the Securities and Exchange Commission (''Commission'') an amendment (''Joint Amendment No. 13'') to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Linkage Plan'').[1] In Joint Amendment No. 13, the Participants propose to modify the definitions of Firm Customer Quote Size (''FCQS'') and Firm Principal Quote Size (''FPQS'') to accommodate the ''natural size'' of quotations. The Linkage Plan currently requires that the Participants be firm for both Principal Acting as Agent and Principal Orders for at least 10 contracts. The proposed Amendment would permit exchanges to be firm for the actual size of their quotation, even if this amount is less than 10 contracts.

The proposed amendment to the Linkage Plan was published in the **Federal Register** on August 24, 2004.[2] No comments were received on the proposed amendment. This order approves the proposed amendment to the Linkage Plan.

## II. Description of the Proposed Amendment

Proposed Joint Amendment No. 13 seeks to change the definitions of both FCQS and FPQS. While the proposed Amendment would maintain a general requirement that the FCQS and FPQS be at least 10 contracts, that requirement would not apply if a Participant were disseminating a quotation of fewer than 10 contracts. In that case, the Participant may establish a FCQS or FPQS equal to its disseminated size, or ''natural size.''

Under the proposed amendment, as with Linkage orders today, if the order is of a size eligible for automatic execution, the receiving exchange must provide automatic execution of the Linkage order. If this is not the case (for example, the receiving exchange's automatic execution system is not engaged), the receiving exchange may allow the order to drop to manual handling. However, the receiving exchange still must provide a manual execution for at least the FCQS or FPQS, as appropriate (in this case, the size of its disseminated quotation of less than 10 contracts).

## III. Discussion

After careful consideration, the Commission finds that the proposed amendment to the Linkage Plan is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment to the Linkage Plan is consistent with Section 11A of the Act[3] and Rule 11Aa3–2 thereunder,[4] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets.

The Commission notes that the Participants adopted the current definitions of FCQS and FPQS, which impose a ''10-up'' requirement, at a time when all the Participants had rules requiring that their minimum quotation size be for at least 10 contracts. Consequently, an exchange receiving a customer limit order for fewer than 10 contracts would disseminate the price of the customer limit order with a size of 10 contracts and the specialist or the trading crowd would be responsible to make up the difference. Since implementation of the Linkage Plan, several of the Participants have modified their rules to permit them to disseminate the ''natural size'' of customer limit orders that are of a size less than 10 contracts.[5] Proposed Joint Amendment No. 13 should conform the minimum quotation requirements contained in the Linkage Plan to be consistent with the Participants' rules regarding the dissemination of the size associated with customer limit orders. The Commission believes that conforming the requirements of the Linkage Plan to the requirements adopted by the Participants, which permit them to disseminate an order's ''natural size,'' should provide greater transparency to investors and the marketplace and better reflect the true state of liquidity in the marketplace.

## IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act[6] and Rule 11Aa3–2 thereunder,[7] that the proposed Joint Amendment No. 13 is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**J. Lynn Taylor,**

*Assistant Secretary.*

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[1] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, PCX, and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[2] *See* Securities Exchange Act Release No. 50211 (August 18, 2004), 69 FR 52050.

[3] 15 U.S.C. 78k–1.

[4] 17 CFR 240.11Aa3–2.

[5] *See* Securities Exchange Act Release Nos. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002) (SR–Phlx–2002–15); 46029 (June 4, 2002), 67 FR 40363 (June 12, 2002) (SR–PCX–2002–30); 45067 (November 16, 2001), 66 FR 58766 (November 23, 2001) (SR–CBOE–2001–56); 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (SR–CBOE–2002–05); and 48957 (December 18, 2003), 68 FR 75294 (December 30, 2003) (SR–Amex–2003–24).

[6] 15 U.S.C. 78k–1.

[7] 17 CFR 240.11Aa3–2.

