into an agreement with the Trust regarding the terms of the investment.

Applicants agree to add the following condition to Nasdaq-100 Trust's Prior Order as condition 3:

13. The Web site for the Trust or the Web site of the American Stock Exchange, each of which will be publicly accessible at no charge, will contain the following information, on a per Nasdaq-100 Share basis, for the Trust: (a) the prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for the Trust will state that the relevant Web site has information about the premiums and discounts at which the Nasdaq-100 Shares have traded.

Applicants agree to add the following condition to Nasdaq-100 Trust's Prior Order as condition 4:

14. The prospectus and annual report for the Trust will also include: (a) the information listed in condition 3(b) above, (i) in the case of the prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Nasdaq-100 Share basis for one, five and ten year periods (or life of the Trust), (i) the cumulative total return and the average annual total return based on NAV and closing price and (ii) the cumulative total return of the Index.

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

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–6188 Filed 3–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27813]

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

March 12, 2004.

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 April 5, 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 April 5, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc. (70–10201)

Notice of Proposed Amendments to Charter and Bylaws; Order Authorizing Solicitation of Proxies

Allegheny Energy, Inc. (''Allegheny''), a Maryland corporation and a registered holding company under the Act, 10435 Downsville Pike, Hagerstown, Maryland 21740, has filed this declaration (''Declaration'') under sections 6(a) and 12(e) of the Act and rules 62 and 65 under the Act.

Allegheny requests authority to: (1) Amend its charter to eliminate the requirement of cumulative voting in the election of directors; (2) require simple majority voting on all matters to be submitted for stockholder approval and, specifically, to (a) amend its bylaws or Charter to opt out of the Maryland Control Share Acquisition Act, (b) institute a simple majority vote of stockholders for removal of directors, and (c) eliminate the application of provisions of the Maryland Business Combination Act to the extent these provisions require super-majority approval of certain business combinations; (3) declassify the Board of Directors (items (1) through (3) are referred to below as the ''Proposed Amendments''), and (4) solicit proxies in connection with (a) the implementation of the Proposed Amendments, (b) a stockholder proposal to make the adoption or extension of any stockholder rights agreement (poison pill) subject to a stockholder vote, and (c) other routine matters and certain stockholder proposals.

I. Requested Authority

The Proposed Amendments cover a number of matters related to stockholder rights that have been proposed by Allegheny's management or stockholders and all of which will be submitted for stockholder approval at Allegheny's 2004 annual meeting of stockholders. Specifically, the Proposed Amendments include:

A. *Elimination of Cumulative Voting.* The Allegheny Board of Directors (''Board'') has approved for submission to stockholders an amendment to Article VII.A of Allegheny's Articles of Restatement of Charter of the Company (''Charter'') that would eliminate the requirement of cumulative voting in the election of directors. The Charter currently provides that in the election of directors, each holder of shares of stock entitled to vote shall be entitled to as many votes as shall equal the number of shares of stock held multiplied by the number of directors to be elected. The stockholder may cast all of these votes for a single director or may distribute them among the number of directors to be elected or any two or more of them as the stockholder may see fit. The Maryland General Corporation Law does not require cumulative voting in elections of directors.

The Board believes that the benefits of cumulative voting are much less relevant today than they were when cumulative voting was originally included in the Charter. At that time, minority stockholders had few federal and state remedies to protect them from overreaching by majority stockholders and, therefore, had a greater need for board representation. Today, the Board believes that the disadvantages of cumulative voting outweigh the advantages for large, extensively regulated and widely held companies. Cumulative voting may allow a minority of stockholders to obtain representation on the Board against the wishes of the majority. Allegheny states that for the Board to work effectively for all of the stockholders, each director should feel a responsibility to the stockholders as a whole and not to any special group of minority stockholders. If the proposed amendment is passed and cumulative voting is eliminated, Allegheny maintains that the holders of a majority of shares entitled to vote in an election of directors will be able to elect all of the directors being elected at that time, and no director will be elected by any

special interest group of minority stockholders.

B. *Simple Majority Vote Requirement.* An Allegheny stockholder proposes to submit for stockholder approval a proposal that would require simple majority approval for all matters submitted for stockholder approval. If this proposal is approved, Allegheny would take the following specific actions.

