

SECURITIES AND EXCHANGE COMMISSION

(Release No. 35- 28062; 70-10122)

FirstEnergy Corporation, et al.

Supplemental Order Authorizing Provision of Energy-Related Infrastructure Services in Canada; Continued Reservation of Jurisdiction

November 14, 2005

FirstEnergy Corporation (“FirstEnergy”) an Ohio public utility holding company registered under the Public Utility Holding Company Act of 1935, as amended (“Act”), and MYR Group, Inc. (“MYR”), and MYR’s subsidiaries (“Applicants”), have filed with the Securities and Exchange Commission (“Commission”) a post-effective amendment to an earlier application, as amended (“Application”) under sections 9(a) and 10 of the Act and rule 54 under the Act.

Applicants request that the Commission issue a supplemental order (i) releasing jurisdiction previously reserved under an earlier order to allow certain of FirstEnergy’s subsidiaries to provide certain energy-related services in Canada, and (ii) continuing the reservation of jurisdiction over the provision of energy-related services elsewhere outside the United States.

By order dated October 29, 2001 (Holding Co. Act Release No. 27459), as supplemented by orders dated November 8, 2001 (Holding Co. Act Release No. 27463) and December 23, 2002 (Holding Co. Act Release No. 27628) (as so supplemented, the “Merger Order”), the Commission approved the merger between FirstEnergy and GPU, Inc. (“GPU”), a Pennsylvania registered public utility holding company. That merger became effective on November 7, 2001, with FirstEnergy as the surviving entity. As a result of the merger, FirstEnergy became a registered holding company and now directly

or indirectly owns all of the outstanding common stock of ten electric utility subsidiaries: Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Pennsylvania Electric Company, Metropolitan Edison Company, Pennsylvania Power Company, York Haven Power Company, and The Waverly Electric Power & Light Company, which together provide service to approximately 4.3 million retail and wholesale electric customers in a 36,100 square-mile area in Ohio, New Jersey, New York and Pennsylvania.

MYR, which was acquired by GPU in 2000,¹ is now a direct wholly-owned non-utility subsidiary of FirstEnergy. MYR is a holding company whose subsidiaries provide utility transmission and distribution, infrastructure, and related commercial and industrial electrical (and some mechanical) contracting services to utilities, and industrial, mining, institutional and governmental entities on a nationwide basis. MYR's transmission and distribution services, which accounted for approximately 61% of MYR's 2004 gross revenues, include the construction and maintenance of transmission and distribution power lines, poles, towers and substations for utility, industrial, institutional and governmental facilities. MYR also performs storm and other emergency restoration services for utility networks. MYR's infrastructure services also include installation and servicing of telecommunications and traffic signalization equipment, which together accounted for about 4% of MYR's 2004 gross revenues. MYR also provides electric

¹ The Commission approved GPU's acquisition of MYR by order dated April 14, 2000. See GPU, Inc., et al., Holding Co. Act Release No. 27165.

construction and maintenance services to the commercial and industrial marketplace, often referred to as “inside” electrical construction, which accounted for about 32% of MYR’s 2004 gross revenues.

In the Merger Order, the Commission authorized certain non-utility subsidiaries of FirstEnergy, referred to as “Energy Related Companies,” to sell goods and services to customers not only within the United States as permitted by rule 58 under the Act, but also outside the United States.² Specifically, the Commission authorized Energy Related Companies to sell “Energy Management Services” and “Consulting Services” anywhere outside the United States,³ and to engage in “Energy Marketing” in Canada and Mexico,

² “Energy Related Companies” are defined in the Merger Order as non-utility subsidiaries which, but for the non-U.S. nature of their business, would fall within the definition of “energy-related companies” under Rule 58.

³ “Energy Management Services” are defined as energy management services, including the marketing, sale, installation, operation and maintenance of various products and services related to energy management and demand-side management, including: energy and efficiency audits; meter data management, facility design and process control and enhancements; construction, installation, testing, sales and maintenance of (and training client personnel to operate) energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies, design and specification of energy consuming equipment; general advice on programs; the design, construction, installation, testing, sales, operation and maintenance of new and retrofit heating, ventilating, and air conditioning (“HVAC”), electrical and power systems, fuel cells, uninterruptible power systems, alarm, security, access control and warning systems, motors, pumps, lighting, water, water-purification and plumbing systems, building automation and temperature controls, installation and maintenance of refrigeration systems, building infrastructure wiring supporting voice, video, data and controls networks, environmental monitoring and control, ventilation system calibration and maintenance, piping and fire protection systems, and design, sale, engineering, installation, operation and maintenance of emergency or distributed power generation systems, and related structures, in connection with energy-related needs; and the provision of services and products designed to prevent, control, or mitigate adverse effects of power disturbances on a customer’s electrical systems.

subject to a reservation of jurisdiction with respect to Energy Marketing elsewhere outside the United States.⁴

In the Merger Order, the Commission also reserved jurisdiction over FirstEnergy's request that Energy Related Companies be permitted to provide "Infrastructure Services" anywhere outside the United States. "Infrastructure Services" was defined to include utility infrastructure services, including the services provided by MYR and its subsidiaries, such as installing and maintaining underground communications and energy networks, high voltage transmission and distribution lines, substations and towers for electric and telecommunications companies, construction and ongoing maintenance services to industrial and municipal owners of complex electric and communications infrastructures on a nationwide basis, management of large volumes of technical service and repair work for communications and energy utilities and new residential design and construction services, permitting a single point of contact for the design and construction of all utility infrastructures (including electric, gas, water, sewer, cable and telephone) and outdoor lighting.

