

Rockville, MD. Comments will be most helpful if received by December 10, 2001.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC home page (<http://www.nrc.gov>). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher, (301) 415-5905; e-mail CAG@NRC.GOV. For information about the draft guide and the related documents, contact Mr. J. Philip at (301) 415-6211; e-mail JXP@NRC.GOV.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

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(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 30th day of August 2001.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

*Director, Division of Engineering Technology,
Office of Nuclear Regulatory Research.*

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27435]

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

August 31, 2001.

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 September 25, 2001, 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 September 25, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

FirstEnergy Corp., GPU, Inc., et al. (70-9793)

FirstEnergy Corp. ("FirstEnergy"), an Ohio holding company claiming exemption from registration under the Act through rule 2, its utility subsidiaries: Ohio Edison Company ("Ohio Edison"), American Transmission Systems, Incorporated ("ATSI"), The Cleveland Electric Illuminating Company ("Cleveland Electric"), The Toledo Edison Company ("Toledo Edison"), Pennsylvania Power Company ("Penn Power"), and Northeast Ohio Natural Gas Corp. ("NONGC"), and their respective subsidiaries; FirstEnergy's direct nonutility subsidiaries: FE Acquisition Corp. ("FE Acquisition"), FirstEnergy Properties, Inc. ("FE Properties"), FirstEnergy Facilities Services Group, LLC ("FE Facilities"), FE Holdings, LLC ("FE Holdings"), FELHC, Inc.

("FELHC"), FirstEnergy Securities Transfer Company ("FirstEnergy Transfer"), FirstEnergy Nuclear Operating Company ("FENOC"), FirstEnergy Solutions Corp. ("FirstEnergy Solutions"), FirstEnergy Generation Corp. ("GenCo"), FirstEnergy Ventures Corp. ("FirstEnergy Ventures"), MARBEL Energy Corporation ("MARBEL"), Centerior Indemnity Trust ("CIT"), Centerior Service Company ("Centerior Service") and FirstEnergy Service Company ("ServeCo"), and their respective subsidiaries, all located at 76 South Main Street, Akron, Ohio, 44308; and GPU, Inc. ("GPU"), a registered public utility holding company, its utility subsidiaries: Jersey Central Power & Light Company ("JCP&L"), Pennsylvania Electric Company ("Penelec"), Metropolitan Edison Company ("Met-Ed"), York Haven Power Company ("York Haven"), and Waverly Electric Power & Light Company ("Waverly Electric"), and their respective subsidiaries; and its nonutility subsidiaries: GPU Capital, Inc. ("GPU Capital"), GPU Electric, Inc. ("GPU Electric"), GPU Diversified Holdings, LLC ("GPUDH"), GPU EnerTech Holdings, Inc. ("GPU EnerTech"), GPU Power, Inc. ("GPU Power"), GPU Advanced Resources, Inc. ("GPUAR"), GPU Service, Inc. ("GPU Service"), GPU Telcom Services, Inc. ("GPU Telcom"), GPU Nuclear, Inc. ("GPU Telecom"), and MYR Group, Inc. ("MYR"), and their respective subsidiaries, all located at 300 Madison Avenue, Morristown, New Jersey, 07962, (collectively, "Applicants"), have filed an application-declaration, as amended ("Application"), under sections 6(a), 7, 9(a), 10, 11, and 13 of the Act and rules 42, 43, 45, 46, 52, 53, 54, and 85-91 under the Act.

Applicants request authority for, among other things, the merger of GPU with and into FirstEnergy ("Merger"); GPU will no longer be a separate entity after the Merger. Following consummation of the Merger, FirstEnergy will register with the Commission as a holding company under the Act. Under the terms of the Agreement and Plan of Merger, dated August 8, 2000 ("Merger Agreement"), FirstEnergy will pay cash for 50% and issue FirstEnergy common shares for 50% of the shares of GPU common stock outstanding at the time of the completion of the Merger, subject to a tax adjustment. The total Merger consideration to be paid by FirstEnergy

is estimated to be approximately \$4.5 billion.¹

In addition, Applicants seek approval for the creation and reorganization of certain nonutility subsidiaries and other matters. In connection with the Merger, Applicants seek approval for financing by FirstEnergy for the purpose of paying the cash and common stock portions of the Merger consideration and other general corporate purposes that may be required in the period immediately following the Merger ("Acquisition Financing"). Applicants also seek approvals for the ongoing financing activities of, the provision of intrasystem services and guaranties by, and certain investments and other matters relating to FirstEnergy and its subsidiaries following the Merger. Applicants further seek preliminary and temporary approval for ServeCo (the new service company for the FirstEnergy system) and GPU Service to act as service companies for the FirstEnergy system under section 13 of the Act and applicable rules.

All pre-Merger subsidiaries of FirstEnergy and GPU are referred to as "Subsidiaries." "FirstEnergy Utility Subsidiaries" include: Ohio Edison, Cleveland Electric, Toledo Edison, Penn Power, NONGC and ATSI; "FirstEnergy Nonutility Subsidiaries" include all the FirstEnergy Subsidiaries, except for the FirstEnergy Utility Subsidiaries; "GPU Subsidiaries" means all current subsidiaries of GPU; "GPU Utility Subsidiaries" include JCP&L, Met-Ed, Penelec, York Haven and Waverly Electric; "GPU Nonutility Subsidiaries" include all GPU Subsidiaries, except for the GPU Utility Subsidiaries; "Utility Subsidiaries" means FirstEnergy Utility Subsidiaries and GPU Utility Subsidiaries; "Nonutility Subsidiaries" means FirstEnergy Nonutility Subsidiaries and GPU Nonutility Subsidiaries; and "Subsidiary" or "Subsidiaries" means all subsidiaries of post-Merger FirstEnergy, including FirstEnergy Utility Subsidiaries, FirstEnergy Nonutility Subsidiaries, GPU Utility Subsidiaries and GPU Nonutility Subsidiaries.

I. Parties to the Merger

A. FirstEnergy and Its Affiliates

FirstEnergy directly owns all of the issued and outstanding voting securities of Ohio Edison,² ATSI, Cleveland

Electric, Toledo Edison, Penn Power, and NONGC.³ Ohio Edison, Cleveland Electric, Toledo Edison and Penn Power, collectively comprise the "FirstEnergy Operating Companies." The FirstEnergy Operating Companies, ATSI, NONGC, OVEC and IKEC are all "public-utility companies" as defined in the Act.

For the twelve months ending December 31, 2000, FirstEnergy had total revenue of \$7,028,961,000 and net income of \$598,970,000. FirstEnergy had total assets of \$17,941,294,000, as of December 31, 2000.

1. Utility Operations

Ohio Edison is both a public utility and a public utility holding company exempt from registration under the Act by order of the Commission.⁴ Ohio Edison engages in the generation, distribution, and sale of electric energy to approximately one million customers within a 7,500-square-mile area of central and northeastern Ohio. For the twelve months ending December 31, 2000, Ohio Edison had total revenue of \$2,343,596,000 and net income of \$313,609,000; Ohio Edison's operating revenue during this period was principally derived from the sale of electricity. Ohio Edison had total assets of \$7,165,242,000, as of December 31, 2000. Ohio Edison owns all of the issued and outstanding voting securities of Penn Power, an electric public utility organized under Pennsylvania law in 1930. Penn Power is also authorized to do business and owns property in Ohio. Penn Power furnishes electric service to approximately 138,000 customers in a 1,500-square-mile area of western Pennsylvania. For the twelve months ending December 31, 2000, Penn Power had total revenue of \$383,112,000, and net income of \$22,847,000; Penn Power's operating revenue was principally derived from the sale of electricity. Penn Power had total assets of \$988,909,000, as of December 31, 2000.

Cleveland Electric is engaged primarily in the generation, distribution and sale of electric energy to approximately 741,000 customers in an area of approximately 1,700 square miles in northeastern Ohio, including the City of Cleveland. Cleveland Electric also has ownership interests in certain generating facilities located in the Commonwealth of Pennsylvania.

Cleveland Electric also engages in the sale, purchase and interchange of electric energy with other electric companies. For the twelve months ending December 31, 2000, Cleveland Electric had total revenue of \$1,887,039,000 and net income of \$202,950,000; Cleveland Electric's operating revenue was principally derived from the sale of electricity. Cleveland Electric had total assets of \$5,964,631,000, as of December 31, 2000.

