

# CITIZEN POWER

*Public Policy Research Education and Advocacy*

June 14, 2010

Rosemary Chiavetta, Secretary  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Joint Application of West Penn Power d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience Under Section 1102(A)(3) of the Public Utility Code Approving a Change of Control of West Penn Power Company and Trans-Allegheny Interstate Line Company; Docket Nos. A-2010-2176520 and A-2010-2176732**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission on behalf of Citizen Power, Inc. are an original and two (2) copies of its Petition to Intervene in the above-captioned proceeding. Copies of this document have been served in accordance with the attached Certificate of Service.

Sincerely,



Theodore Robinson  
Counsel for Citizen Power

Enclosures

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of West Penn Power Company	:	
d/b/a Allegheny Power, Trans-Allegheny Interstate	:	
Line Company and FirstEnergy Corp. for a	:	A-2010-2176520
Certificate of Public Convenience under Section	:	A-2010-2176732
1102(a)(3) of the Public Utility Code approving	:	
A change of control of West Penn Power Company	:	
And Trans-Allegheny Interstate Line Company	:	

**PETITION TO INTERVENE OF CITIZEN POWER, INC.**

**TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

Citizen Power, Inc. (“Citizen Power”), by and through its attorney, Theodore S. Robinson, hereby Petitions to Intervene in the above-captioned proceeding pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (“PUC” or “Commission”), 52 Pa. Code §§ 5.71-5.76, and in support thereof states as follows:

**I. BACKGROUND**

1. On May 14, 2010, West Penn Power Company (“West Penn”), Trans-Allegheny Interstate Line Company (“TrAILCo”), and FirstEnergy Corp. (“FirstEnergy”) (collectively the “Joint Applicants”) filed a Joint Application to obtain the approval of the Commission under Chapters 11 and 28 of the Public Utility Code for a change of control of West Penn and TrAILCo to be effected by the merger of Allegheny Energy, Inc. (“Allegheny”) with Element Merger Sub., Inc. (“Merger Sub”), a wholly-owned subsidiary of FirstEnergy (“the Merger”).

2. The Joint Applicants also request that the Commission approve certain revisions to affiliated interest arrangements under Chapter 21 of the Public Utility Code, which they believe will facilitate the sharing of services between the Allegheny and FirstEnergy systems.

3. West Penn is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and is engaged in the business of supplying and distributing electricity to approximately 715,000 retail customers in western and central Pennsylvania. West Penn is a “public utility” and an “electric distribution company” (“EDC”) as defined in Sections 102 and 2803 of the Public Utility Code and is therefore subject to regulation by the Commission. West Penn is headquartered at 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601. Application, p. 2.

4. TrAILCo is a corporation organized and existing under the laws of the State of Maryland and the Commonwealth of Virginia and is engaged in the business of transmitting electricity in interstate commerce. TrAILCo is a “public utility” under Section 102 of the Public Utility Code and, therefore, is subject to regulation by the Commission. TrAILCo is headquartered at 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601. Application, p. 2.

5. FirstEnergy is a corporation organized and existing under the laws of the State of Ohio and is a diversified energy services holding company. FirstEnergy owns directly or indirectly all of the outstanding common stock of seven electric utility operating subsidiaries in four states: Metropolitan Edison Company (Pennsylvania), Pennsylvania Electric Company (Pennsylvania and owner of The Waverly Electric Light and Power Company in New York), Pennsylvania Power Company (Pennsylvania), Ohio Edison Company (Ohio), The Cleveland Electric Illuminating Company (Ohio), The Toledo Edison Company (Ohio), and Jersey Central Power & Light Company (New Jersey) (collectively, the “FirstEnergy Utilities”). The

FirstEnergy Utilities serve 4.5 million customers. Also, FirstEnergy subsidiaries and affiliates are involved in the generation and transmission of electricity, energy management and other energy-related services. Through its subsidiaries, FirstEnergy owns electric generation totaling more than 14,000 MW of capacity. FirstEnergy is headquartered at 76 South Main Street, Akron, Ohio 44308. Application, p. 2-3.

6. Allegheny is a public utility holding company headquartered at 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601. Allegheny has three public utility subsidiaries that conduct business as Allegheny Power: West Penn (Pennsylvania), Monongahela Power Company (West Virginia), and The Potomac Edison Company (Maryland, West Virginia, and Virginia) (collectively, the "Allegheny Power Utilities"). The Allegheny Power Utilities serve 1.6 million customers. TrAILCo is an indirect public utility subsidiary of Allegheny. Application, p. 3.