[8] 17 CFR 200.30–3(a)(29).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27903]**

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

October 22, 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 November 15, 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 November 15, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Entergy Corporation, et al. (70–10240)**

Entergy Corporation (''Entergy''), a registered holding company, 639 Loyola Avenue, New Orleans, LA 70113; Entergy's public utility subsidiaries: Entergy Arkansas, Inc., (''Arkansas''), 424 West Capitol Avenue, Little Rock, Arkansas 72201, Entergy Gulf States, Inc., (''Gulf States''), 350 Pine Street,

Beaumont, TX 77701, Entergy Louisiana, Inc., (''Louisiana''), 4809 Jefferson Highway, New Orleans, LA 70121, Entergy Mississippi, Inc. (''Mississippi''), 308 East Pearl Street, Jackson, MS 39201, and Entergy New Orleans, Inc., (''New Orleans''), 1600 Perdido Building, New Orleans, LA 70112 (collectively the ''Operating Companies,'' and individually, an ''Operating Company''); System Energy Resources, Inc., (''System Energy''), 1340 Echelon Parkway, Jackson, MS 39213, a generating company subsidiary of Entergy; Entergy Operations, Inc., (''EOI''), 1340 Echelon Parkway, Jackson, MS 39213, a nuclear power plant operations subsidiary of Entergy; Entergy Energy Services, Inc. (''ESI''), 639 Loyola Avenue, New Orleans LA 77701, a service company subsidiary of Entergy; and System Fuels, Inc., (''SFI''), 350 Pine Street, Beaumont, TX 77701, a fuel supply company of four of the Operating Companies, (collectively, ''Applicants'') have filed an application-declaration (''Application'') under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 43, 45, and 54 under the Act.

**I. Background**

By order dated November 29, 2001 (HCAR No. 27470) (''Prior Order''), the Commission authorized through November 30, 2004: (1) The Operating Companies, System Energy, EOI, ESI and SFI to make unsecured short-term borrowings through the Entergy System Money Pool (''Money Pool''); (2) the Operating Companies and System Energy to issue and sell short-term debt; (3) Entergy to make loans to EOI, ESI and SFI, and for EOI, ESI and SFI to issue notes evidencing the loans made by Entergy and under external banks lines of credit; [1] and (4) Entergy to guarantee the obligations of EOI, ESI and SFI under the external bank lines of credit.

**II. Proposed Transactions**

The Operating Companies, System Energy, EOI, ESI and SFI propose to continue, through November 30, 2007 (the ''Authorization Period''), to finance their interim capital needs through Money Pool borrowings as provided below. The Operating Companies and System Energy also request authority to issue notes to banks evidencing short-term borrowings and to issue and sell commercial paper in the amounts and under the terms and conditions set forth below.

[1] EOI, ESI and SFI do not currently have any external bank lines of credit pursuant to this authorization.

The Operating Companies and System Energy propose to effect short-term borrowings through the Money Pool and through the issuance of notes evidencing borrowing from banks and through the issuance and sale of commercial paper in the following maximum amounts for each company: Arkansas, $235 million; Gulf States, $340 million; Louisiana, $225 million; Mississippi, $160 million; New Orleans, $100 million; and System Energy, $140 million.

In addition EOI, ESI, SFI and Entergy request authorization to extend (i) the maturities of the loan agreements authorized in the Prior Order between Entergy and each of EOI, ESI and SFI the notes issued to Energy pursuant to the loan agreements, and (ii) the existing authorization with respect to EOI, ESI and SFI issuing notes evidencing borrowings under loan agreements entered with one or more banks (and with respect to Entergy guaranteeing the obligations of EOI, ESI and SFI thereunder) through the Authorization Period in the following aggregate amounts: $20 million in the case of EOI and $200 million each, in the case of ESI and SFI, all as further set forth below.

*A. Money Pool*

The Operating Companies, System Energy, Entergy, EOI, ESI and SFI (collectively, the ''Participants,'' and individually, a ''Participant'') propose to participate in the Money Pool, which will be administered on behalf of the Participants by ESI under the direction of its Treasurer. The Money Pool will consist solely of available funds from the treasuries of the Participants, which will be loaned on a short-term basis (potentially as short as intra-day) to any one or more of the Participants in the Money Pool, other than Entergy. Entergy will be a participant in the Money Pool only to the extent that it has funds available to invest through the Money Pool, but in no event will Entergy be permitted to borrow funds held in the Money Pool.

The determination of whether a Participant at any time has funds that may be available to the Money Pool will be made by, or under the direction of, its respective Treasurer or other designee. Participants will not make external borrowings for the purpose of making loans to other Participants in the Money Pool.

The operation of the Money Pool will be designed and managed to match, on a daily basis, the available cash and borrowing requirements of the Participants, thereby reducing the need for borrowings to be made by the Participants from external sources. Although it is generally expected that the short-term borrowing requirements of the Operating Companies and System Energy will be met first with the proceeds of borrowing through the Money Pool, and then, only to the extent necessary with the proceeds of external borrowings, there may be circumstances where it may be desirable for one or more of the Participants to make short-term bank borrowings, notwithstanding the existence of available funds in the Money Pool.