1. Exemption from Control Share Act. The Board proposes to opt out of the Maryland Control Share Acquisition Act (''Control Share Act''), which would remove a super-majority stockholder vote requirement for the approval of control share voting rights. The Control Share Act provides that control shares of a Maryland corporation acquired in a control share acquisition have no voting rights except to the extent approved by a vote of two-thirds of the votes entitled to be cast on the matter. Shares owned by the acquiror, by officers or by directors who are employees of the corporation are excluded from shares entitled to vote on the matter. Control shares are voting shares of stock which, if aggregated with all other shares of stock owned by the acquiror or in respect of which the acquiror is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiror to exercise voting power in electing directors within certain statutorily-defined ranges (one-tenth but less than one-third, one-third but less than a majority, and more than a majority of the voting power). The Control Share Act also does not apply to the voting rights of shares of stock if the acquisition of those shares has been approved or exempted by the charter or bylaws of the corporation or to shares acquired in a merger, consolidation, or share exchange in which the corporation is a party. Allegheny's Charter and bylaws do not currently contain any approval or exemption from these provisions of Maryland law.

At the 2003 annual meeting of stockholders, a majority of stockholders voted in favor of eliminating super-majority voting requirements. In light of the level of stockholder support for this change, the Board's Nominating and Governance Committee reviewed the matter in January 2004 and recommended that the Board take action consistent with Maryland law to effect this change. Under Maryland law, opting out of the Control Share Act requires an amendment to either Allegheny's Charter or its bylaws. If the proposal to require majority voting on all matters submitted for a stockholder vote is approved by the stockholders, the Board intends to amend the bylaws or the Charter to exempt Allegheny from the Control Share Act. If the proposal is approved and the Board takes the action described, the Board will also take appropriate actions necessary under Maryland law to require stockholder approval to opt back into the requirements of the Maryland Control Share Act.

2. Simple Majority Vote for Removal of Directors. The Board proposes to take action under Maryland law to permit the removal of directors upon approval by a majority of votes entitled to be cast generally in the election of directors. Under an election made by the Board in July 1999, Allegheny currently is subject to provisions of the Maryland General Corporation Law that provide that directors may only be removed by the affirmative vote of at least two-thirds of all votes entitled to be cast by stockholders generally in the election of directors. At the 2003 annual meeting of stockholders, a majority of stockholders voted in favor of eliminating super-majority voting requirements. In light of the level of stockholder support for this change, the Board's Nominating and Governance Committee reviewed the matter in January 2004 and recommended to the Board that the two-thirds requirement for removal of directors be eliminated. If the proposal is approved, the Board will take action so that Allegheny is no longer subject to the Maryland law requiring a two-thirds stockholder vote to remove a director. It should be noted that if the elimination of cumulative voting as discussed above is not approved by the stockholders and the Charter continues to provide for cumulative voting in the removal of directors, Allegheny will remain subject to the mandatory provisions of Maryland law providing that a director may not be removed without cause if the votes cast against the director's removal would be sufficient to elect him if then cumulatively voted in an election of the entire Board (or the class to which the director belongs). If this proposal is approved and the Board takes the action described above, the Board will also take action necessary under Maryland law to require stockholder approval to opt back into the provisions of Maryland law requiring a two-thirds majority vote to remove a director.

3. Exemption from Business Combination Voting Requirements. The Board of Directors proposes to eliminate the application of certain provisions of the Maryland Business Combination Act to the extent these provisions require the concurrence of a greater proportion of votes than the affirmative vote of a majority of the votes entitled to be cast to approve certain business combinations.

Under Maryland law, ''business combinations'' between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include a merger, consolidation, share exchange, or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. An interested stockholder is defined as: any person who beneficially owns 10% or more of the voting power of the corporation's shares or an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then outstanding voting stock of the corporation. A person is not an interested stockholder under the statute if the board of directors approved in advance the transaction by which he otherwise would have become an interested stockholder. However, in approving a transaction, the board of directors may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by the board.

After the five-year prohibition, any business combination between the Maryland corporation and an interested stockholder generally must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least: 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation and two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or held by an affiliate or associate of the interested stockholder. These super-majority vote requirements do not apply if the corporation's common stockholders receive a minimum price, as defined under Maryland law, for their shares in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its shares.

The statute provides for various exemptions from the application of its provisions, including for business combinations that are exempted by the board of directors prior to the time that the interested stockholder becomes an interested stockholder. The Board has not granted any exemptions. However, if

the proposal to require simple majority voting on all matters submitted for a stockholder vote is approved by the stockholders, the Board will take action consistent with Maryland law to remove the requirement of the two super-majority votes discussed above and instead provide that these business combinations may be approved by a majority of the votes entitled to be cast on the matter. If this proposal is approved and the Board takes the action described above, the Board will also take all action necessary under Maryland law to require stockholder approval to opt back into the super-majority voting provisions of the Maryland Business Combination Act.

