pool of Receivables that it owns to a conduit established to issue and sell commercial paper (''Conduit'') and/or one or more financial institutions (collectively, ''Purchasers'') through Bank One, NA, acting as agent (''Agent''). The maximum purchase commitment of the Purchasers under the RPAs are $80 million in the case of Met-Ed, $75 million in the case of Penelec, and $25 million in the case of Penn Power.

Under each RSA, an Applicant will sell and assign to its respective SPE all of its right, title and interest to its Receivables (together with any security that may have been obtained from customers and collections by the Applicant on the Receivables). The Receivables will be sold to the SPE without recourse (except as described below), at a discount using a discount rate to be determined from time to time based on, among other factors, the SPE's cost of funds (as described below), which takes into account the Applicant's credit rating, and the risk of non-payment by the obligors on the Receivables (*i.e.*, the Applicant's loss experience on its accounts receivable).

Although Receivables will be sold by each Applicant to its respective SPE without recourse, the SPE will be entitled to a credit equal to any reduction in the amount of any Receivables resulting from (1) any defective or rejected goods or services, any discount or any adjustment or otherwise in the amount of any Receivable, or (2) any setoff in respect of any claim affecting the Receivables. In addition, if any of the representations or warranties made by the Applicant in the RSA are no longer true with respect to any Receivable, the SPE will be entitled to a credit against the purchase price for the Recievable in an amount equal to its outstanding balance. Each Applicant has the right to terminate the RSA upon giving 15 business days written notice to the SPE.

Each SPE will finance the purchase of the Receivables, first, using the funds obtained from Purchasers under the related RPA (as described below), second, by delivery of the proceeds of a subordinated revolving loan by the SPE's parent (a ''Subordinated Loan''), and third, by accepting a contribution of Receivables to its capital from its parent in an amount equal to the remaining balance of the purchase price for the Receivables. The note evidencing the Subordianted Loan will bear interest at a prime rate, which is equal to the higher of (1) the rate of interest per annum determined by the Agent from time to time as its prime commercial lending rate and (2) the federal funds effective rate plus .50%.

The amount of Receivables originated by an Applicant will vary from month to month based on electricity usage by its customers. As a result of this and other factors, the funds available to an SPE to purchase Receivables may not match the cost of Receivables available for sale. The use of the Subordinated Loan/capital contribution mechanism is intended to address this periodic mismatch. When the amount of Receivables available for sale by an Applicant exceeds the amount of cash its SPE has available, the excess will be

[1] *See* FASB Statement No. 140, ''Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities,'' a replacement of FASB Statement No. 125 (September 2000). FASB 140 sets forth various tests that have to be met in order for the transferred assets to be deemed to be isolated from (*i.e.*, out of the control of) the seller. Special-purpose entities similar to those the Applicants propose to form are typically used to establish separateness.

purchased by the SPE with the proceeds of a Subordinated Loan and/or by accepting a capital contribution of Receivables. Conversely, if, after payments of all amounts due under the RPA an SPE develops a cash surplus due to collections of previously purchased Receivables (or Receivables received as a contribution) exceeding the balance of newly created Receivables available for purchase, the surplus funds will be used to repay the Subordinated Loan and/or make a cash distribution. Through this mechanism, it is expected that the SPEs will not retain substantial cash balances at any time and that substantially all cash realized from the collection of the Receivables (net of the costs of the program) will be made available to the Applicants.

Under each RPA, the SPE is obligated to pay: (1) The Agent various fees (including fees paid to the Agent and the Conduit under a fee letter); (2) fees and costs to each Applicant for the service provided in billing and collecting on the Receivables the Applicant sold to the SPE (described further below); (3) amounts required to reduce the interests in the Receivables purchased by the Purchasers, (4) amounts required if the representations and warranties regarding the Receivables are no longer true; (5) broken funding costs (*e.g.*, damages incurred to prepay any LIBOR borrowings); (6) default fees; and (7) amounts payable as yield (''Yield'') on the capital at any time associated with the undivided interest in purchased Receivables. The Yield for any interest accrual period that will be applied to capital provided by financial institutions that are Purchasers shall be an amount equal to the product of the applicable bank rate (either (1) the London Interbank Offered Rate (LIBOR), plus a spread, or (2) a prime rate, which is the higher of (a) the rate of interest per annum determined by the Agent from time to time as its prime commercial lending rate and (b) the federal funds effective rate plus .50%), multiplied by the capital invested. The Yield for each month that will be applied to capital provided by the Conduit shall be an amount based on the effective cost of funds on promissory notes issued by the Conduit in the commercial paper market.

Each Applicant is designated as the servicer under the RPA to which it is a party. Thus, the transactions described above will have no effect on the services each Applicant provides to its customers. Among other things, each Applicant will continue to bill and collect all of its utility service accounts receivable in accordance with its current credit and collection policies. As compensation for the services it renders, each Applicant (as servicer) will be paid a monthly servicing fee equal to .25% of the aggregate outstanding balance of all Receivables during the month. Upon the occurrence of certain events, including, among others, a failure by an SPE to pay indebtedness or other fees when due or to perform or observe certain covenants under the RPA, an event of insolvency affecting an SPE or an Applicant, or the failure by an Applicant to maintain certain debt coverage and capitalization ratios, the Agent would have the right to designate a new servicer.

The proposed transaction will provide the Applicants with an additional source of funds, and will save Met-Ed and Penelec approximately 50–125 basis points over the cost of conventional financing and Penn Power approximately 40–115 basis points over the cost of conventional financing. Based on present market conditions, the Applicants estimate that the current cost of the funds available under the Receivables program is 1.545% in the case of Met-Ed and Penelec and 1.645% in the case of Penn Power, as compared to the estimated costs to the Applicants of bank financing (2.75%) and a one-year floating rate note (approximately 2%).