The Operating Companies and System Energy will have priority as borrowers from the Money Pool. EOI, ESI and SFI will be permitted to borrow through the Money Pool, only if, on a given day, there are funds available in the Money Pool after the needs of the Operating Companies and System Energy have been satisfied.

Some of System Energy's existing credit arrangements require (absent waivers) that System Energy's Money Pool borrowings be deemed subordinated indebtedness to the extent that in the event of a default by System Energy or the insolvency, liquidation, reorganization or similar proceedings (a ''Default Condition'') affecting System Energy, no payments by System Energy of principal or interest on its Money Pool obligations may be made until all obligations of System Energy under these credit arrangements have been paid or otherwise provided for. Except where a Default Condition exists, System Energy would be permitted to make payments of principal and interest on account of its Money Pool borrowings.

With respect to funds remaining in the Money Pool after satisfaction of the borrowing needs of the Participants, ESI, the administrator of the Pool, will invest the remaining funds and allocate the earnings on these funds among the Participants on a pro rata basis in accordance with their respective interest in the funds. ESI proposes to invest the excess funds in investments as are permitted by the provisions of Section 9(c) and Rule 40 of the Act.

Subject to each Participant's borrowing limits specified above, the Participants making borrowing through the Money Pool (other than EOI, ESI, and SFI) will be entitled to borrow, on any given day, an amount of the total funds then available for lending to the Participants determined on the basis of an equal allocation of the funds among all borrowing Participants, except that in circumstances where one or more borrowing Participants would be provided with funds in excess of the Participant's respective borrowing

requirements, the excess will be available for loans equally allocated among the remaining borrowing Participants.

All loans will be payable on demand (subject to the subordination provision described above in the case of System Energy), may be prepaid at any time without premium or penalty, and will bear interest payable monthly at a rate calculated on a daily basis, equal to the Daily Weighted Average Investment Rate of the Money Pool portfolio; provided however, that in the event, on and as of any particular day, there are no excess Money Pool funds invested in the Money Pool portfolio, the Daily Federal Funds Effective Rate as quoted by the Federal Reserve Bank of New York will be the rate of interest applicable to Money Pool loans and borrowings for that day. ''Daily Weighted Average Investment Rate'' as applied to any day, shall be calculated by multiplying (A) the aggregate of the total daily interest payable on all investments in the Money Pool portfolio (consisting of excess Money Pool funds not loaned to the Participants) outstanding as of that day by (B) 360, and dividing the product by the total amount invested in the Money Pool portfolio as of that day. For purpose of calculating the daily interest payable on each investment in the Money Pool portfolio in (A) above, the original cost of each investment is multiplied by its respective yield and the product is divided by 360.

In the event that, on any given day, the available funds in the Money Pool are insufficient to satisfy the short-term borrowing requirements of one or more of the Operating Companies or System Energy, the Operating Company or System Energy, as the case may be, will effect short-term borrowing through bank loans and/or sales of commercial paper as provided below.

*B. Lines of Credit*

Each of the Operating Companies and System Energy may establish lines of credit with various commercial banks. These lines of credit may be arranged on an individual basis, or on a consolidated basis with each other and with EOI, ESI and SFI.

Borrowings from banks will be in the form customarily used by the lending bank, will be secured or unsecured, will be payable not later than one year from the date of issuance, and will bear interest at rates which will not exceed the greater of (a) 500 basis points over the comparable-term London Interbank Offered Rate (''LIBOR'') or (b) a gross spread over LIBOR that is consistent with bank borrowings by companies of the same or reasonably comparable credit quality and having the same or reasonably similar maturities and similar terms, conditions and features.

The Participants may agree to pay to each lending bank (a) a commitment, facility or similar fee that will be (i) a fixed dollar amount; and/or (ii) a percentage of the total commitment or unused commitment, as well as (b) one time closing fees, consisting of up-front fees, arrangement fees, administrative agency fee or similar closing fees. The fees will be negotiated at the time of the arrangement and will be comparable to fees in the applicable market for borrowing arrangements with similar features and terms and conditions to borrowers of comparable credit quality, provided that in no event shall these fees exceed five percent (5%) of the aggregate principal amount of the applicable bank borrowings.