Toledo Edison is a public utility engaged primarily in the distribution and sale of electric energy to approximately 303,000 customers in an area of approximately 2,500 square miles in northwestern Ohio, including the City of Toledo. Toledo Edison owns directly 4% of the issued and outstanding voting securities of OVEC. For the twelve months ending December 31, 2000, Toledo Edison had total revenue of \$954,947,000, and net income of \$137,233,000; Toledo Edison's operating revenue was principally derived from the sale of electricity. Toledo Edison had total assets of \$2,652,267,000, as of December 31, 2001.

ATSI owns and operates certain major, high-voltage transmission facilities, which consist of approximately 7,100 circuit miles (5,752 "pole" miles) of transmission lines with voltages of 345 kV and 138 kV (the "Bulk Transmission System") and 69 kV (the "Area Transmission System," and together with the Bulk Transmission System, the "Transmission System"). ATSI has 37 interconnections with six neighboring control areas. ATSI is the control area operator for the FirstEnergy system. The primary function of the Transmission System is to integrate the generation resources of the FirstEnergy Companies with their native retail and wholesale loads. To perform this network function, the Bulk Transmission System and the Area Transmission System are integrated and operate in a parallel manner to each other. The FirstEnergy Companies also operate low voltage 23, 33, 34.5, and 36 kV facilities.

NONGC is a public-utility company that provides gas distribution and transportation service to approximately 5,000 customers located in central and northeast Ohio. NONGC operates approximately 420 miles of distribution and transportation pipeline and ancillary facilities. NONGC receives its gas supplies from local gas producers as well as from interstate pipeline companies. For the twelve months ending December 31, 2000, NONGC had total revenue of \$6,074,120, and net

¹ Consideration estimation is based on the market price of FirstEnergy common stock and the number of shares of GPU common stock outstanding at the time the Merger Agreement is executed.

² Ohio Edison directly owns 16.5% of the issued and outstanding voting securities of Ohio Valley Electric Corporation ("OVEC"), and OVEC owns all

of the issued and outstanding voting securities of Indiana-Kentucky Electric Corporation ("IKEC").

³ The acquisition of NONGC by FirstEnergy is the subject of a separate filing currently before the Commission (File No. 70-9941).

⁴ See Ohio Edison Company, HCAR No. 21019 (April 26, 1979).

income of \$112,985; NONGC's operating revenue was principally derived from the distribution and transportation of natural gas. NONGC had total assets of \$18,374,761, as of December 31, 2000.

2. Nonutility Subsidiaries

FirstEnergy Properties owns nonutility land and coal rights held for sale, investment or potential development; office buildings rented to affiliated companies and third parties; and also holds the former Centerior Energy Corporation's partnership share of investments in economic development investments. FirstEnergy Properties has one subsidiary, BSG Properties, Inc. ("BSG Properties").⁵ FirstEnergy Properties also owns a 1.47% limited partnership interest in Cleveland Development Partnership I ("Cleveland Development").⁶ FirstEnergy Properties also owns a 5% interest in CID.

FirstEnergy Ventures' principal business involves the ownership of stock investments in certain unregulated enterprises and business ventures. FirstEnergy Ventures has eight wholly owned subsidiaries organized under Ohio law.⁷ FirstEnergy Transfer is an

⁵ BSG Properties owned a commercial building, which it sold, and is engaged in post-closing matters.

⁶ Cleveland Development is a partnership created to provide a source of private sector funding for real estate development in the City of Cleveland.

⁷ FirstEnergy Ventures' subsidiaries include: (1) Centerior Power Enterprises, Inc. ("Centerior Power"), which will be dissolved upon the planned cancellation of a contract which required it (together with CPICOR Management LLC ("CPICOR"), a non-affiliate) to implement the Department of Energy ("DOE") clean coal project; (2) Centerior Energy Services, Inc. ("Centerior Energy Services"), which provides various consulting services related to energy management and procurement under the registered trade name "The E Group"; (3) Advanced Technologies Development Corp. ("Advanced Technologies"), which owns fiber optics cables, communications towers and electronics for cell siting operations, as well as some proprietary software for telecommunications services; (4) Centerior Communications Holdings, Inc. ("Centerior Communications"), which holds an interest in Fiber Venture Equity, Inc. ("Fiber Venture") (Fiber Venture owns a 6.5% interest in America's Fiber Network, LLC ("AFN") and 100% of AFN Finance Company No. 3 ("AFN No. 3")); (5) Bay Shore Power Company ("Bay Shore"), which is undergoing start-up operations and will own and operate a petroleum coke disposal facility that will supply steam to GenCo for the operation of turbines at the Bay Shore Power Plant and to BP Amoco Corporation ("BP"); (6) FirstEnergy Fuel Marketing Company ("FirstEnergy Fuel Marketing"), which provides products and services to electricity generators and industrial fuel suppliers, including logistics services, contract administration, inventory management and fuel blending; (7) FirstEnergy Telecommunications Corp. ("FirstEnergy Telecommunications"), which will be a competitive telecommunications services provider offering services only in the regulated activities area; and (8) Warrenton River Terminal, Ltd.

Ohio corporation organized in 1997 to act as transfer agent and registrar for the securities of FirstEnergy and its direct and indirect subsidiaries.

FirstEnergy Facilities is the parent company of 11 direct subsidiaries which provide mechanical contracting, facilities management and energy management services to regional and national customers.⁸ FirstEnergy Facilities is also the parent company of six indirect subsidiaries providing related services.⁹

MARBEL is the parent company of NONGC, a gas utility, and a holding company, Marbel Holdco, Inc. ("Marbel Holdco").¹⁰ In addition, MARBEL is the contracting party to two large gas supply agreements.

FirstEnergy Services is a natural gas and power marketer in both wholesale

("Warrenton River"), which owns facilities for the transloading of bulk materials on the Ohio River—primarily coal. FirstEnergy Ventures is also part owner of two Ohio limited liability companies: Eastroc Technologies, LLC ("Eastroc Technologies") and Engineered Processes, Ltd. ("Engineered Processes"), which own or apply technologies for the production of gypsum products.

⁸ These subsidiaries consist of the following: (1) Ancoma, Inc. ("Ancoma") of Rochester, New York (a New York corporation); (2) Colonial Mechanical Corporation ("Colonial Mechanical") of Richmond, Virginia (a Virginia corporation); (3) Webb Technologies, Inc. ("Webb Technologies") of Norfolk, Virginia (a Virginia corporation); (4) Dunbar Mechanical Inc. ("Dunbar Mechanical") of Toledo, Ohio (an Ohio corporation); (5) Edwards Electrical & Mechanical, Inc. ("Edwards E&M") of Indianapolis, Indiana (an Indiana corporation); (6) Elliott-Lewis Corporation ("Elliott-Lewis") of Philadelphia, Pennsylvania (a Pennsylvania corporation); (7) L.H. Cranston and Sons, Inc. ("Cranston and Sons") of Timonium, Maryland (a Maryland corporation); (8) Roth Bros., Inc. ("Roth Bros.") of Youngstown, Ohio (an Ohio corporation); (9) The Hattenbach Company ("Hattenbach") of Cleveland, Ohio (an Ohio corporation); (10) R. P. C. Mechanical, Inc. ("R. P. C. Mechanical") of Cincinnati, Ohio (an Ohio corporation); and (11) Spectrum Controls Systems, Inc. ("Spectrum") of Cincinnati, Ohio (an Ohio corporation).

⁹ E-L Enterprises, Inc. ("E-L Enterprises") is a wholly owned subsidiary of Elliott-Lewis. E-L Enterprises holds all of the issued and outstanding stock of Modern Air Conditioning, Inc. ("Modern AC") and R.L. Anderson, Inc. (R.L. Anderson") (both of which provide HVAC equipment installation and service, energy management, facilities management and plumbing services). Elliott-Lewis also has two other direct subsidiaries: A.A. Duckett, Inc. ("Duckett") (provides HVAC installation and service) and Sautter Crane Rental, Inc. ("Sautter Crane") (provides crane rental service to affiliated companies and third parties, including other utilities and mechanical contractors).