"Consulting Services" are defined as consulting services with respect to energy- and gas-related matters for associate and nonassociate companies, as well as for individuals. Such consulting services would include technical and consulting services involving technology assessments, power factor correction and harmonics mitigation analysis, meter reading and repair, rate schedule design and analysis, environmental services, engineering services, billing services (including consolidation or centralized billing, bill disaggregation tools and bill inserts), risk management services, communications systems, information systems/data processing, system planning, strategic planning, finance, feasibility studies, and other similar related services.

⁴ "Energy Marketing" is defined as the brokering and marketing of electricity, natural gas and other energy commodities, as well as providing incidental related services, such as fuel management, storage and procurement.

The Commission renewed the authorization of FirstEnergy's Energy Related Companies, subject to the same reservations of jurisdiction, by order dated June 30, 2003 (Holding Co. Act Release No. 27694) (the "2003 Financing Order").⁵

FirstEnergy now requests that the Commission issue a supplemental order (i) releasing jurisdiction over the performance of Infrastructure Services in Canada by MYR and other Energy Related Companies and (ii) continuing its reservation of jurisdiction over those activities anywhere else outside the United States. It is expected that the Infrastructure Services in Canada would consist chiefly of the transmission and distribution services currently provided by MYR to electric utility network owners.

The proposed transaction is also subject to the requirements of rule 54 under the Act, which provides that in determining whether to approve an application by a registered holding company that does not relate to any "exempt wholesale generator" ("EWG") or "foreign utility company" ("FUCO"), the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an EWG or a FUCO upon the registered holding company if paragraphs (a), (b) and (c) of rule 53 are satisfied.⁶

⁵ The 2003 Financing Order was supplemented by order dated November 25, 2003 (Holding Co. Act Release No. 27769) to clarify the terms of the Commission's reservation of jurisdiction over guarantees and other forms of credit support provided by FirstEnergy.

⁶ Applicants state that FirstEnergy currently meets all of the conditions of rule 53(a), except for clause (1). Under the Merger Order and the 2003 Financing Order, the Commission, among other things, authorized FirstEnergy to invest in EWGs and FUCOs so long as FirstEnergy's "aggregate investment," as defined in rule 53(a)(1), in EWGs and FUCOs does not exceed \$5 billion, which \$5 billion amount is greater than the amount which would be permitted by clause (1) of rule 53(a) which, based on FirstEnergy's "consolidated retained earnings," also as defined in rule 53(a)(1), of \$1.9 billion as of June 30, 2005, would be \$950 million. The Merger Order and the 2003

Financing Order, also specify that this \$5 billion amount may include amounts invested in EWGs and FUCOs by FirstEnergy and GPU at the time of the Merger Order (“Current Investments”) and amounts relating to possible transfers to EWGs of certain generating facilities owned by certain of FirstEnergy's operating utilities (“GenCo Investments”). FirstEnergy has made the commitment that through December 31, 2005, its aggregate investment in EWGs and FUCOs other than the Current Investments and GenCo Investments (“Other Investments”) will not exceed \$1.5 billion (the “Modified Rule 53 Test”). Under the Merger Order and 2003 Financing Order, the Commission reserved jurisdiction over Other Investments that exceed such \$1.5 billion amount.

As of June 30, 2005, and on the same basis as set forth in the Merger Order, FirstEnergy's “aggregate investment” in EWGs and FUCOs was approximately \$1 billion, an amount significantly below the \$5 billion amount authorized in the Merger Order. (This \$1 billion amount represents Current Investments only. As of June 30, 2005, FirstEnergy had no GenCo Investments.) Additionally, as of June 30, 2005, “consolidated retained earnings” were \$1.9 billion. By way of comparison, FirstEnergy's consolidated retained earnings as of December 31, 2001 were \$1.52 billion.