*C. Commercial Paper Arrangements*

Each of the Operating Companies and System Energy proposes to issue, reissue and sell the commercial paper directly to a dealer in commercial paper (''Dealer'') at a discount not in excess of the maximum discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturity sold by public utility issuers to Dealers.

The proposed commercial paper will be in the form of unsecured promissory notes with varying maturities not to exceed 270 days, the actual maturity to be determined by market conditions and the particular borrower's anticipated cash requirement at the time of issuance. No commission or fee will be payable by the Operating Companies or System Energy in connection with the issuance and sale of the commercial paper. Each Dealer will reoffer and sell the commercial paper to customers on a non-public list for each Operating Company and System Energy, consisting of financial and non-financial institutions that normally invest funds in commercial paper, at the customary discount rate for commercial paper. Applicants state that they expect the commercial paper to be held by the buyers to maturity. However, each Dealer may, if desired by a buyer, repurchase the commercial paper for resale to other customers on the list.

*D. EOI, ESI and SFI Loan Agreements With Entergy*

EOI, ESI and SFI were each previously authorized by the Commission through November 30, 2004 to enter into a separate loan agreement with Entergy of up to an aggregate principal amount of $20 million in the case of EOI, $200 million in the case of ESI and $200 million in the case of SFI. EOI, ESI, SFI and Entergy now propose to enter into an amendment to each of their respective loan agreements, which will extend the expiration date of the borrowing period through the Authorization Period and provide for the issuance of new notes stated to mature on November 30, 2007. The aggregate amount that EOI, ESI and SFI may borrow from Entergy through the Authorization Period will be $20 million, $200 million and $200 million, respectively.

Each loan agreement mentioned above will provide that the amount of Entergy's respective commitments will be correspondingly reduced by the commitments of any bank or banks to lend money to EOI, ESI, or SFI, as applicable. The new notes will continue to be payable to the order of Entergy and may be prepaid at any time without premium or penalty and will bear interest, payable quarterly, on the unpaid principal amount at the rate that is determined from time to time to be equal to Entergy's effective cost of short-term debt.

*E. External Borrowing Arrangements*

EOI, ESI and SFI further propose to extend the period during which they may enter into external borrowing arrangements with one or more banks through the Authorization Period. EOI, ESI and SFI may arrange these lines of credit on an individual basis, or on a consolidated basis with each other, and/or with the Operating Companies and System Energy. The proposed bank borrowing will be in an aggregate principal amount of up to $20 million in the case of EOI, up to $200 million in the case of ESI and up to $200 million in the case of SFI. Additionally, these borrowings (and any related promissory notes) will be in the form customarily used by lending banks, will be payable not later than November 30, 2007 and will bear interest at rates which will not exceed the greater of (a) 500 basis points over LIBOR or (b) a gross spread over LIBOR that is consistent with bank borrowings by companies of the same or reasonably comparable credit quality and having the same or reasonably similar maturities and similar terms, conditions and features.

Each borrower may agree to pay to each bank (a) a commitment, facility or similar fee that will be (i) a fixed dollar amount; and/or (ii) a percentage of the total commitment or unused commitment, as well as (b) one-time closing fees. These fees will be negotiated at the time of the arrangement and will be comparable to

the fees generally prevailing in the market for borrowing arrangements having similar terms to borrowers of comparable credit quality, provided that in no event will these fees exceed five percent (5%) of the aggregate principal amount of the applicable bank borrowings.

As an inducement to banks to make loans to EOI, ESI, and SFI, it is contemplated that Entergy may be required to guarantee the obligations of EOI, ESI and SFI in an aggregate principal amount not to exceed $20 million in the case of EOI, $200 million in the case of ESI and $200 million in the case of SFI. Entergy agrees that the fee, if any, charged to EOI, ESI and SFI for any guarantee provided will not exceed the cost, if any, of obtaining the liquidity necessary to perform the guarantee for the period of time the guarantee remains outstanding. Accordingly, Applicants request authority for Entergy to issue these guarantees through the Authorization Period.

*F. Use of Proceeds*

The proceeds to be received by the Operating Companies and System Energy from borrowings through the Money Pool and through borrowings from banks and the issuance and sale of commercial paper, together with other funds available from time to time to the Operating Companies and System Energy from operations will be used to provide interim financing for construction expenditures, to meet long-term debt maturities and satisfy sinking fund requirements, as well as for the possible refunding, redemption, purchase or other acquisition of all or a portion of certain series of debt and preferred stock and for general corporate purposes.