¹⁰ Marbel Holdco holds FirstEnergy's 50% ownership in Great Lakes Energy Partners, LLC ("Great Lakes"). Great Lakes is an oil and gas exploration and production company in a joint venture with Range Resources Corporation and holds a majority of its assets in the Appalachian Basin, including more than 7,700 oil and natural gas wells, drilling rights on nearly one million acres, proven resources of 450 billion cubic feet equivalent of natural gas and oil, and 5,000 miles of pipeline. Great Lakes also owns intrastate gas pipelines and a small interstate pipeline between Ohio and West Virginia.

and retail markets. FirstEnergy Services has two wholly owned subsidiaries, Penn Power Energy, Inc. ("Penn Power Energy")¹¹ and GenCo.¹² FE Acquisition holds all of the outstanding shares of Mid-Atlantic Energy Development Co. ("Mid-Atlantic"), an inactive holding company.¹³ FENOC operates the Davis-Besse Nuclear Power Station, and the Perry and the Beaver Valley Nuclear Power Plants under the supervision and direction of the owners of those facilities. FELHC is a wholly owned FirstEnergy, first tier subsidiary that serves as licensee with respect to all Federal Communications Commission ("FCC") radio licenses for the FirstEnergy Operating Companies.¹⁴ FirstEnergy also holds all of the issued and outstanding voting securities of the following three direct, inactive, nonutility subsidiaries: Centerior Service, CIT,¹⁵ and FE Holdings.

FirstEnergy directly holds minority interests in nonutility businesses comprised of two real estate companies,¹⁶ two telecommunications companies,¹⁷ and eight companies engaged in power marketing and brokering, investing venture capital in the energy industry, emission technology, electronic commerce related to the power markets, and alternative energy storage systems.¹⁸ Further,

¹¹ Penn Power Energy is a licensed electric supplier providing retail electricity service in Pennsylvania.

¹² GenCo is an exempt wholesale generator within the meaning of Section 32 of the Act ("EWG") and operates fossil fuel plants and the Seneca pumped storage plant, all of the output of which is sold at wholesale prices to FirstEnergy Services. Most of the generating facilities operated by GenCo are leased from the FirstEnergy Operating Companies.

¹³ Mid-Atlantic owned three 130 MW gas-fired peaking turbines at Richland, Ohio. Mid-Atlantic sold those turbines to GenCo effective January 1, 2001, prior to their going into service.

¹⁴ An application was made on January 18, 2001, for FCC approval of FELHC as an exempt telecommunications company ("ETC").

¹⁵ CIT is a wholly owned subsidiary of FirstEnergy and the remnant of an executive compensation program that required the creation of a trust if the rating of Centerior Energy Corporation dropped below investment grade. That event occurred, and the trust was funded using short term debt instruments, but it is expected that the trust will cease to exist between December 2001 and June 2002.

¹⁶ CIT is a wholly owned subsidiary of FirstEnergy and the remnant of an executive compensation program that required the creation of a trust if the rating of Centerior Energy Corporation dropped below investment grade. That event occurred, and the trust was funded using short term debt instruments, but it is expected that the trust will cease to exist between December 2001 and June 2002.

¹⁷ Cleveland Civic Vision Housing Fund, L.L.C. (5.5%) and Marion Senior Housing Limited Partnership (29.21%).

¹⁸ FirstEnergy Telecommunications Corp. ("First Communications") (31.08%) and Pantellos Corporation ("Pantellos") (5.38%); these companies have applied to the FCC for approvals as ETCs.

FirstEnergy holds a 10% membership interest in The Alliance Participants Administrative and Startup Activities Company, LLC ("BridgeCo").¹⁹ In addition, FirstEnergy owns varying shares of passive financial investments in an array of companies.²⁰

In addition to the utility subsidiaries mentioned above, Ohio Edison owns multiple wholly owned, indirect and direct, nonutility subsidiaries involved in energy operations and financing.²¹ Ohio Edison also has interests in 14 real estate subsidiaries: McDonald Corporate Tax Credit Fund Limited Partnership (12.37%); McDonald Corporate Tax Credit Fund—1995 Limited Partnership (9.0%); McDonald Ohio Tax Credit Fund—1996 Limited Partnership (42.13%); McDonald Ohio Tax Credit Fund—1998 Limited Partnership (30.94%); Ohio Equity Fund For Housing Limited Partnership II (7.62%); USA Institutional Tax Credit Fund VII, L.P. (8.11%); Boston Financial Institutional Tax Credits III, a Limited Partnership (5.38%); Boston Financial Institutional Tax Credits V, a Limited Partnership (3.24%); Boston Financial Institutional Tax Credits XVI, a Limited Partnership (5.83%); Apollo Tax Credit Fund III, L.P. (33.33%); Apollo Tax Credit Fund—IX, Limited Partnership (99.99%); Boston Capital Corporate Tax Credit Fund IV, a Limited Partnership (2.95%); Boston Capital Corporate Tax Credit Fund X, a Limited Partnership (10.93%); and Boston Capital Corporate Tax Credit Fund XIV, a Limited Partnership (20.00%). Further, Ohio Edison owns a 10% limited partnership

interest in CID Ohio Equity Capital, Limited Partnership Fund IV ("CID"), a vehicle for investments in a portfolio of private equity and equity-related securities of start-up and early-stage growth companies operating principally in Ohio (inactive). Further, Penn Power, a subsidiary of Ohio Edison, owns a 50% limited partnership interest in Cranberry Square Associates, L.P. ("Cranberry Square") (a real estate limited partnership).

Further, two other FirstEnergy utilities hold interests in nonutility businesses. Cleveland Electric has three nonutility subsidiaries,²² and Toledo Edison has nonutility interests through the ownership of 90% of The Toledo Edison Capital Corporation ("TECC").

B. GPU and Its Affiliates

GPU directly owns all of the outstanding shares of common stock of three electric utilities: JCP&L, Penelec, and Met-Ed (together, "GPU Energy Companies").²³ The customer service function and transmission and distribution operations of these three electric utilities are conducting business under the name "GPU Energy." The GPU Energy Companies rely almost exclusively on purchased power agreements, principally short- and intermediate-term contracts and existing power purchase agreements with non-utility generators, to supply energy to their customers. GPU indirectly owns all of the voting securities of two additional utility companies: York Haven and Waverly Electric. As of May 31, 2000, GPU's domestic electric utility operations served approximately two million customers in New Jersey, Pennsylvania and New York. For the twelve months ending December 31, 2000, GPU had total revenue of \$5,196,256,000, and net income of \$233,538,000. GPU had total assets of \$19,262,461,000, as of December 31, 2000.

JCP&L is engaged in the sale, purchase, transmission and distribution of electric power to 1,016,650 customers

(as of May 31, 2001) located within 13 counties and 236 municipalities in northern, western and east central New Jersey. For the twelve months ending December 31, 2000, JCP&L had total revenue of \$1,979,297,000, and net income of \$210,812,000; operating revenues were derived from the distribution and resale of electricity. JCP&L had total assets of \$6,217,355,000, as of December 31, 2000.

Penelec is an electric utility company engaged in the sale, purchase, transmission, and distribution of electric power to 576,091 customers (as of May 31, 2001) in approximately 31 counties in northern and central Pennsylvania. Penelec also provides wholesale service to six municipalities in Pennsylvania and five municipalities in New Jersey. Additionally, Penelec, through Waverly Electric, a direct subsidiary of Penelec, provides retail electric service to 3,741 customers (as of May 31, 2001) in Waverly, New York, and vicinity.²⁴ For the twelve months ending December 31, 2000, Penelec had total revenue of \$901,881,000, and net income of \$39,250,000; operating revenues were derived from the distribution and resale of electricity. Penelec had total assets of \$3,048,119,000, as of December 31, 2000.

Met-Ed was organized under Pennsylvania law in 1922 and is engaged in the sale, purchase, transmission and distribution of electric power to 497,609 customers (as of May 30, 2001) in 14 counties in central and eastern Pennsylvania. Met-Ed owns all of the voting securities of York Haven, a public utility company. For the twelve months ending December 31, 2000, Met-Ed had total revenue of \$842,333,000, and net income of \$81,895,000; operating revenues were derived from the distribution and resale of electricity. Met-Ed had total assets of \$3,161,379,000, as of December 31, 2000.

II. Description of the Merger

As mentioned above, the Merger Agreement provides for GPU to be merged with and into FirstEnergy, with FirstEnergy as the surviving corporation and the separate existence of GPU ceasing. The GPU Energy Companies will become direct subsidiaries of FirstEnergy following the merger. On November 21, 2000, the shareholders of FirstEnergy and GPU approved the Merger.