Applicants assert that even taking into account the capitalization of and earnings from EWGs and FUCOs in which FirstEnergy currently has an interest, there would be no basis for the Commission to withhold approval of the proposed transactions. Applicants state that with respect to capitalization, since the date of the Merger Order, there has been no material adverse impact on FirstEnergy's consolidated capitalization resulting from FirstEnergy's investments in EWGs and FUCOs. As of June 30, 2005, FirstEnergy's consolidated capitalization consisted of 44.5% common equity, 1.1% cumulative preferred stock, 52.8% long-term debt and 2.8% notes payable. As of December 31, 2001, those ratios were as follows: 30.3% common equity, 3.1% cumulative preferred stock, 2.2% subsidiary-obligated mandatorily redeemable preferred securities, 60.9% long term debt and 3.5% notes payable. Additionally, the proposed transactions would not have any impact on FirstEnergy's consolidated capitalization. Further, since the date of the Merger Order, FirstEnergy's investments in EWGs and FUCOs have contributed positively to its level of earnings, other than for the negative impact on earnings due to FirstEnergy's writedowns of its investments in Avon Energy Partners Holdings (“Avon”) and GPU Empresa Distribuidora Electrica Regional S.A. (“Emdersa”).

(At the time of the Merger Order, FirstEnergy identified certain former GPU EWG and FUCO investments for divestiture within one year. Among those identified were Avon, a holding company for Midlands Electricity plc, an electric distribution business in the United Kingdom and Emdersa and affiliates, an electric distribution business in Argentina. In May 2002, FirstEnergy sold 79.9% of its interest in Avon, and in the fourth quarter of 2002, recorded a \$50 million charge (\$32.5 million net of tax) to reduce the carrying value of its remaining 20.1% interest. The remaining 20.1% interest in Avon. was sold on January 16, 2004. Through 2002, FirstEnergy was unsuccessful in

divesting GPU's former Argentina operations and made the decision to abandon its interest in Emdersa in early 2003. On April 18, 2003, FirstEnergy divested its ownership in Emdersa through the abandonment of its shares in Emdersa's parent company. FirstEnergy included in discontinued operations Emdersa's net income of \$7 million and a \$67 million charge for the abandonment in the second quarter of 2003. An after-tax loss of \$87 million (including \$109 million in currency transaction losses arising principally from U.S. dollar denominated debt) was included in discontinued operations in 2002. In December 2003, Emdersa Guaracachi S. A. ("EGSA"), GPU Power's Bolivia subsidiary, was sold to Bolivia Integrated Energy Limited. FirstEnergy included in discontinued operations a \$33 million loss on the sale of EGSA in the fourth quarter of 2003 and an operating loss for the year of \$2 million. On January 30, 2004, FirstEnergy sold its 28.67% interest in Termobarranquilla S. A., Empresa de Servicios Publicos ("TEBSA") for \$12 million. An impairment loss of \$26 million related to TEBSA was recorded in December 2003 in Other Operating Expenses on the consolidated statement of income and no gain or loss was recognized upon the sale in 2004.)

Applicants state that FirstEnergy's domestic public-utility subsidiaries are financially sound companies as indicated by their investment grade ratings from the nationally recognized rating agencies for their senior secured debt. The following chart includes a breakdown of the senior, secured credit ratings for those utility subsidiaries that currently have ratings for senior secured debt:

<u>Subsidiary</u>	<u>Standard & Poors</u>	<u>Moody's</u>	<u>Fitch</u>
Ohio Edison	BBB	Baa1	BBB+
Cleveland Electric	BBB-	Baa2	BBB-
Toledo Edison	BBB-	Baa2	BBB-
Penn Power	BBB-	Baa1	BBB+
Jersey Central Power	BBB+	Baa1	BBB+
Metropolitan Edison Co.	BBB	Baa1	BBB+
Pennsylvania Electric Co,	BBB		

Applicants state that FirstEnergy satisfies all of the other conditions of paragraphs (a) and (b) of rule 53. FirstEnergy maintains books and records in conformity with, and otherwise adheres to, the requirements of rule 53(a)(2). With respect to rule 53(a)(3), no more than 2% of the employees of FirstEnergy's domestic public utility companies render services, at any one time, directly or indirectly, to EWGs or FUCOs in which FirstEnergy directly or indirectly holds an interest. With respect to rule 53(a)(4), FirstEnergy will

Applicants estimate that the additional fees, commissions and expenses incurred or to be incurred in connection with the preparation of the application will not exceed \$2,500. Applicants state that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

On the basis of the facts in the record, it is found that the applicable standards of the Act and rules under the Act are satisfied, and no adverse findings are necessary.

IT IS ORDERED, under the applicable provisions of the Act and the rules under the Act, that, except as to matters as to which jurisdiction has been reserved, the Application of FirstEnergy Corporation, et al. (70-10122), as amended, be, and hereby is, granted, subject to the terms and conditions prescribed in rule 24 under the Act.

continue to provide a copy of each application and certificate relating to EWGs and FUCOs and relevant portions of its Form U5S to each regulator referred to in that rule, and will otherwise comply with that rule's requirements concerning the furnishing of information. With respect to rule 53(b), none of the circumstances enumerated in subparagraphs (1), (2) and (3) have occurred.

IT IS FURTHER ORDERED that jurisdiction is reserved, pending completion of the record, over the performance of Infrastructure Services anywhere outside the United States besides Canada.

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

Jonathan G. Katz

Secretary