The proceeds of borrowings by EOI through the Money Pool, as well as the proceeds of borrowings by EOI pursuant to its loan agreement with Entergy and other external borrowing arrangements will be used to finance EOI's interim capital needs.

The proceeds of borrowings by ESI through the Money Pool, as well as the proceeds of borrowing by ESI pursuant to ESI's loan agreement with Entergy and other external borrowings will be used by ESI for the repayment of other borrowings from time to time and for any lawful purpose in connection with its performance as a subsidiary service company under the Act.

The proceeds of borrowings by SFI through the Money Pool, as well as the proceeds of borrowings by SFI pursuant to its loan agreement with Entergy and other external borrowing arrangements of SFI will be used by SFI for the repayment of other borrowings and for any lawful purpose in connection with its fuel supply program.

None of the proceeds to be received by the Operating Companies, System Energy, EOI, ESI or SFI from borrowings through the Money Pool or through the issuance and sale of promissory notes and commercial paper will be used to invest directly or indirectly in an exempt wholesale generator or foreign utility company as defined in Section 32 or 33, respectively, of the Act.

*G. Financing Parameters*

1. Common Equity Ratio

Entergy and each of the Operating Companies, System Energy and EOI represents that it will at all times during the Authorization Period maintain common equity (as reflected in the most recent Quarterly Report on Form 10–Q or Annual Report on Form 10–K filed with the Commission adjusted to reflect changes in capitalization since the balance sheet date therein) of at least 30% of its consolidated capitalization. The term ''consolidated capitalization'' means shareholders' equity, long-term debt, preferred stock with sinking fund and short-term debt.

2. Investment Grade Rating

Entergy, the Operating Companies, System Energy and EOI each represent that, apart from promissory notes issued to evidence borrowings from the Money Pool, no guarantees or other securities may be issued by it in reliance upon the authorization granted by the Commission under this Application, unless (1) the security to be issued, if rated, is rated investment grade, (2) all outstanding securities of the issuer that are rated, are rated investment grade (except, in the case of Gulf States, the company's preferred stock and trust preferred securities (''QUIPS'') and, in the case of New Orleans, the company's preferred stock, and (3) all outstanding securities of Entergy that are rated, are rated investment grade (''Investment Grade Ratings Criteria''). For purposes of this provision, a security will be deemed to be rated ''investment grade'' if it is rated investment grade by Moody's Investors Service, Standard & Poor's, Fitch Ratings or any other nationally recognized statistical rating agency (''NRSRO''), as that term is used in paragraphs (C)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other security at any time that one or more of the Investment Grade Ratings Criteria are not satisfied.

*Rochester Gas and Electric Corporation (70–10241)*

Rochester Gas and Electric Corporation (''RG&E''), is a New York corporation and a wholly owned subsidiary of RGS Energy Group, Inc. (''RGS'') [2],which, in turn, is a wholly owned subsidiary of Energy East Corporation, (''Energy East'') a New York corporation and a registered holding company under the Act. RG&E is located at 89 East Avenue, Rochester, New York. RG&E filed a Declaration seeking authorization, under section 12(c) of the Act and rules 42, 46 and 54 under the Act.

RG&E is a public utility company engaged in the purchase, generation, transmission, distribution and sale of electricity and the purchase, distribution and sale of natural gas in New York.

In connection with the restructuring of the electric industry in New York, RG&E sold the Robert E. Ginna Nuclear Power Plant for approximately $420,000,000. According to RG&E it is in the interests of RG&E's security holders and ratepayers for RG&E to transfer by dividend up to $175 million to an associate company and to use the amount for the reduction of debt held by Energy East. RG&E states, among other things, that RG&E's revenues from operations are sufficient to fund its expenses and capital improvements, that its current equity as a percentage of its total capitalization is in excess of 45%, and that the New York Public Service Commission will not allow RG&E to earn a return on equity that is in excess of 45%. RG&E asserts that the better use of the funds represented by the proposed dividend is reducing debt within the Energy East holding company system. Accordingly, RG&E requests authority from the Commission for RG&E to declare or pay dividends out of capital or unearned surplus and for RG&E to acquire, retire or redeem its securities from an associate company.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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[2] RGS is a New York corporation and a public utility holding company that is exempt from registration by order under section 3(a)(1) of the Act. According to RG&E, the Commission has authorized RGS to conduct similar transactions. *Energy East Corp. et al.,* HCAR No. 27643 (Jan. 28, 2003).