²⁴ Waverly Electric's revenues account for less than 1% of Penelec's total operating revenue.

¹⁸ PowerSpan Corp. ("PowerSpan") (18.63%); Nth Power Technologies II, LLC, ("Nth Power") (8.2%); Kinetic Ventures I, LLC (formerly Utility Competitive Advantage Fund I, LLC) (11.1049%); Kinetic Ventures II, LLC (formerly Utility Competitive Advantage Fund II, LLC) (17.63%); Envirotech Investment Fund I, L.P. ("Envirotech") (6.36%); Automated Power Exchange, Inc., Active Power, Inc. ("APX") (1.16%); Active Power, Inc. ("Active Power") (0.006%); and Utility.com, Inc. ("Utility.Com") (5.0%).

¹⁹ BridgeCo is a short-term entity created to manage the financial and other affairs of the ten members of the Alliance RTO until the company begins operations.

²⁰ Corvis Corporation; Cisco Systems Inc.; S1 Corporation; Smarthouse, Inc.; Silas Creek Retail, Inc.; Smith International, Inc.; Steel City Products, Inc.; Madisons of Columbus, Inc.; The Mason And Dixon Lines, Inc.; Luckey Farmers, Inc.; The Lionel Corp.; Jewel Recovery L.P. (d/b/a Zales Corp.); Hermans Sporting Goods, Inc.; Homeplace of America, Inc.; House of Fabrics, Inc.; Federals, Inc.; Country Spring Farms Co-Op, Inc.; Cook United, Inc.; County Seat Stores, Inc.; Busy Beavers Building Centers, Inc.; Bulk Materials, Inc.; Best Products Co., Inc.; Value Merchants Inc.; COLOROCS Corp.; Republic Technologies International, Inc.; United Merchants and Manufacturers, Inc.; Edison Brothers Stores, Inc.; EBS Pension, L.L.C.; EBS Building, L.L.C.; EBS Litigation, L.L.C.; EnviroSource, Inc.; and Oakhurst Capital, Inc.

²² Cleveland Electric owns Centerior Funding Corporation ("Centerior Funding"), which is a Delaware corporation organized in 1996 that factors accounts receivable. It also owns 10% of The Toledo Edison Capital Corporation ("TECC"), which is a Delaware corporation organized in 1997 that makes equity investments in Delaware business trusts that hold lessor debt instruments issued in connection with Cleveland Electric's and Toledo Edison's sale and leaseback of interests in the Bruce Mansfield Plant. Cleveland Electric Financing Trust I ("CEI Financing Trust I") is a wholly owned financing subsidiary of Cleveland Electric.

²³ In addition, GPU owns interests in various nonutility businesses. GPU's nonutilities conduct businesses permitted by the Act under sections 32, 33, or 34, by Commission order under section 11(b)(1), or by rule 58.

Shortly before the Merger is completed, FirstEnergy will give each GPU shareholder the opportunity to elect to receive, for each share of GPU common stock he or she owns, either: \$36.50 in cash, without interest; or, a number of shares of FirstEnergy common stock equal to an exchange ratio designed to provide GPU shareholders with FirstEnergy shares having a value of \$36.50.²⁵

If GPU shareholders elect to receive cash for more than 50% of the GPU shares, the amount of cash that GPU shareholders will receive for each GPU share for which they made a cash election will be reduced *pro rata* so that the total amount of cash that FirstEnergy will pay to all GPU shareholders in the Merger is the same as the amount that FirstEnergy would have had to pay if cash elections were made for only 50% of the GPU shares. Similarly, if GPU shareholders elect to receive FirstEnergy shares for more than 50% of the GPU shares, the number of FirstEnergy shares GPU shareholders will receive for each GPU share for which they made a share election will be reduced *pro rata* so that the total number of shares that FirstEnergy will issue to all GPU shareholders in the Merger is the same as the number of shares that FirstEnergy would have had to issue if share elections had been made for only 50% of the GPU shares.

FirstEnergy will not issue fractional interests in its shares in connection with the Merger. Any GPU shareholder otherwise entitled to a fractional interest, including in connection with a tax adjustment, will instead receive cash in an amount equal to that fraction multiplied by the average of the closing prices of the shares of FirstEnergy common stock over the five-day trading period ending on the trading day before the Merger is completed.

Under certain circumstances it may be necessary for FirstEnergy to reduce the total amount of cash it pays in the Merger in order to ensure that the Merger qualifies as a "reorganization" for U.S. federal income tax purposes. In

this event, all GPU shareholders who are entitled to receive cash, other than as a result of being a dissenting shareholder or being entitled to cash in lieu of a fractional share of FirstEnergy common stock, will receive a reduced amount of cash, as nearly *pro rata* as possible, and FirstEnergy shares with a value equal to the reduced cash amount. For these purposes, FirstEnergy will determine the value of those FirstEnergy shares based on the closing price of the FirstEnergy shares on the date the Merger is completed.

After the Merger, FirstEnergy proposes to hold as first tier subsidiaries seven public utility companies: Ohio Edison, Cleveland Electric, Toledo Edison, JCP&L, Penelec, Met-Ed and ATSI. FirstEnergy will hold as second tier subsidiaries five public utility companies: Penn Power, York Haven, Waverly, NONGC and OVEC. FirstEnergy will hold IKEC as a third-tier subsidiary. For the purpose of the Application at issue, Ohio Edison, Cleveland Electric, Toledo Edison, JCP&L, Penelec, and Met-Ed are collectively referred to as the "Primary Operating Utilities." FirstEnergy also proposes to own a number of nonutility subsidiaries as described above.

III. Financing Authorization

A. Overview

In order to ensure that the FirstEnergy system is able to meet its capital requirements immediately following registration and plan its future financing, FirstEnergy and its Subsidiaries request authorization to enter into numerous types of financing transactions for the period beginning with the effective date of the Commission's order in this matter and continuing to and including June 30, 2003 ("Authorization Period"). In addition to engaging in Acquisition Financing, Applicants request that FirstEnergy be able to engage in other financing transactions as set forth below during the Authorization Period.

FirstEnergy requests authority to engage in Acquisition Financing in order to meet the cash and common stock portions of the Merger consideration. FirstEnergy will issue between 74 million and 95 million shares of common stock in connection with the Merger. Approximately \$2.2 billion of cash will be used at closing to fund the cash portion of the Merger consideration. In addition to this Merger consideration, FirstEnergy plans to refinance at or about the effective time of the Merger certain then-outstanding GPU-related short-term debt (expected

to be approximately \$1.8 billion). Applicants plan to meet the Acquisition Financing requirements through a short-term bank bridge loan, but may use long-term or short-term financing, including preferred stock and preferred stock equivalent securities (collectively, "Preferred Securities") or securities convertible into common stock. The bridge loan will ultimately be repaid with proceeds from permanent debt financing by FirstEnergy or other entities in the FirstEnergy system as approved by the Commission in this filing or in subsequent requests contained in later submissions to the Commission.

Applicants also seek authority for: (1) External issuances by FirstEnergy of common stock, Preferred Securities, long-term debt, short-term debt and other securities; guarantees of obligations of affiliated or unaffiliated persons in favor of other unaffiliated persons; and the entering into by FirstEnergy of transactions to manage interest rate risk ("Hedging Transactions"); (2) the entering into by the Utility Subsidiaries of hedging transactions to the extent not exempt pursuant to rule 52; (3) lending to non-wholly owned Non-Utility Subsidiaries at a rate not less than the cost of capital of the lending associate company; (4) the establishment of a utility money pool ("Utility Money Pool") and a nonutility money pool ("Nonutility Money Pool") and the issuance of intrasystem guaranties by FirstEnergy and the Nonutility Subsidiaries on behalf of the Subsidiaries; (5) the continuation of existing intrasystem debt, guarantees and other financing arrangements; (6) the ability of 50% or more owned Subsidiaries to alter their capital stock in order to engage in financing transactions with their parent company; (7) the ability of FirstEnergy and those Subsidiaries identified below to pay dividends out of capital or unearned surplus; and (8) the formation of financing entities ("Financing Subsidiaries") and the issuance by these entities of securities otherwise authorized to be issued and sold in accordance with this Application or to applicable exemptions under the Act, including intrasystem guaranties of these securities and the retention of existing Financing Subsidiaries.

Applicant's effective cost of money on long-term debt borrowings under the authorizations granted under this Application will not exceed the greater of (1) 350 basis points over the comparable term U.S. Treasury securities or (2) a gross spread over U.S. Treasuries that is consistent with similar securities of comparable credit

²⁵ FirstEnergy will determine the exact exchange ratio by dividing \$36.50 by the average of the closing sale prices for a share of FirstEnergy common stock on the New York Stock Exchange as reported in The Wall Street Journal over the 20-day trading period ending on the seventh trading day before the Merger is completed. The exchange ratio, however, will be fixed at 1.2318 if the average closing price of the FirstEnergy shares over this period is equal to or greater than \$29.6313, and at 1.5055, if the average closing price over this period is equal to or less than \$24.2438. This means that the number of FirstEnergy shares a GPU shareholder will receive for each GPU share he or she owns will never be less than 1.2318 nor more than 1.5055, regardless of what happens to FirstEnergy's share price.

quality and maturities (or perpetual preferred) issued by other companies. Applicant's effective cost of money on short-term debt borrowings under authorizations granted under this Application will not exceed the greater of (1) 350 basis points over the comparable term London Interbank Offered Rate ("LIBOR") or (2) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The dividend rate on any series of Preferred Securities will not exceed the greater of (1) 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of such series of Preferred Securities or (2) a rate that is consistent with similar securities of comparable credit quality and maturities (or perpetual preferred) issued by other companies. The maturity of indebtedness will not exceed fifty years. All Preferred Securities (other than perpetual preferred) will be redeemed no later than fifty years after their issuance.

The proceeds from the sale of securities in external financing transactions will be used for general corporate purposes, including: financing the cash and stock portion of the Merger consideration under the Merger Agreement; the financing, in part, of the capital expenditures of FirstEnergy and its Subsidiaries; the financing of working capital requirements of FirstEnergy and its Subsidiaries; the acquisition, retirement or redemption under rule 42 of securities previously issued by FirstEnergy or its Subsidiaries; and authorized investments in energy-related companies, as defined in rule 58 under the Act ("Rule 58 Subsidiaries"), other energy-related companies ("Energy-Related Companies"), exempt wholesale generators ("EWGs"), foreign utility companies ("FUCOs"), ETCs; and for other lawful purposes.

Financings by each Applicant will be subject to the following conditions ("Financial Conditions"): (1) FirstEnergy's *pro forma* common equity ratio at the assumed closing date of the Merger will be 29.5%;²⁶ (2) FirstEnergy's consolidated common equity²⁷ will be at least 30% of consolidated capitalization by December

31, 2002, and at all times thereafter during the Authorization Period; (3) within nine months following the date of the order in this matter and at all times thereafter during the Authorization Period, FirstEnergy will maintain at least an investment grade corporate credit rating or senior secured debt rating by at least one nationally recognized rating agency; (4) each Primary Operating Utility, other than Cleveland Electric, will maintain common equity of at least 30% of its capitalization and at least an investment grade senior secured debt rating by at least one nationally recognized rating agency; (5) Cleveland Electric will achieve a 30% common equity ratio and an investment grade senior secured debt rating by at least one nationally recognized credit agency by June 30, 2003; and (6) except as otherwise approved by the Commission in accordance with any request contained in this Application FirstEnergy represents that it also will be in compliance with rule 53. Notwithstanding the commitments described in the preceding paragraph regarding investment grade ratings and the 30% common equity criteria, Applicants request that the Commission reserve jurisdiction over the issuance of securities in those circumstances where FirstEnergy does not comply with either the investment grade ratings or the 30% common equity criteria.

B. Existing Financing Arrangements

Applicants estimate that FirstEnergy has a \$450 million credit agreement outstanding and that the FirstEnergy Operating Companies and ATSI have \$7.4 billion outstanding in first mortgage bonds, preferred stock, debentures, and other notes. Applicants seek authority for these existing outstanding securities and financing arrangements to stay in place following the Merger. Applicants also each seek authority, following the Merger, to refinance or refund these existing securities for the purpose of lowering interest costs, changing from fixed rate to variable rate, refunding short-term debt with long-term debt (including any refinancing of the Acquisition Financing), extending the maturity, altering covenants, changing capitalization ratios or for other proper financial purposes. Further, Applicants seek approval for the outstanding securities and financing arrangements of the FirstEnergy Nonutility Subsidiaries to remain in place following consummation of the Merger.

In addition, each of the GPU Energy Companies has in place approval from the Commission for the issuance of

short term debt.²⁸ Applicants propose that such approvals remain in place following the Merger and to the extent any such approval contemplated a transaction between GPU and a GPU Energy Company, FirstEnergy proposes to succeed to the rights and duties of GPU. Accordingly, Applicants request authority for FirstEnergy to assume any short-term debt outstanding or credit facility of GPU existing at the time of the Merger. As mentioned FirstEnergy proposes to refinance at or about the effective date of the Merger certain then-outstanding GPU-related short-term debt (expected to be about \$1.8 billion). Such short-term debt refinancing will count against the Aggregate Financing Limit.

C. FirstEnergy External Financing

In addition to existing financing, Applicants request authority for FirstEnergy to obtain funds externally through sales of common stock, Preferred Securities, long-term debt, and short-term debt securities. With respect to common stock, FirstEnergy also requests authority to issue common stock to third parties in consideration for the acquisition by FirstEnergy or a Nonutility Subsidiary of equity or debt securities of a company being acquired under rule 58 or sections 32, 33 or 34 of the Act. In addition, FirstEnergy seeks the flexibility to enter into certain hedging transactions to manage rate risk and for other lawful purposes. The aggregate amount of new equity, Preferred Securities, long-term debt and short-term debt financing to be obtained by FirstEnergy during the Authorization Period shall be not more than \$8.0 billion ("Aggregate Financing Limit"), which includes the common stock and debt portions of the Acquisition Financing. The Aggregate Financing Limit does not include the existing financing, and any refinancing or refunding of outstanding securities as described in Section III. B. above.

1. Common Stock

FirstEnergy is authorized under its restated articles of incorporation to issue 300 million shares of common stock (\$.10 par value).²⁹ FirstEnergy proposes, during the Authorization

²⁸ HCAR No. 27041 (June 22, 1999), supplemented by, HCAR No. 27302 (Dec. 15, 2000); HCAR No. 26544 (July 17, 1996); and HCAR No. 26801 (Dec. 22, 1997).

²⁹ Under its articles of incorporation, FirstEnergy is authorized to issue 305 million shares consisting of 300 million shares of common stock and 5 million shares of preferred stock. As of December 31, 2000, FirstEnergy had 224,531,580 shares of common stock outstanding and no shares of preferred stock outstanding. Upon consummation of the Merger, FirstEnergy will be authorized to issue up to 375 million shares of common stock and 5 million shares of preferred stock.

²⁶ For this purpose, consolidated capitalization includes common equity, preferred stock, including preferred stock subject to mandatory redemption within one year, and long-term and short-term debt, including current maturities of long-term debt.

²⁷ Common equity is to be based upon the balance sheets contained in FirstEnergy's most recent 10-K or 10-Q filed with the Commission pursuant to the Securities Exchange Act of 1934.

Period, to issue common stock (other than for employee benefit plans or stock purchase and dividend reinvestment plans and other than shares issued in the Merger) in amounts that, when combined with the proposed additional long-term debt, short-term debt, and Preferred Securities issued and then outstanding, shall not exceed the Aggregate Financing Limit.

Common stock financings may be made through underwritten public distributions, private placements, or other non-public offerings to one or more persons. All such common stock sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

2. Preferred Securities

FirstEnergy requests authority to issue preferred stock or other types of Preferred Securities in one or more series with such rights, preferences and priorities as may be designated in the instrument creating each such series, as determined by FirstEnergy's Board of Directors. Dividends or distributions on Preferred Securities will be made periodically and to the extent funds are legally available for such purpose, but may be made subject to terms which allow the issuer to defer dividend payments for specified periods. Preferred Securities may be convertible or exchangeable into shares of FirstEnergy common stock or indebtedness.

3. Long-Term Debt

FirstEnergy proposes to issue long-term debt securities, including bonds, notes, medium-term notes or debentures under one or more indentures (each, the "FirstEnergy Indenture") or long-term indebtedness under agreements with banks or other institutional lenders. The maturity dates, interest rates, redemption and sinking fund provisions, tender or repurchase and conversion features, if any, with respect to the long-term securities of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding. In addition to the long-term debt noted above, FirstEnergy expects to assume \$300 million of GPU debentures (7.7% Series A, due December 1, 2005) upon consummation of the Merger. Because it is part of existing capitalization, this \$300 million will not count against the Aggregate Financing Limit.

4. Short-Term Debt

FirstEnergy seeks authority to issue short-term debt in order to provide for the reissuance of pre-Merger letters or lines of credit or commercial paper and to provide financing for general corporate purposes, working capital requirements, and temporary financing of Subsidiary capital expenditures. Any short-term debt outstanding or credit facility of GPU existing at the time of the Merger would be assumed by FirstEnergy. FirstEnergy's proposed short-term debt may also include commercial paper, from time to time, in established domestic or European commercial paper markets. This commercial paper would 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. The aggregate amount of additional capitalization obtained by FirstEnergy during the Authorization Period from issuance and sale of short-term debt, when combined with common stock (other than for employee benefit plans or stock purchase and dividend reinvestment plans and other than shares issued in the Merger), long-term debt, and Preferred Securities issued then outstanding, as described in this section, shall not exceed the Aggregate Financing Limit. FirstEnergy will limit the amount of short-term debt issued and outstanding at any time under the authority requested in this Application plus any short-term debt outstanding at the date of the Merger, to \$5.0 billion. Further, FirstEnergy may, without counting against the above \$5.0 billion limit, maintain back-up lines of credit in connection with a commercial paper program in an aggregate amount not to exceed the amount of authorized commercial paper. Credit lines may be set up for use by FirstEnergy for general corporate purposes in addition to credit lines to support commercial paper as described in this subsection. FirstEnergy would borrow and repay under such lines of credit, from time to time, as it is deemed appropriate or necessary.

5. Hedging Transactions

FirstEnergy requests authority to enter into, perform, purchase and sell financial instruments intended to reduce or manage the volatility of interest rates, including but not limited to interest rate swaps, caps, floors, collars and forward agreements or any other similar agreements. Hedges may also include issuance of structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments

are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or Agency (*e.g.*, Federal National Mortgage Association) obligations or LIBOR based swap instruments (collectively, "Hedge Instruments"). FirstEnergy will not engage in speculative transactions unassociated with its outstanding debt and financing needs and activities. FirstEnergy will only enter into agreements with counterparties ("Approved Counterparties") whose senior debt ratings, as published by a national recognized rating agency, are greater than or equal to "BBB," or an equivalent rating.

In addition, FirstEnergy and the Subsidiaries request authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings (the "Anticipatory Hedges"), subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through: (1) A forward sale of exchange-traded Hedge Instruments ("Forward Sale"), (2) the purchase of put options on Hedge Instruments ("Put Options Purchase"), (3) a Put Options Purchase in combination with the sale of call options Hedge Instruments ("Zero Cost Collar"), (4) transactions involving the purchase or sale, including short sales, of Hedge Instruments, or (5) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to, structured notes, caps and collars, appropriate for the Anticipatory Hedges.

D. Subsidiary External Financing

ATSI and NONGC each seek approval to issue debt or Preferred Securities on the same terms and conditions as FirstEnergy as described above. The maximum amount of new financing to be obtained by ATSI and NONGC during the Authorization Period shall not exceed \$500 million for ATSI and \$200 million for NONGC.³⁰ Additionally, to the extent not exempt under rule 52, the Utility Subsidiaries request authority to enter into, perform, purchase, and sell Hedge Instruments and Anticipatory Hedges subject to the

³⁰ These securities shall be included in determining compliance with the overall financing limitation of \$8 billion for FirstEnergy.

limitations and requirements applicable to FirstEnergy.

Financings obtained by the Utility Subsidiaries within and beyond the scope of rule 52 will be used for general corporate purposes and working capital requirements, including contributions to the Utility Money Pool. These financings may be made under instruments in place at the time of the Merger or new agreements.

E. Intrasystem Transactions

1. Guaranties

Applicants request authority to enter into guaranties, obtain letters of credit, enter into support or expense agreements or otherwise provide credit support with respect to the obligations of the Subsidiaries as may be appropriate or necessary to enable such Subsidiaries to carry on in the ordinary course of their respective businesses, and to enter into guaranties of nonaffiliated third parties' obligations in the ordinary course of FirstEnergy's business ("FirstEnergy Guaranties"). In addition, Applicants request authority for each Nonutility Subsidiary to provide guaranties and other forms of credit support ("Nonutility Guaranties") (together with FirstEnergy Guaranties, "Guaranties").

The aggregate amount of the Guaranties will not exceed \$4.0 billion outstanding at any one time, not taking into account obligations exempt under rule 45 ("Guaranty Limit"). Excluded from this amount are guaranties and other credit support mechanisms by FirstEnergy and GPU in favor of their respective Subsidiaries which were previously issued and are expected to remain in place following the Merger.³¹

The issuance of any guaranties will also be subject to the limitations of rule 53(a)(1) or 58(a)(1), as applicable. Applicants propose that each Subsidiary be charged a fee for each guaranty provided on its behalf that is not more than that obtainable by the beneficiary of the guaranty from third parties.

2. Money Pools

Applicants request authority for FirstEnergy and the Utility Subsidiaries to establish the Utility Money Pool. In addition, Applicants request authority for the Utility Subsidiaries, to the extent not exempted by rule 52, to make unsecured short-term borrowings from the Utility Money Pool, to contribute surplus funds to the Utility Money Pool, and to lend and extend credit to (and acquire promissory notes from) one another through the Utility Money Pool.

In addition, FirstEnergy and the Nonutility Subsidiaries request authority to establish the Nonutility Money Pool. FirstEnergy requests authority to contribute its surplus funds and to lend and extend credit to: (1) The Utility Subsidiaries through the Utility Money Pool; and (2) the Nonutility Subsidiaries through the Nonutility Money Pool. Amounts borrowed by each Utility Subsidiary from the Utility Money Pool would be limited to amounts authorized by each applicable state commission. FirstEnergy will receive no loans and will borrow no funds from either Money Pool.

Utility Money Pool participants that borrow would borrow *pro rata* from each company that lends, in the proportion that the total amount loaned by each such lending company bears to the total amount then loaned through the Utility Money Pool. On any day when more than one fund source (e.g., surplus treasury funds of FirstEnergy and other Utility Money Pool participants ("Internal Funds")) and proceeds from external financings ("External Funds"), with different rates of interest, is used to fund loans through the Utility Money Pool, each borrower would borrow *pro rata* from each such fund source in the Utility Money Pool in the same proportion that the amount of funds provided by that fund source bears to the total amount of short-term funds available to the Utility Money Pool.

If only Internal Funds make up the funds available in the Utility Money Pool, the interest rate applicable and payable to or by Utility Subsidiaries for all loans of these Internal Funds will be the greater of the 30-day LIBOR rate as quoted in The Wall Street Journal or the money market rate that a lending Subsidiary could have obtained if it placed its excess cash in such an investment.

If only External Funds comprise the funds available in the Utility Money Pool, the interest rate applicable to loans of such External Funds would be equal to the lending company's cost for such External Funds (or, if more than one Utility Money Pool participant had made available External Funds on such day, the applicable interest rate would be a composite rate equal to the weighted average of the cost incurred by the respective Utility Money Pool participants for such External Funds).

In cases where both Internal Funds and External Funds are concurrently borrowed through the Utility Money Pool, the rate applicable to all loans comprised of these "blended" funds would be a composite rate equal to the weighted average of: (1) The cost of all

Internal Funds contributed by Utility Money Pool participants (as determined in accordance with the second-preceding paragraph above) and (2) the cost of all such External Funds (as determined in accordance with the immediately preceding paragraph above). In circumstances where Internal Funds and External Funds are available for loans through the Utility Money Pool, loans may be made exclusively from Internal Funds or External Funds, rather than from a "blend" of these funds, to the extent it is expected that these loans would result in a lower cost of borrowing.