Proceeds of the Receivables sale program will be used by the Applicants for general corporate purposes.

**Pennsylvania Electric Company (70–10193)**

Metropolitan Edison Company (''Met-Ed'') and Pennsylvania Electric Company (''Penelec''), each at 76 South Main Street, Akron, Ohio, 44308, and direct wholly-owned public-utility subsidiaries of FirstEnergy Corp. (''FirstEnergy''), a registered holding company, and Pennsylvania Power Company (''Penn Power''), 76 South Main Street, Akron, Ohio, 44308, an indirect wholly-owned public-utility subsidiary of FirstEnergy, have each filed an application/declaration under sections 6(a), 7, 9(a)(1), 10, and 12(b) of the Public Utility Holding Company Act of 1935, as amended (''Act'') and rules 43, 45, 46 and 54 under the Act. Met-Ed, Penelec and Penn Power are referred to individually as an ''Applicant,'' and collectively as the ''Applicants.''

The Applicants seek authority to form and acquire all of the membership interests in separate Delaware limited liability companies (each an ''SPE'' and collectively ''SPEs'') to which Met-Ed, Penelec and Penn Power will sell their respective customer accounts receivables (''Receivables''). Each of the SPEs will be organized under Delaware law as a single-member limited liability company. Each SPE will have nominal capital (except as described below) and will conduct no business operations or own any assets other than the Receivables purchased from, or contributed by, its parent. The purpose in forming the SPEs is to isolate the Receivables from the Applicants who have originated them, so that under the Financial Accounting Standards Board Statement No. 140 (''FASB 140''),[2] the sale of the Receivables to the SPEs qualifies for treatment as a true sale of assets by the Applicants rather than as a loan secured by the Receivables. This will allow the Receivables to be removed as assets from the books of the Applicants. The Applicants will not have any obligation to repurchase Receivables that they have sold.

Each Applicant will enter into a substantially identical Receivables Sale Agreement (''RSA'') with its respective SPE. Each SPE, in turn, will enter into a Receivables Purchase Agreement (''RPA'') under which the SPE will fund its purchase of Receivables by selling, on a revolving basis, undivided ownership interests in the pool of Receivables that it owns to a conduit established to issue and sell commercial paper (''Conduit'') and/or one or more financial institutions (collectively, ''Purchasers'') through Bank One, NA, acting as agent (''Agent''). The maximum purchase commitment of the Purchasers under the RPAs are $80 million in the case of Met-Ed, $75 million in the case of Penelec, and $25 million in the case of Penn Power.

Under each RSA, an Applicant will sell and assign to its respective SPE all of its right, title and interest to its Receivables (together with any security that may have been obtained from customers and collections by the Applicant on the Receivables). The Receivables will be sold to the SPE without recourse (except as described below), at a discount using a discount rate to be determined from time to time based on, among other factors, the SPE's cost of funds (as described below), which takes into account the Applicant's credit rating, and the risk of non-payment by the obligors on the

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Each SPE will finance the purchase of the Receivables, first, using the funds obtained from Purchasers under the related RPA (as described below), second, by delivery of the proceeds of a subordinated revolving loan by the SPE's parent (a ''Subordinated Loan''), and third, by accepting a contribution of Receivables to its capital from its parent in an amount equal to the remaining balance of the purchase price for the Receivables. The note evidencing the Subordianted Loan will bear interest at a prime rate, which is equal to the higher of (1) the rate of interest per annum determined by the Agent from time to time as its prime commercial lending rate and (2) the federal funds effective rate plus .50%.

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Applicants estimate that the current cost of the funds available under the Receivables program is 1.545% in the case of Met-Ed and Penelec and 1.645% in the case of Penn Power, as compared to the estimated costs to the Applicants of bank financing (2.75%) and a one-year floating rate note (approximately 2%).

Proceeds of the Receivables sale program will be used by the Applicants for general corporate purposes.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–3577 Filed 2–18–04; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49217; File No. SR–Amex–2004–10]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Application of a Fee Cap for Member Firm Options Transactions

February 10, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Amex as establishing or changing a due, fee, or other charge, pursuant to section 19(b)(3)(A)(ii) [3] of the Act and Rule 19b–4(f)(2) [4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt an options fee cap of $75,000 per month in connection with ''firm'' trades of member organizations for all equity and index options transaction charges, options comparison charges, and options floor brokerage charges.

The text of the proposed rule change is available at the Amex and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to adopt an options fee cap, exclusive of any options licensing fee, of $75,000 per month in connection with ''firm'' trades of member organizations on all equity and index options transaction charges, options comparison charges, and options floor brokerage charges. The ''firm'' designation identifies a clearing member's account that handles only transactions cleared and positions carried on behalf of non-customers that are not specialists, registered options traders or away market makers. Under this proposal, firm-related charges for equity and index options, in the aggregate for one month, would not exceed $75,000 per month per member firm.

The Amex believes that member firms that are substantial order flow providers should be rewarded through the proposed fee cap. The Exchange believes that this proposal provides an incentive for member firms to attract and transact more volume on the floor of the Exchange. In addition, an increase in firm orders should also provide more trading opportunities for floor members, thereby increasing revenue potential to the membership and the Exchange.

2. Statutory Basis

The Exchange believes the proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b)(4) of the Act,[5] regarding the equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [6] and Rule 19b–4(f)(2)[7] thereunder, because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Amex–2004–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).