7. Merger Sub is a Maryland corporation and a wholly owned subsidiary of FirstEnergy that was formed for the sole purpose of effecting the Merger. If the Merger is completed, Merger Sub will cease to exist. Application, p. 4.

8. Citizen Power is a non-profit, 501(c)(3), public policy research, education, and advocacy organization incorporated under the laws of the Commonwealth of Pennsylvania with its principal place of business located at 2121 Murray Avenue, Pittsburgh, Pennsylvania 15217, with an additional office at 2424 Dock Road, Madison, Ohio 44057. Citizen Power is also registered to do business in the State of Ohio.

## **II. STANDARDS FOR INTERVENTION**

9. The Commission's regulations at 52 Pa. Code §§ 5.71-5.76 establish the standards and requirements for a party to intervene in an action before the Commission. Section 5.72 sets forth the eligibility requirements for a party to intervene, which provides, in pertinent part, as follows:

(a) Persons. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

52 Pa. Code § 5.72. The eligibility requirements for an interested party to intervene in an action before the Commission is less strict and easier to satisfy than the common law standard for intervention. *Application of Metropolitan Edison Co. for Approval to Construct an Electric Generating Unit Fueled by Natural Gas*, Docket No. A-110300, 1994 Pa. PUC LEXIS 52 (Order entered Feb. 25, 1994) (citing *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975)).

### **III. FACTS SUPPORTING INTERVENTION**

10. David Hughes is the Executive Director of Citizen Power and is a customer of Duquesne Light and The Cleveland Electric Illuminating Company ("CEI"), an operating

company of FirstEnergy. Kelli O'Neill and Ronald O'Connell are Directors of Citizen Power, and each is also a customer of CEI.

11. The principal place of business of Citizen Power is 2121 Murray Avenue, Pittsburgh, Pennsylvania 15217. Citizen Power is a customer of Duquesne Light at this location.

12. Citizen Power devotes almost all of its resources to consumer and environmental protections issues. Citizen Power has participated in numerous proceedings regarding electricity market deregulation, renewable resource standards, energy efficiency, and customer rates in Pennsylvania and Ohio and at the Federal Energy Regulatory Commission ("FERC"). Citizen Power has been a statewide advocate for lower energy costs and increased use of renewable energy and energy-efficiency technologies.

13. As part of its advocacy, Citizen Power has investigated the impacts of deregulation and the role that market power plays upon the wholesale markets. Specifically, David Hughes testified on behalf of Citizen Power before the Pennsylvania House Environmental Resources and Energy Committee on July 22, 2008 regarding the impact of deregulation. Citizen Power has also testified in Docket M-00061957 concerning policies to mitigate potential electricity price increases. In addition, Citizen Power testified in Ohio before the House Public Utilities Committee on January 30, 2008 regarding the lack of retail electricity competition in that state.

14. Citizen Power has been a participant in previous Allegheny Power proceedings before the Commission, including Docket No. A-110150F0015 (Application of DQE and Allegheny to Merge their Systems), Docket No. R-00973981 (relating to the Application of West Penn Power Company for Approval of its Restructuring Plan under Section 2806 of the Public Utility Code), and Docket No. R-00039022 (regarding the Petition of West Penn Power

Company for Issuance of Further Supplement to its Previous Qualified Rate Orders Under Sections 2802 and 2812 of the Public Utility Code). Citizen Power was also a party to the FirstEnergy-GPU merger proceeding at the Commission, Docket No. A-110300F-0095.

15. Citizen Power has also been or is a participant in FirstEnergy proceedings before the Public Utility Commission of Ohio (“PUCO”), including the FirstEnergy Transition Case (Case Nos. 99-1212-EL-ETP, 99-1213-EL-ETP, and 99-1214-EL-ETP), the FirstEnergy Electric Security Plan (“ESP”) Case for standard service through May 2011 (Case No. 08-935-EL-SSO), the FirstEnergy Market Rate Offer (“MRO”) Case for standard service through May 2011 (Case No. 08-936-EL-SSO), the FirstEnergy ESP Case for service through May 2014 (Case No. 10-388-EL-SSO), the FirstEnergy MRO Case for service through May 2014 (Case No. 09-906-EL-SSO), the FirstEnergy Energy Efficiency Portfolio Case (Case No. 09-1947-EL-POR), the FirstEnergy application for a force majeure determination concerning solar energy resource benchmarks (Case No. 09-1922-EL-ACP), and the FirstEnergy application to modify their energy efficiency benchmarks for 2009 (Case No. 09-1004-EL-EEC, 09-1005-EL-EEC, and 09-1006-EL-EEC).