Funds not required by the Utility Money Pool to make loans (with the exception of funds required to satisfy the Utility Money Pool's liquidity requirements) would ordinarily be invested in one or more short-term investments, including: (1) Interest-bearing accounts with banks; (2) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements; (3) obligations issued or guaranteed by any state or political subdivision of a state, provided that these obligations are rated not less than "A" by a nationally recognized rating agency; (4) commercial paper rated not less than "A-1" or "P-1" or their equivalent by a nationally recognized rating agency; (5) money market funds; (6) bank certificates of deposit; (7) Eurodollar funds; and (8) other investments that are permitted by section 9(c) of the Act and rule 40 under the Act.

The Nonutility Money Pool will be operated on the same terms and conditions as the Utility Money Pool, except that FirstEnergy funds made available to the two money pools will be made available first for loans through the Utility Money Pool and then for loans through the Nonutility Money Pool. Operation of the Utility and Nonutility Money Pools, including record keeping and coordination of loans, will be handled by FirstEnergy's service company, ServeCo, under the authority of the appropriate officers of the participating companies. ServeCo will administer the Utility and Nonutility Money Pools on an "at cost" basis and will maintain separate records for each money pool.

3. Other Borrowings

Applicants request authority for FirstEnergy or a Nonutility Subsidiary, as the case may be, to make loans to Nonutility Subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. If

³¹ FirstEnergy and GPU each has, respectively, \$846 million and \$58 million in existing guaranties.

these loans are made to a Nonutility Subsidiary, that Nonutility Subsidiary will not sell any services to any associate Nonutility Subsidiary unless that company falls within one of the categories of companies to which goods and services may be sold on a basis other than "at cost" as described in the Application in this matter.

Applicants also request authority for FirstEnergy or a Nonutility Subsidiary to make loans to Nonutility Subsidiaries that are not wholly owned by FirstEnergy, directly or indirectly, at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. If these loans are made to a Nonutility Subsidiary, that Nonutility Subsidiary will not sell any services to any associate Nonutility Subsidiary unless that company falls within one of the categories of companies to which goods and services may be sold on a basis other than "at cost," as described in the Application.

F. Other Transactions

1. Financing Subsidiaries

FirstEnergy and the Subsidiaries request authority to acquire, directly or indirectly, the equity securities of one or more Financing Subsidiaries. Financing Subsidiaries may be corporations, trusts, partnerships or other entities created specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of FirstEnergy and the Subsidiaries through the issuance of long-term debt, Preferred Securities or equity securities, to third parties and the transfer of the proceeds of these financings to FirstEnergy or these Subsidiaries.³²

FirstEnergy or a Subsidiary may, if required, guarantee or enter into support or expense agreements in respect of the obligations of any such Financing Subsidiaries. Any amounts issued by such financing entities to third parties will be included in the overall external financing limitation, if any, applicable to its immediate parent. However, any intrasystem borrowing by the parent of the proceeds of those issuances would not count against the proposed aggregate financing limitation, if any, applicable to the parent and a guaranty by the parent with respect to those issuances would not count against the Guaranty Limit.

2. Nonutility Subsidiary Reorganizations

Applicants request the authorization and approval of the Commission to organize and acquire the securities of one or more additional Subsidiaries to act as a holding company for nonutility investments if, in FirstEnergy's judgment, there are organizational, functional, tax or other benefits to be derived in separating nonutility businesses at the first-tier level. Accordingly, unless otherwise indicated, references to the "Nonutility Holding Company" shall include such other first-tier Subsidiaries as FirstEnergy may choose to organize to serve a similar purpose. Applicants request authority, through the Authorization Period, to sell or otherwise transfer: (1) Nonutility Subsidiary businesses; (2) the securities of current Subsidiaries engaged in some or all of these nonutility businesses; or (3) investments which do not involve a Subsidiary (*i.e.*, less than 10% voting interest) to certain first-tier nonutility holding companies (collectively, "Nonutility Holding Companies") or a Subsidiary of Nonutility Holding Company, and, to the extent approval is required, Nonutility Holding Company or any Subsidiary of Nonutility Holding Company requests authority to acquire the assets of these businesses, securities of former Subsidiaries of FirstEnergy or GPU or other investment interests.³³ Applicants state that the proposed transactions will not involve the sale or disposition of any utility assets, and will not involve the acquisition of any new businesses or activities.

3. Changes in Capital Stock of Majority Owned Subsidiaries

Applicants state that proposed sales of capital securities (*i.e.*, common stock or Preferred Stock) may in some cases exceed the then authorized capital stock of a Subsidiary. In addition, the Subsidiary may choose to use capital stock with no par value. Therefore, Applicants request authority to change the terms of any 50% or more owned Subsidiary's authorized capital stock capitalization or other equity interests by an amount deemed appropriate by FirstEnergy or other intermediate parent company, provided that the consent of all other shareholders has been obtained for this change. This request for authorization is limited to FirstEnergy's 50% or more owned Subsidiaries and

will not affect the aggregate limits or other conditions contained in this Application. A Subsidiary would be able to change the par value, or change between par value and no-par stock, or change the form of such equity from common stock to limited partnership or limited liability company interests or similar instruments, or from such instruments to common stock, without additional Commission approval. Any action by a Utility Subsidiary would be subject to and would only be taken upon receipt of necessary approval by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business.

4. Payment of Dividends

a. *FirstEnergy*. Applicants state that as a result of the application of the purchase method of accounting to the Merger, the current retained earnings of the GPU Subsidiaries will be recharacterized as additional paid-in-capital. In addition, the Merger will give rise to a substantial level of goodwill. In accordance with the Commission's Staff Accounting Bulletin No. 54, Topic 5], the goodwill will be "pushed down" to the GPU Subsidiaries, and the difference between the purchase price allocated to the GPU Subsidiaries and the par values, if any, of their outstanding common stock will be reflected as additional paid-in capital on the GPU Subsidiaries' financial statements. The effect of these accounting practices will be to leave the GPU Subsidiaries with no retained earnings, the traditional source of dividend payments. Accordingly, Applicants request authority for FirstEnergy to pay dividends out of additional paid-in-capital up to the amount of \$155 million, representing the total amount of dividends out of capital from the GPU Subsidiaries.

b. *Nonutility Subsidiaries*. The Nonutility Holding Company proposes to pay dividends, on behalf of itself and every direct or indirect Nonutility Subsidiary, from time to time through the Authorization Period, out of capital and unearned surplus (including revaluation reserve), to the extent permitted under state law. Without further approval by the Commission no Nonutility Subsidiary will declare or pay any dividend out of capital or unearned surplus if that Nonutility Subsidiary derives any material part of its revenue from the sale of goods, services, electricity, or natural gas to any of the Utility Subsidiaries.

5. EWGs and FUCOs

Following the Merger, Applicants request authority for FirstEnergy to

³² One of the special purpose subsidiaries already in existence, such as OES Capital or Centerior Funding, may be used for these purposes as well.

³³ Applicants state that transfers of these securities or assets may be effected by share exchanges, share distributions or dividends followed by contribution of these securities or assets to the receiving entity.

finance the acquisition of additional investments in EWGs and FUCOs provided that its "aggregate investment" in EWGs and FUCOs (as that term is defined in rule 53) of up to \$5 billion (including amounts currently invested in EWGs and FUCOs by FirstEnergy and GPU). Applicants state that GPU's aggregate investment in EWGs and FUCOs as of March 31, 2001, was \$1,846,598,000. As of the same date, FirstEnergy's aggregate investment in EWGs was \$354,831,392. Applicants note that *pro forma* consolidated retained earnings of FirstEnergy as of December 31, 2000, was \$1.1 billion.

6. Stock and Incentive Plans

Applicants request authority for FirstEnergy, from time to time, to issue up to 30 million shares of FirstEnergy common stock under the employee benefit and incentive plans described below and under a dividend reinvestment plan currently in place at FirstEnergy and anticipated to continue after the Merger.

After the Merger, FirstEnergy will continue to have several employee and director stock-based plans. These include an Executive and Director Incentive Compensation Plan, an Executive Deferred Compensation Plan, a Deferred Plan for Directors, two Employee Savings Plans and two plans that were assumed by FirstEnergy in connection with the merger between Ohio Edison and Centenor Energy Corporation that resulted in the formation of FirstEnergy. In addition, as a result of the Merger, FirstEnergy will assume certain obligations of GPU under GPU related stock option and incentive plans.

