

securities or the assets of such Nonutility Subsidiaries and/or Nonutility Subsidiaries existing as of the date of the Merger, to other direct or indirect Nonutility Subsidiaries or to liquidate or merge Nonutility Subsidiaries. FirstEnergy requests authority to engage in these transactions, to the extent that they are not exempt under the Act, through the Authorization Period.

#### C. 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 consents of all other shareholders have been obtained for the proposed 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 such action by a Utility Subsidiary would be subject to and would only be taken upon the receipt of any necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business. FirstEnergy will be subject to all applicable laws regarding the fiduciary duty of fairness of a majority shareholder to minority shareholders in any such 50% or more owned Subsidiary and will undertake to ensure that any change implemented under this paragraph is consistent with such legal requirements.

#### D. Payment of Dividends

FirstEnergy also proposes, on behalf of every direct or indirect Nonutility Subsidiary, that such companies be permitted to pay dividends with respect to the securities of such companies and/or acquire, retire or redeem any securities of such companies that are held by an associate company or

affiliate, from time to time, through the Authorization Period, out of capital or unearned surplus, to the extent permitted under applicable corporate law. Without further approval of the Commission, no Nonutility Subsidiary will declare or pay any dividend and/or acquire, retire or redeem any security of such company held by any associate company or affiliate out of capital or unearned surplus if that Nonutility Subsidiary derives any material part of its revenues from sales of goods, services, electricity or natural gas to any of the Utility Subsidiaries.

#### E. EWGs and FUCOs

Under the Merger Order, FirstEnergy was authorized to utilize the proceeds of authorized financing to increase its "aggregate investment" in EWGs and FUCOs to \$5 billion, which includes FirstEnergy's and GPU's investments in EWGs and FUCOs at the time of the merger ("Current Investment") and amounts relating to certain facilities owned by Ohio Edison, Cleveland Electric, Toledo Edison, and Penn Power that may be transferred to EWGs ("GenCo Investments"). FirstEnergy committed that, during the authorization period under the Merger Order, new investments in EWGs and FUCOs would not exceed \$1.5 billion and requested the Commission to reserve jurisdiction over an "aggregate investment" in EWGs and FUCOs, other than Current Investment and GenCo Investments, in an amount over \$1.5 billion ("Other Investments"). FirstEnergy is requesting a continuation, without change, of these limitations through the Authorization Period as applied to utilization of proceeds of financing authorized in this proceeding. FirstEnergy requests that the Commission continue to reserve jurisdiction over Other Investments that exceed such \$1.5 billion amount.

#### F. Stock and Incentive Plans

FirstEnergy proposes, from time to time during the Authorization Period, to issue and/or acquire in open market transactions or by some other method which complies with applicable law and Commission interpretations then in effect for the purpose of reissuance up to 30 million additional shares of Common Stock under the FirstEnergy Stock Investment Plan and other existing dividend reinvestment and stock-based management incentive and employee benefit plans ("Stock Plans") described in the Application. Any newly issued shares of Common Stock will be counted against the External Financing Limit; shares of Common Stock purchased in the open market or

otherwise acquired for the purpose of reissuance under Stock Plans will not be counted against the External Financing Limit.

#### G. Tax Allocation Agreement

In the Merger Order, the Commission reserved jurisdiction over, among other things, a proposed tax allocation agreement ("Tax Allocation Agreement") that will allocate consolidated tax liability among FirstEnergy and its Subsidiaries.

FirstEnergy financed the cash portion of the consideration paid in connection with the merger with GPU, approximately \$2.2 billion, with borrowings under a credit agreement with a group of banks (the "Bank Bridge Loan"). Amounts outstanding under the Bank Bridge Loan were to be repaid by October 1, 2002 and carried an initial interest rate of LIBOR plus 1.25% per annum. Additional funds from the Bank Bridge Loan were used to repay approximately \$1.5 billion of the short-term indebtedness of GPU and its subsidiaries outstanding immediately prior to the consummation of the Merger and to repay approximately \$300 million of FirstEnergy's short-term indebtedness. Subsequently, on November 15, 2001, FirstEnergy issued \$4 billion aggregate principal amount of unsecured notes ("Notes") having maturities of 2006 through 2031, the proceeds of which were used to repay in full the amounts outstanding under the Bank Bridge Loan.

As used in the Application, the term "Acquisition Debt" includes that portion of the proceeds of the Notes used to repay the portions of the Bank Bridge Loan related to the \$2.2 billion merger-related cash consideration and the \$1.5 billion GPU-related short-term indebtedness. The term also includes indebtedness that may be incurred by FirstEnergy during the Authorization Period for the purposes of refinancing any of the foregoing indebtedness.

Applicants request that the Commission authorize FirstEnergy and its Subsidiaries to enter into and allocate consolidated income taxes in accordance with the Tax Allocation Agreement. Under the proposed Tax Allocation Agreement, the consolidated tax would be allocated among the members of the group in proportion to the separate return tax liability of each member, provided that the tax apportioned to any subsidiary company of FirstEnergy will not exceed the "separate return tax" liability of such subsidiary. The Tax Allocation Agreement further provides that FirstEnergy will retain the benefit (in the form of the reduction in