C. *Declassification of the Board.* An Allegheny stockholder proposes to present for stockholder consideration a proposal to elect each Allegheny director annually, which would have the effect of declassifying the Board effective as of the 2005 annual meeting of stockholders. In July 1999, the Board made an election under Maryland law to subject Allegheny to provisions of the Maryland General Corporation Law that provide for a classified board. Under these provisions, the Board is currently divided into three classes of directors, with each class serving a three-year term and one class being elected each year. A majority of stockholders voted in favor of eliminating the classified board system at the 2001, 2002 and 2003 annual meetings of stockholders. In light of the level of stockholder support for this change, the Nominating and Governance Committee of the Board reviewed this matter in January 2004 and recommended to the Board that the classified board system be eliminated. If stockholders approve the proposal, the Board intends to take all action required under Maryland law to declassify the Board and to take all further action necessary to implement the change so that the election of directors will be annualized beginning at the 2005 annual meeting of stockholders. If this proposal is approved and the Board takes the action described, the Board will also take all action necessary under Maryland law to require stockholder approval to opt back into the provisions of Maryland law to classify the Board.

D. *Proxy Solicitation in Connection with Stockholder Rights Agreement.* Allegheny's proxy statement will contain a stockholder proposal regarding stockholder input on stockholder rights agreements. Specifically, this proposal seeks to require that adoption or extension of any future stockholder rights agreement be submitted to a stockholder vote. Allegheny seeks authorization to solicit proxies in connection with the stockholder proposal.[1]

II. Order for Solicitation of Proxies

Allegheny has requested that an order be issued authorizing commencement of the solicitation of proxies from the holders of outstanding shares of common stock for approval of the various Charter and bylaw changes discussed in detail above and for the approval of changes in stockholder input with regard to stockholder rights agreements. It appears to the Commission that Allegheny's Declaration regarding the proposed solicitation of proxies should be permitted to become effective immediately under rule 62(d).

III. Rule 54 Analysis

Rule 54 promulgated under the Act states that in determining whether to approve the issue or sale of a security by a registered holding company for purposes other than the acquisition of an exempt wholesale generator (''EWG'') or a foreign utility company (''FUCO''), or other transactions by such registered holding company or its subsidiaries, other than with respect to EWGs or FUCOs, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an EWG or a FUCO upon the registered holding company system if rules 53(a), (b) or (c) are satisfied.

Allegheny does not satisfy the requirements of rule 53(a)(1). The Commission has authorized Allegheny to invest up to $2 billion in EWGs and FUCOs and found that this investment would not have either of the adverse effects set forth in rule 53(c). As of September 30, 2003, Allegheny's ''aggregate investment,'' as defined in rule 53(a)(l), was approximately $185 million. Allegheny is, however, no longer in compliance with the financing conditions of its financing orders. As of September 30, 2003, Allegheny's common equity ratio was below 28 percent. As a result, Allegheny is no longer able to make any investments in EWGs and FUCOs, without further authorization from the Commission.[2]

Allegheny currently complies with, and will comply with, rules 53(a)(2), 53(a)(3), and 53(a)(4). None of the circumstances described in 53(b)(1) have occurred. The circumstances described in rule 53(b)(2) and (b)(3) have occurred. And, the requirements of rule 53(c) are met.

Allegheny believes that the requested authorization will not have a substantial adverse impact upon the financial integrity of Allegheny nor its public utility company subsidiaries (''Operating Companies''). Allegheny maintains that the requested relief will not adversely affect the Operating Companies and their customers. The ratio of common equity to total capitalization of each of the Operating Companies will continue to be maintained at not less than 30 percent.[3] Furthermore, the common equity ratios of the Operating Companies will not be affected by the proposed transactions.

The fees, commissions and expenses incurred or to be incurred in connection with this Declaration will not exceed $10,000. Allegheny maintains that no state or federal regulatory agency, other than the Commission, has jurisdiction over the requested authority.

It is ordered, under rule 62 of the Act, that the Declaration regarding the proposed solicitation of proxies from the holders of outstanding shares of Allegheny common stock become effective immediately, subject to the terms and conditions of rule 24 under the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–6169 Filed 3–18–04; 8:45 am]

BILLING CODE 8010–01–P

[1] On October 14, 2003, Allegheny filed an application in file no. 70–10178 to redeem the rights under its existing stockholder rights agreement.

[2] As of September 30, 2003, Allegheny had a consolidated common equity ratio of 20.9 percent and Allegheny Energy Supply Company LLC had a consolidated common equity ratio of 15.71 percent.

[3] The common equity ratios of the Operating Companies as of September 30, 2003 are as follows: West Penn Power Company: 48 percent; Potomac Edison Company: 48 percent; and Monongahela Power Company: 37 percent.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49414; File No. SR–NYSE–2003–33]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the New York Stock Exchange, Inc., Relating to Exchange Fees for Closed-End Funds

March 12, 2004.

On October 20, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule