

SECURITIES AND EXCHANGE COMMISSION

(Release No. 35-28069; 70-10322)

FirstEnergy Corp., et al.

Order Authorizing Transfer of Nuclear Generating Plant Assets to Associate Company and Authorizing Certain Financing Transactions

December 2, 2005

FirstEnergy Corp., (“FirstEnergy”), a registered holding company under the Public Utility Holding Company Act of 1935 (“Act”) and certain of 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”; Ohio Edison, Cleveland Electric, Toledo Edison and Penn Power collectively referred to as “Utility Subsidiaries”); and FirstEnergy Nuclear Generating Corp. (“FE Nuclear”), a newly-incorporated Ohio corporation that will become a public utility subsidiary of FirstEnergy, all of Akron, Ohio, have filed with the Securities and Exchange Commission (“Commission”) an application-declaration, as amended (“Application”) under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(d), and 12(f) of the Act and rules 43, 44, 45, 46 and 54 under the Act. FirstEnergy, the Utility Subsidiaries and FE Nuclear are referred to as “Applicants.” The Commission issued a notice of the Application on October 28, 2005.

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 engages in the generation, distribution and sale of electric energy in a 1,500 square mile-area of western Pennsylvania having a population of approximately 300,000. Penn Power is also authorized to do business and owns property in the State of Ohio

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

¹FirstEnergy'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.

northwestern Ohio having a population of approximately 800,000. It also has interests in certain generating facilities located in Pennsylvania.

Requested Authorization

The Utility Subsidiaries request authorization to transfer ownership of their respective interests in certain nuclear generating plants and related assets and liabilities to FE Nuclear. These asset transfers are in furtherance of FirstEnergy’s Ohio and Pennsylvania corporate separation plans, which were described in FirstEnergy’s application/declaration for authorization to merge with GPU, Inc. (“GPU”).² In addition, FirstEnergy and FE Nuclear request authorization to engage in financing and other related transactions through February 8, 2006 (the “Authorization Period”).

Transfer of Nuclear Generating Plants to FE Nuclear.

The Utility Subsidiaries own, as tenants in common, interests in the following nuclear generating plants:

Plant	Location	MW	Ownership %
Beaver Valley 1	Shippingport, PA	821	Ohio Edison 35% Penn Power 65%
Beaver Valley 2	Shippingport, PA	831	Ohio Edison 20.22% Penn Power 13.74% Cleveland Electric 24.47% Toledo Edison 1.65%
Davis-Besse	Oak Harbor, OH	883	Cleveland Electric 51.38% Toledo Edison 48.62%
Perry	North Perry Village, OH	1,260	OES Nuclear 17.42% Penn Power 5.245% Toledo Edison 19.91% Cleveland Electric 44.85%

² See HCAR No. 27459 (October 29, 2001) (“the Merger Order”).

The Utility Subsidiaries propose to sell or otherwise transfer their respective ownership interests in the nuclear plants to FE Nuclear by means of the following transactions, all of which will be carried out concurrently:³

Transfer of Nuclear Plants by Penn Power. Pursuant to the terms of a Subscription and Capital Contribution Agreement (“Penn Power Contribution Agreement”), Penn Power will acquire 100 shares of common stock of FE Nuclear in consideration for Penn Power’s contribution to FE Nuclear of its undivided interests in the two Beaver Valley units and Beaver Valley common facilities and its undivided interest in Perry Unit 1. In connection with such contribution, FE Nuclear will assume Penn Power’s obligations in respect of \$63 million aggregate principal amount of pollution control revenue bonds (“PCRBs”) and certain other liabilities associated with the transferred units. The parties to the Penn Power Contribution Agreement have agreed that the value of the contributed assets will be the net book value as of the end of the fiscal quarter immediately preceding the closing. Simultaneously, Penn Power will receive from FE Nuclear a promissory note (“FE Nuclear Note”) in respect of the book value of certain related assets, including construction work in progress, nuclear plant decommissioning funds, inventories and spare parts (totaling, as of September 30, 2005, approximately \$328 million), less the agreed upon value of other liabilities assumed by FE Nuclear (approximately \$162 million as of September 30, 2005). The FE Nuclear Note will bear interest at a rate equal to Penn Power’s weighted average cost of long-term debt, will mature 20

³ The Utility Subsidiaries do not propose to transfer to FE Nuclear their remaining percentage ownership interests in certain of the nuclear facilities that are currently subject to sale and leaseback arrangements with third parties.

years after its date of issuance, and will be prepayable at any time, in whole or in part, by FE Nuclear.⁴

Transfer of Nuclear Plants by Ohio Edison. Pursuant to the terms of a Capital Contribution Agreement (“Ohio Edison Contribution Agreement”), Ohio Edison will contribute its undivided interests in the two Beaver Valley units and Beaver Valley common facilities and the common stock of OES Nuclear Incorporated (“OES Nuclear”), a wholly-owned subsidiary of Ohio Edison, which holds an undivided interest in Perry Unit 1, together with associated decommissioning funds and its interests in other assets, inventories, fuel, spare parts, equipment, supplies and contract rights relating to the transferred units, to FE Nuclear as an additional capital contribution to FE Nuclear. In connection with such transfer, FE Nuclear will assume Ohio Edison’s obligations in respect of \$115 million aggregate principal amount of PCRB obligations and certain other liabilities associated with the transferred units. An additional \$297 million of Ohio Edison’s PCRBs will be assumed and/or refinanced by FE Nuclear after the distribution described in the next paragraph. The parties to the Ohio Edison Contribution Agreement have agreed that the value of the contributed assets will be the net book value as of the end of the fiscal quarter immediately preceding the closing.

Following the transfer of Ohio Edison’s nuclear assets to FE Nuclear, Applicants anticipate that OES Nuclear will be merged with and into FE Nuclear, and Ohio Edison will

⁴ Following the contribution to FE Nuclear, Penn Power will distribute the stock of FE Nuclear as a dividend to its parent, Ohio Edison, such that FE Nuclear will become, momentarily, a direct wholly-owned subsidiary of Ohio Edison. If the transactions described in the previous paragraph had occurred on September 30, 2005, Applicants state that Penn Power’s cost basis for the stock of FE Nuclear would have been equal to the net book value of the transferred interests in the Beaver Valley and Perry units and associated assets (approximately \$176 million), less the PCRB obligations (\$63 million) and the distribution of the stock of FE Nuclear to Ohio Edison would have resulted in a charge to Penn Power’s retained earnings of \$133 million.

distribute the stock of FE Nuclear as a dividend to its parent, FirstEnergy, such that FE Nuclear will momentarily become a direct wholly-owned subsidiary of FirstEnergy.⁵

Sale of Nuclear Plants by Cleveland Electric and Toledo Edison. Cleveland Electric and Toledo Edison have each entered into a Nuclear Purchase and Sale Agreement with FE Nuclear (“Nuclear PSA”), under which FE Nuclear has agreed to purchase Cleveland Electric’s and Toledo Edison’s respective undivided ownership interests in Beaver Valley Unit 2, Perry Unit 1 and Davis-Besse for a purchase price equal to the net book value, determined as of the end of the fiscal quarter immediately preceding the closing, together with the respective interests of Cleveland Electric and Toledo Edison in nuclear decommissioning trust funds associated with those plants and their respective right, title and interest in and to all contracts, fuel, spare parts, inventories, equipment, supplies and other assets associated with each transferred unit, less the amount of obligations of Cleveland Electric and Toledo Edison under PCRBs associated with the transferred units (\$367 million and \$246 million, respectively, at September 30, 2005), and the agreed upon value of certain other liabilities associated with the transferred units.

⁵ If the transactions described above had occurred on September 30, 2005, Applicants represent that Ohio Edison’s cost basis for the stock of FE Nuclear would have been equal to the net book value of the transferred interests in the Beaver Valley and Perry units and associated assets (approximately \$514 million), less the initial PCRb obligations to be assumed (at closing, \$115 million), less accumulated and other comprehensive income (approximately \$7 million) and the agreed upon value of other liabilities assumed by FE Nuclear (approximately \$160 million). Simply in order to account for the difference between Ohio Edison’s capital contribution to FE Nuclear and the additional Ohio Edison nuclear assets which FE Nuclear is acquiring from Ohio Edison as part of the transaction, an intercompany receivable (represented for accounting purposes by a long term FE Nuclear Note) will be set up on the Ohio Edison balance sheet in the amount of \$232 million. FE Nuclear will repay that obligation, together with interest, through the assumption and/or refinancing after closing of the additional outstanding Ohio Edison PCRBs which, as noted above, total \$297 million, an amount greater than the intercompany receivable that is created in the transaction.

At closing, FE Nuclear will pay the purchase price, determined as described in the previous paragraph, by delivering to Cleveland Electric and Toledo Edison FE Nuclear Notes secured by a lien on the transferred assets. Each FE Nuclear Note will bear interest at a rate per annum based on the average weighted cost of long-term debt of Cleveland Electric and Toledo Edison, as the case may be, will mature 20 years after the date of issuance, and will be prepayable at any time, in whole or in part, at the option of FE Nuclear, without penalty.⁶

Repurchases of Common Stock of Cleveland Electric, Toledo Edison and Penn Power.

FirstEnergy states that, in connection with the transfer of the nuclear plants to FE Nuclear, FirstEnergy will make a cash capital contribution to FE Nuclear of up to \$750 million. FE Nuclear will use the proceeds of this investment at or subsequent to closing to prepay a like amount of the FE Nuclear Notes delivered at closing to Penn Power, Cleveland Electric and Toledo Edison. In turn, Penn Power, Cleveland Electric and Toledo Edison will apply the proceeds of such prepayment of the FE Nuclear Notes to repay outstanding borrowings under the FirstEnergy system utility money pool. To the extent that there are any remaining prepayment proceeds, the Applicants request authorization for Cleveland Electric and Toledo Edison to repurchase shares of their common stock that are held by FirstEnergy and Penn Power requests authorization to repurchase shares of its common stock that are held by Ohio Edison. Applicants state that the purpose of these transactions is to adjust (*i.e.*, reduce) the equity and debt capitalization of Cleveland Electric, Toledo Edison and Penn Power to mirror their smaller asset base after the transfer of their undivided interests in the nuclear plants to FE Nuclear.

⁶ If the transactions described above had been consummated at September 30, 2005, Applicants state that the principal amounts of the FE Nuclear Notes delivered to Cleveland Electric and Toledo Edison would have been approximately \$993 million and \$706 million, respectively.

Financing by FE Nuclear.

External Debt Financing by FE Nuclear. FE Nuclear requests authorization to issue and sell to unaffiliated lenders, from time to time through the Authorization Period, long-term debt securities having maturities of up to 50 years (“Long-term Debt”) and short-term debt securities having maturities of less than one year (“Short-term Debt”) in an aggregate amount at any time outstanding not to exceed \$1.5 billion (the “FE Nuclear Debt Limit”). The following general terms will be applicable where appropriate to Long-term Debt and Short-term Debt of FE Nuclear:

(a) Effective Cost of Money. The effective cost of capital (i.e., the aggregate of all payments, including interest, dividend distributions and other periodic payments) in respect of Long-term Debt and Short-term Debt of FE Nuclear will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that, in no event will the effective cost of capital (i) on Long-term Debt exceed at the time of issuance 500 basis points over the yield to maturity of comparable-term U.S. Treasury securities if the interest rate on such Long-term Debt securities is a fixed rate or, if the rate on such Long-term Debt securities is a floating rate, 500 basis points over the London Interbank Offered Rate (“LIBOR”) for maturities of less than one year; and (ii) on Short-term Debt exceed at the time of issuance, (A) in the case of commercial paper or any other short-term borrowing that is not tied to a reference rate, 300 basis points over LIBOR, and (B) in the case of any short-term borrowing that is tied to a reference rate, either (1) 300 basis points over LIBOR, (2) 50 basis points over the prime rate, as announced from time to time by CitiBank, or any successor, or (3) 100 basis points over the Federal Funds Rate, whichever reference rate is applicable.

(b) Issuance Expenses. The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of any security (not including any original issue discount) will not exceed 5% of the principal or total amount of the security being issued.

(c) Use of Proceeds. The proceeds from the sale of securities in external financing transactions will be used for general corporate purposes, including financing, in part, of the capital expenditures of FE Nuclear, financing of working capital requirements of FE Nuclear, the acquisition, retirement or redemption of securities (including PCRB obligations) previously issued by or on behalf FE Nuclear, and other lawful purposes.

(d) Common Equity Ratio. FE Nuclear and each of the Utility Subsidiaries commits that it will maintain common equity as a percentage of consolidated capitalization (common stock equity, long-term debt and short-term debt, including current maturities of long-term debt) at 30% or higher.

(e) Ratings Event. With respect to the securities issuance for which authorization is requested: (a) within four business days after the occurrence of a Ratings Event,⁷ Applicants will notify the Commission of its occurrence (by means of a letter, via fax, email or overnight mail to the Office of Public Utility Regulation), and (b) within 30 days after the occurrence of a Ratings Event, Applicants will submit a post-effective amendment to this

⁷A “Ratings Event” will be deemed to have occurred if, during the Authorization Period, (i) any security issued by FE Nuclear or FirstEnergy upon original issuance, if rated, is rated below investment grade, or (ii) any outstanding security of FirstEnergy or FE Nuclear that is rated is downgraded below investment grade. For purposes of this provision, a security will be deemed “investment grade” if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3-1 of the Securities Exchange Act of 1934, as amended).

Application explaining the material facts and circumstances relating to that Ratings Event (including the basis on which, taking into account the interests of investors, consumers and the public as well as other applicable criteria under the Act, it remains appropriate for FE Nuclear to issue the securities for which authorization has been requested, so long as FE Nuclear continues to comply with the other applicable terms and conditions specified in the Commission's order authorizing the transactions requested in this Application). Furthermore, except in accordance with a further order of the Commission, no such securities will be issued following the 60th day after a Ratings Event (other than Short-term Debt) if the downgraded rating(s) has or have not been upgraded to investment grade. Applicants request that the Commission reserve jurisdiction, through the remainder of the Authorization Period, over the issuance of any securities (other than Short-term Debt) that FE Nuclear is prohibited from issuing as a result of the occurrence of a Ratings Event if no revised rating reflecting an investment grade rating has been issued.

Description of Specific Types of External Debt Securities of FE Nuclear.

Long-term Debt. Each series of Long-term Debt will have such designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms and other terms and conditions as FE Nuclear may determine at the time of issuance. Any Long-term Debt (a) may be secured or unsecured, (b) may be senior or subordinated, (c) will have maturities ranging from one to 50 years, (d) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof, (e) may be entitled to mandatory or optional sinking fund provisions, (f) may provide for reset of the coupon pursuant to a remarketing arrangement, (g) may be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event, (h) may be

called from existing investors by a third party, and (i) may be entitled to the benefit of affirmative or negative financial or other covenants.

Long-term Debt may also be in the form of agreements between FE Nuclear and one or more industrial development authorities (“IDAs”) pursuant to which an IDA agrees to issue PCRBs for the purpose of financing or refinancing pollution control revenue facilities relating to FE Nuclear’s nuclear power plants. Under the terms of any such agreement, payments to the issuing IDA will be designed to match payments of principal of and interest on the PCRBs to which such agreement relates.

As security for FE Nuclear’s obligations under any agreement relating to any series of PCRBs, FE Nuclear requests authority to (1) issue its promissory note or notes to evidence the loan to FE Nuclear of the proceeds of the PCRBs by the issuing IDA, (2) acquire and deliver a letter of credit (“LOC”) guaranteeing payment of the PCRBs and enter into reimbursement agreements with respect to any such LOC, (3) acquire insurance policies guaranteeing payment of the PCRBs, and/or (4) pledge its first mortgage bonds as collateral for its obligations to the issuing IDA, any trustee, LOC bank or PCRb insurer. To avoid double counting, FE Nuclear proposes that the amount of any note or notes issued by FE Nuclear to evidence the loan to FE Nuclear of the proceeds of any PCRBs or first mortgage bonds issued by FE Nuclear as collateral security for PCRb obligations not count against the FE Nuclear Debt Limit.

Short-term Debt. Short-term Debt of FE Nuclear may be in the form of commercial paper, promissory notes and/or other forms of unsecured short-term indebtedness. FE Nuclear may establish from time to time new committed bank lines of credit, provided that only the principal amount of any outstanding borrowings will be counted against the proposed FE Nuclear Debt Limit. Credit lines may be set up for use by FE Nuclear for general corporate

purposes in addition to credit lines to support commercial paper as described in this subsection. FE Nuclear will borrow and repay under such lines of credit, from time to time, as it is deemed appropriate or necessary. FE Nuclear may also engage in other types of short-term financing, including borrowings under uncommitted lines, generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

Commercial paper will be sold in established domestic or European commercial paper markets from time to time. Such commercial paper will be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from FE Nuclear will reoffer such paper at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities and finance companies.

Intrasystem Financing Transactions. FE Nuclear further requests authorization to make direct long-term and short-term borrowings from FirstEnergy (“Direct Borrowings”). All such Direct Borrowings will be evidenced by FE Nuclear’s promissory notes and will be prepayable at any time without premium or penalty at FE Nuclear’s option. The aggregate principal amount of Direct Borrowings by FE Nuclear at any time outstanding will be counted against and will in no event exceed the FE Nuclear Debt Limit. The interest rate and maturity of any Direct Borrowings will be designed to parallel the terms (i.e., effective cost of funds and maturity) of similar debt securities issued by FirstEnergy, as authorized by the Commission by order dated June 30, 2003 (HCAR No. 27694) (the “2003 Financing Order”).

In addition, FE Nuclear requests authorization to become a participant in and to make borrowings under the FirstEnergy system nonutility money pool agreement (“Nonutility Money Pool”) subject to terms and conditions previously approved by the Commission in the 2003 Financing Order.⁸ FE Nuclear requests authorization to borrow up to \$1 billion at any time outstanding under the Nonutility Money Pool. Borrowings by FE Nuclear under the Nonutility Money Pool will also be counted against the proposed FE Nuclear Debt Limit.

Rule 54

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) and (b), except for clause (1).⁹

⁸ Under the 2003 Financing Order, FirstEnergy is authorized to maintain and make loans to its nonutility subsidiaries through the Nonutility Money Pool.

⁹ Under the Merger Order, as modified by the 2003 Financing Order, the Commission, among other things, authorized FirstEnergy to invest in EWGs and FUCOs so long as FirstEnergy's “aggregate investment,” as defined in Rule 53(a)(1), in EWGs and FUCOs does not exceed \$5 billion. The Merger Order and the 2003 Financing Order also specify 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”). As of September 30, 2005, FirstEnergy's aggregate investment in EWGs and FUCOs was approximately \$2.5 billion. As of September 30, 2005, FirstEnergy's consolidated retained earnings were \$2.1 billion. By way of comparison, FirstEnergy's consolidated retained earnings as of December 31, 2001 were \$1.52 billion.

Applicants state that the fees, commissions and expenses incurred or to be incurred in connection with the preparation and filing of the Application are not expected to exceed \$35,000. The transfer of the Utility Subsidiaries' interests in the nuclear power plants to FE Nuclear has been approved by the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission. In addition, Penn Power has obtained approval from the Pennsylvania Public Utility Commission for the proposed transactions under Pennsylvania's affiliated interest statute. Applicants maintain that no other state or federal commission or agency, other than the Commission, has jurisdiction over the transactions for which authorization is sought in this Application.

Due notice of the filing of this Application has been given in the manner prescribed in rule 23 under the Act, and no hearing has been requested of or ordered by the Commission. Based on the facts in the record, the Commission finds that, except as to those matters over which jurisdiction is reserved, the applicable standards of the Act and rules are satisfied and that no adverse findings are necessary.

IT IS ORDERED, under the applicable provisions of the Act and the rules under the Act, that, except as to those matters over which jurisdiction is reserved, the Application as amended, be granted and be permitted to become effective immediately, subject to the terms and conditions prescribed in rule 24 under the Act.

IT IS FURTHER ORDERED, that jurisdiction is reserved, in the Application of FirstEnergy Corp., et al. (70-10322), through the remainder of the Authorization Period, over the issuance of any securities (other than Short-term Debt) that FE Nuclear is prohibited from issuing as a result of the occurrence of a Ratings Event if no revised rating reflecting an investment grade rating has been issued.

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

Jonathan G. Katz
Secretary