16. Citizen Power was a participant in the FERC proceedings concerning the application of Allegheny Power to combine with Duquesne (Docket No. EC97-46-000), the application of Ohio Edison, Pennsylvania Power, Cleveland Electric Illuminating Company, and Toledo Edison to form FirstEnergy (Docket No. EC97-5-002), and the merger application of FirstEnergy and GPU, Inc. (Docket No. EC01-22-000).

17. Citizen Power has been actively involved in the implementation of Act 129, commenting in Docket No. L-2009-2095604 (Default Service Regulations) and M-2009-2092655 (Smart Meter Deployment and Capabilities). Citizen Power has also participated in and

contributed to the Fuel Switching Working Group (M-00051865) and the Low-Income Working Group (M-2009-2146801).

18. Upon the announcement of the Merger, Standard & Poor's Rating Services, Inc. ("S&P") lowered its ratings for FirstEnergy from triple B to triple B minus and additionally lowered its senior unsecured debt rating for FirstEnergy, and all of the FirstEnergy subsidiary companies, from triple B minus to double B plus. Joint Applicants St. 2, p. 8.

19. Allegheny controls significant generation reserves throughout Pennsylvania and also owns coal reserves in the Pittsburgh Seam. Joint Applicants St. 4, p. 12.

20. FirstEnergy control significant generation reserves throughout Pennsylvania. Ex. E, Company Disclosure Schedule, pp. 31-35.

21. FirstEnergy's operating subsidiaries in Ohio applied for, and were granted by PUCO, a waiver to amend their 2009 energy efficiency benchmarks to zero.

22. The proposed merger would increase concentration in the PJM wholesale electric energy markets and fails the FERC mandated market screen analysis, using the Herfindahl-Hirshman index ("HHI"), during three different time periods. Joint Applicants St. 4, p. 9.

23. The proposed merger would also allocate over 56 million dollars of "costs-to-achieve" [the merger] to Pennsylvania and over 97 million dollars of "costs-to-achieve" to "Non-Pennsylvania". Ex. TJF-3.

24. Allegheny Energy Supply Company, LLC ("AE Supply") is a subsidiary of Allegheny and is a licensed retail supplier in Pennsylvania. First Energy Solutions Corp. ("FES") is a subsidiary of FirstEnergy and also a competitive retail supplier in Pennsylvania. Both AE Supply and FES have industrial and commercial retail customers in the Duquesne's Pennsylvania



Service Area. FES also serves residential customers in Ohio. The proposed merger would remove a potential retail market choice for Duquesne Light customers. St. 4, pp. 12-14.

#### **IV. GROUNDS FOR INTERVENTION**

25. Citizen Power has a direct interest in the outcome of this proceeding and meets the standards for intervention set forth in 52 Pa. Code § 5.72(a)(2). Specifically, as a customer of Duquesne Light, Citizen Power has an interest that the proposed merger does not negatively impact wholesale prices through the exercise of market power, ultimately impacting the prices paid by default service customers.

26. In addition, as a customer of FirstEnergy in Ohio, Citizen Power has an interest in FirstEnergy maintaining their current debt rating in order to keep prices in Ohio as low as possible.

27. Furthermore, as a customer of FirstEnergy, Citizen Power has an interest in the estimated benefits and the allocation of the “costs-to-achieve” of the merger plan.

28. The Commission’s regulation also provides that a person who has “[a]nother interest of such nature that participation of the petitioner may be in the public interest” may intervene in the proceeding. 52 Pa. Code § 5.72(a)(3). Citizen Power has experience from its participation in both the Duquesne Light and Allegheny Power merger proceedings and the FirstEnergy and GPU merger proceedings. In addition, as both a consumer and environmental advocacy organization, Citizen Power has a unique perspective that cannot be represented by any other party in this proceeding. Citizen Power submits that this unique interest coincides with the public interest and should be considered by the Commission.

29. Finally, under Article I, Section 27 of the Pennsylvania Constitution, Citizen Power has “a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment” (PA CONST. I. § 27). The environmental impacts of the proposed merger are uncertain at this time. As an advocate for the environment, Citizen Power has an interest in the environmental impacts of the proposed merger.