7. Tax Allocation Agreement

The Applicants request the Commission approve an agreement for the allocation of consolidated tax among FirstEnergy and its Subsidiaries following the Merger ("Tax Allocation Agreement"). Applicants state that the Tax Allocation Agreement is subject to the approval by the Commission under the Act because it provides for the retention by FirstEnergy of certain tax benefits related to the incurrence of indebtedness by FirstEnergy rather than the allocation of such benefits to Subsidiaries. The Applicants request that the Commission reserve jurisdiction over approval of the Tax Allocation Agreement pending completion of the record.

8. Investment in Nonutility Subsidiaries

Applicants propose to acquire directly or indirectly the securities of one or more corporations, trusts, partnerships,

limited liability companies or other entities (collectively, "Intermediate Subsidiaries"), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more EWGs, FUCOs, ETCs, Rule 58 Subsidiaries, and Energy Related Companies (collectively, "Exempt Subsidiaries") and make additional investments in other Nonutility Subsidiaries approved by the Commission as requested in this Application (collectively, "Non-Exempt Securities"). FirstEnergy states that Intermediate Subsidiaries also may engage in development and administrative activities related to these Exempt Subsidiaries and other Nonutility Subsidiaries, and proposes to expand, directly or through Nonutility Subsidiaries up to \$300 million in the aggregate outstanding at any one time during the Authorization Period on these development activities. Applicants also maintain that the Intermediate Subsidiaries will provide both development and administrative activities "at cost" in accordance with section 13(b) and rules 90 and 91 of the Act.

9. Sale of Certain Goods and Services Outside the United States

Applicants request authority to allow Energy Related Companies to acquire interests in the entities not only within the United States as permitted by rule 58 but also outside the United States. Specifically, Applicants request that they be allowed to engage in energy management and consulting services anywhere outside the United States. Applicants also request that these entities be allowed to engage in energy marketing in Canada and Mexico and request that the Commission reserve jurisdiction with respect to the granting of authority to provide energy marketing services elsewhere outside the United States. Finally, Applicants request authority to allow these entities to engage in infrastructure services anywhere outside the United States and request that the Commission reserve jurisdiction over this proposal.

IV. Affiliate Transactions

A. Service Companies

Applicants propose that ServeCo will enter into a service agreement with each of the Utility Subsidiaries and other affiliates. Applicants seek certain exemptions from or waiver of the Commission's rules regarding the provision of services at cost to FirstEnergy affiliates as described below. GPU's nuclear operating

company, GPU Nuclear, is an approved subsidiary service company. FirstEnergy Nuclear Operating Company also provides operating services to the FirstEnergy nuclear generating plants under the direction and supervision of the plants' owners.

1. Proposed Interim Operations

Currently, FirstEnergy provides many common corporate services to its affiliates, including the FirstEnergy Utility Subsidiaries.³⁴ As a part of the Merger, GPU Service will become a subsidiary of FirstEnergy. GPU Service is an approved subsidiary service company which provides services to the GPU Subsidiaries. FirstEnergy currently anticipates that all of the service functions of FirstEnergy and of GPU Service will be transferred to ServeCo. ServeCo will be staffed primarily by transferring existing personnel from the current employee rosters of FirstEnergy, GPU Service and the Utility Subsidiaries or other affiliates. In the interim, subject to Commission approval, FirstEnergy will continue to provide services to all its affiliates after the Merger, and GPU Service will function as it has in the past in accordance with Commission approvals. GPU Service may render services to the FirstEnergy Utility Subsidiaries or other Subsidiaries of FirstEnergy following the Merger.

FirstEnergy will cause ServeCo to begin at least minimal operations within 90 days following the closing of the Merger and will transfer to ServeCo the service functions currently conducted by FirstEnergy consistent with continued efficient operation of the FirstEnergy system. In any event, Applicants state that all these service functions will be transferred to ServeCo no later than January 1, 2003. Applicants also state that a determination regarding the status of FENOC and GPU Nuclear will be made before January 1, 2003. FirstEnergy requests authority under section 13(a) permitting FirstEnergy to continue to provide services to affiliates, including the Utility Subsidiaries, during this interim period. FirstEnergy will file a separate application with the Commission on or before September 1,

³⁴ These services include: energy supply management of the bulk power and natural gas supply, procurement of fuels, coordination of electric and natural gas distribution systems, maintenance, construction and engineering work; customer bills and related matters; materials management; facilities; real estate; rights of way; human resources; finance; accounting; internal auditing; information systems; corporate planning and research; public affairs; corporate communications; legal; environmental matters; and executive services.

2002, seeking authorization for ServeCo to consolidate service functions now provided by FirstEnergy, other FirstEnergy entities and GPU Service.

During the interim period, in order to assure that an allocable portion of certain services to be provided by FirstEnergy (e.g., executive services) are properly charged or allocated to all of FirstEnergy's Subsidiaries after the Merger, FirstEnergy will enter into a service agreement with GPU Service. Any charges by FirstEnergy to GPU Service will in turn be assigned and allocated to the GPU Subsidiaries in accordance with the terms of the existing GPU system service agreements. Amounts that were allocated to GPU under the GPU system service agreements will be allocated to FirstEnergy. Except as noted in Section IV.A.2., all services provided by FirstEnergy, ServeCo, GPU Service, GPU Nuclear, and FENOC will be at cost, as defined in rules 90 and 91 under the Act.

2. Exemption Requests

Applicants request authorization for ServeCo, GPU Service and the Nonutility Subsidiaries to enter into agreements to provide construction, goods or services to certain associate companies at fair market prices determined without regard to cost and therefore request an exemption (to the extent that rule 90(d) of the Act does not apply) under section 13(b) from the cost standards of rules 90 and 91.

Applicants note that certain associate companies, currently provide services to the FirstEnergy Utility Subsidiaries at a price not restricted to cost. Applicants request authorization to allow these arrangements, as well as extensions, additions and replacements of these arrangements in the ordinary course of business (the "At Market Service Arrangements"), to remain in place for a period ending not later than December 31, 2002, and request an exemption or waiver under section 13 from the cost standards of rules 90 and 91, as applicable, for these At Market Service Arrangements.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-22593 Filed 9-7-01; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Federal Register Citation of Previous Announcement: [66 FR 46301, September 4, 2001]

Status: Closed meeting.

Place: 450 Fifth Street, NW., Washington, DC.

Date Previously Announced: August 30, 2001.

Change in the Meeting: Deletion.

The following item was not considered at the closed meeting scheduled for Wednesday, September 5, 2001: consideration of actions involving foreign governmental authorities.

At times, change in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: September 6, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01-22708 Filed 9-6-01; 11:29 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 3771]

Culturally Significant Objects Imported for Exhibition; Determinations: "Art and Home: Dutch Interiors in the Age of Rembrandt"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended by Delegation of Authority No. 236-3 of August 28, 2000 [65 FR 53795], and Delegation of Authority dated June 29, 2001, I hereby determine that the objects to be included in the exhibit, "Art and Home: Dutch Interiors in the Age of Rembrandt," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also

determine that the temporary exhibition or display of the exhibit objects at The Newark Museum, Newark, New Jersey, from on or about September 26, 2001, to on or about January 20, 2002, the Denver Art Museum, Denver, Colorado, from on or about March 2, 2002, to on or about May 26, 2002, and other possible venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619-5997, and the address is United States Department of State, SA-44, Room 700, 301 4th Street, SW., Washington, DC 20547-0001.

Dated: September 5, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01-22753 Filed 9-7-01; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF STATE

[Public Notice 3770]

Office of the Coordinator for Counterterrorism; Designation of a Foreign Terrorist Organization

AGENCY: Department of State.

ACTION: Designation of a foreign terrorist organization.

Pursuant to section 219 of the Immigration and Nationality Act ("INA"), as added by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, section 302, 110 Stat. 1214, 1248 (1996), and amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009 (1996), the Secretary of State hereby designates, effective September 10, 2001, the following organization as a foreign terrorist organization: The "United Self-Defense Forces of Colombia", also known as the "Autodefensas Unidas de Colombia", also known as the "AUC".

Dated: September 5, 2001.

Ambassador Francis X. Taylor,

Coordinator for Counterterrorism, Department of State.

[FR Doc. 01-22638 Filed 9-7-01; 5:00 pm]

BILLING CODE 4710-10-P