

is not at least 30 percent, neither Allegheny nor any of its subsidiaries will invest or commit to invest any funds in any new projects which qualify as EWGs or FUCOs under the Act; provided, however, that Allegheny may increase its investment in EWGs as a result of the qualification of existing projects as EWGs, and Allegheny may make additional investments in an existing EWG to the extent necessary to complete any project or desirable to preserve or enhance the value of Allegheny's investment in the EWG.⁷ Allegheny requested the Commission to reserve jurisdiction over any additional investment by Allegheny and its Subsidiaries in EWGs and FUCOs during the period that Allegheny's common equity ratio is below 30 percent.

Applicants also committed that at any time Allegheny's ratio of common equity to total capitalization is not at least 30 percent, neither Allegheny nor any of its subsidiaries will invest or commit to invest any funds in any new energy-related company within the meaning of rule 58 under the Act ("Rule 58 Company"); provided, however, that Allegheny may increase its investment in an existing Rule 58 Company to the extent necessary to complete any project or desirable to preserve or enhance the value of Allegheny's investment in the company. The commitment also stipulated that Allegheny and/or AE Supply may invest in one or more new Rule 58 Companies which may be created in connection with the restructuring and/or reorganization of the existing energy trading business of AE Supply and its subsidiaries. Allegheny requested that the Commission reserve jurisdiction over any additional investment by Allegheny and its Subsidiaries in Rule 58 Companies during the period that Allegheny's common equity ratio is below 30 percent.

The Capitalization Order also reserved jurisdiction over (i) the financing authorizations at a time that the common equity ratio levels of Allegheny and AE Supply were below 28 percent and 20 percent, respectively, and (ii) the issuance of debt securities at an interest rate in excess of the modified interest rates. In the Trust Preferred Securities Order, the

Commission granted the Applicants' request to release jurisdiction over the issuance by Allegheny of up to \$325 million of convertible trust preferred securities.

In addition, the Capitalization Order authorized AE Supply to pay dividends out of capital and unearned surplus up to \$500 million through December 31, 2003, in order to provide Allegheny with necessary liquidity.

The Capitalization Order required the Applicants to file an application with the Commission if they wish to seek relief from the 30 percent common equity requirement after December 31, 2003 and to extend the Revised Financing Conditions. This Amendment seeks that relief and extension of the Revised Financing Conditions, including the 28 and 20 percent common equity requirements applicable to Allegheny and AE Supply, respectively.

This Amendment also seeks continuation of authority for AE Supply to pay dividends out of capital and unearned surplus up to \$500 million through December 31, 2004. Allegheny proposes to use these funds to pay debt on outstanding indebtedness and for general corporate purposes. Specifically, AE Supply⁸ will declare and pay dividends to Allegheny only to the extent required by Allegheny to pay debt service on outstanding indebtedness which becomes payable beginning the first quarter of 2004 in an aggregate amount of up to \$275 million. Applicants seek authority for AE Supply to pay dividends out of capital and unearned surplus of up to \$275 million for this purpose and request the Commission to reserve jurisdiction over the remainder of AE Supply's \$500 dividend authority.

Allegheny commits that any dividends received by Allegheny from AE Supply will be used solely to pay the principal of and interest on this indebtedness and none of the amounts will be used by Allegheny to pay dividends to its stockholders. To the extent that Allegheny does not require proceeds of dividends from AE Supply to pay indebtedness of Allegheny during 2004, Applicants request that the Commission reserve jurisdiction over the declaration and payment of dividends by AE Supply out of capital and unearned surplus up to an aggregate amount of \$500 million.

Applicants state that they continue to make significant progress toward the

resolution of their financial difficulties. On July 25, 2003, Allegheny completed its private placement of \$300 million of convertible trust preferred securities, as authorized by the Trust Preferred Securities Order. On July 28, 2003, AE Supply announced that its subsidiary, Allegheny Trading Finance Company ("ATF") had entered into an agreement to sell its energy supply contract with the California Department of Water Resources (the "CDWR Contract") and associated hedge transactions (collectively, "West Book") to J. Aron & Company ("Aron"), a division of The Goldman Sachs Group, for \$405 million, subject to adjustments for market price changes and hedge transactions not transferred.

On September 15, 2003, AE Supply and ATF announced that they completed the sale of the West Book to Aron for \$354 million. Much of the adjustment from the estimated sale price, previously announced on July 28, 2003, is attributable to contracts with one counterparty, valued at \$38.6 million, which were removed from the sale by mutual agreement of the parties. Changes in the mark-to-market value of the remaining contracts at closing and reduction in the number of remaining trades assumed by Aron, account for the rest of the adjustment. The proceeds from the sale were applied, in large part, to finance the termination of tolling agreements with Williams Companies, Inc. and Las Vegas Cogeneration II and certain related hedging arrangements. In addition, Allegheny will have deposited, after certain escrow funds are released and pursuant to an authorization by certain of its creditors, the remainder of the proceeds (estimated to be approximately \$75 million) in a cash collateral account for the benefit of certain of its lenders.⁹

Sale of the West Book was described in the Trust Preferred Securities Application as, along with the sale of the securities authorized by the Trust Preferred Securities Order, one of the major components of Allegheny's plan to return to financial health. In addition, AE Supply and its subsidiaries Allegheny Energy Supply Conemaugh, LLC, Allegheny Energy Supply Hunlock Creek, LLC, and Allegheny Energy Supply Development Services, LLC have entered into asset sales

⁷ The existing EWGs in which Allegheny and its subsidiaries have investments as of the date hereof are as follows: Allegheny Energy Hunlock Creek, LLC, Hunlock Creek Energy Ventures, AE Supply Gleason Generating Facility, LLC, AE Supply Wheatland Generating Facility, LLC, AE Supply Lincoln Generating Facility, LLC, Buchanan Generation, LLC, Acadia Bay Energy Company and Buchanan Generation, LLC.

⁸ Since AE Supply is a limited liability company, "dividend" shall include for this purpose any distribution by AE Supply in respect of its membership interests.

⁹ As noted in the amendments submitted in this file on August 19 and September 23, 2003, as a condition to closing, Aron escrowed \$71 million of the proceeds pending an order from the Commission authorizing AE Supply to undertake the guarantees connected with the sale of the West Book. A notice of this amendment was issued on September 23, 2003 (Holding Co. Act Release No. 27723).