30. The interests of Citizen Power are not adequately represented by another party. The only other parties at this time are the Office of Trial Staff of the Pennsylvania Public Utility Commission, the York County Solid Waste and Refuse Authority, Duquesne Light, and the International Brotherhood of Electrical Workers; none of which are authorized or have standing to represent the interests of Citizen Power.

31. Based on the foregoing, Citizen Power has substantial interests that will be directly and immediately affected by the Commission’s disposition of the Applicants’ Application. Therefore, this Petition to Intervene should be granted.

32. Under 52 Pa. Code §§ 5.53, 5.74, protests and petitions to intervene may be filed no later than the date fixed for filing protests as published in the Pennsylvania Bulletin. A notice appearing in the Bulletin on May 29, 2010 (40 Pa.B. 2843) set a date of June 14, 2010 for such filings. This protest and petition to intervene is therefore timely.

**V. POSITION OF CITIZEN POWER, INC.**

33. Citizen Power believes that this proposed merger needs to be fully investigated by the Commission. Citizen Power is specifically concerned about the impact of the proposed merger upon wholesale markets and competition, the potential environmental effects, and the long term rate impacts for both FirstEnergy and Duquesne Light customers.

34. At this time, Citizen Power continues to evaluate its position on the Applicant's Application and will refine its position based upon further study of the plan, review of discovery and additional input from other parties. Petitioner reserves the right to raise other issues as necessary and appropriate during the course of the proceeding and to respond to issues raised by other parties.

**VI. COUNSEL**

35. Citizen Power will be represented in this proceeding by the following counsel:

Theodore S. Robinson, Esq.  
Citizen Power  
2121 Murray Avenue  
Pittsburgh, PA 15217

Phone: 412-421-7029  
Fax: 412-421-6162  
Email: [robinson@citizenpower.com](mailto:robinson@citizenpower.com)

36. Counsel consents to the service of documents by electronic mail to [robinson@citizenpower.com](mailto:robinson@citizenpower.com), as provided in 52 Pa. Code § 1.54(b)(3).

WHEREFORE, for all of the foregoing reasons, Citizen Power believes that its intervention in this proceeding satisfies the legal standards for intervention and will serve the public interest. Citizen Power respectfully requests that the Commission grant this Petition to Intervene in the above-captioned matter and give it full party status in this proceeding.

Respectfully submitted,



---

Theodore S. Robinson, Esquire  
PA Attorney ID No. 203852

Citizen Power

2121 Murray Avenue  
Pittsburgh, PA 15217

Phone: 412-421-7029

Fax: 412-421-6162

Email: [robinson@citizenpower.com](mailto:robinson@citizenpower.com)

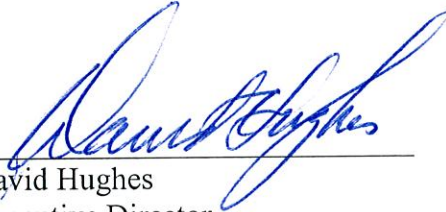
Date: June 14, 2010

Counsel for Citizen Power

**VERIFICATION**

I, David Hughes, hereby state that the facts set forth above in the Petition to Intervene are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Dated:            June 14, 2010

  
\_\_\_\_\_  
David Hughes  
Executive Director  
Citizen Power  
2121 Murray Avenue  
Pittsburgh, PA 15217

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of West Penn Power Company :  
d/b/a Allegheny Power, Trans-Allegheny Interstate :  
Line Company and FirstEnergy Corp. for a : A-2010-2176520  
Certificate of Public Convenience under Section : A-2010-2176732  
1102(a)(3) of the Public Utility Code approving :  
A change of control of West Penn Power Company :  
And Trans-Allegheny Interstate Line Company :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Petition to Intervene of Citizen Power, Inc. upon the participants listed below, in accordance with the requirements of § 1.54 (relating to service by a participant).

**VIA E-MAIL AND FIRST CLASS MAIL**

Honorable Wayne L. Weisman  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street – 2 West (L-M)  
PO Box 3265  
Harrisburg, PA 17105-3265

Honorable Mary D. Long  
Pennsylvania Public Utility Commission  
Piatt Place  
301 Fifth Avenue  
Room 220  
Pittsburgh, PA 15222

W. Edwin Ogden, Esquire  
Alan Michael Seltzer, Esquire  
Ryan, Russell, Ogden, and Seltzer, PC  
Suite 210, 1150 Berkshire Boulevard  
Wyomissing, PA 19610-1208  
[eogden@ryanrussell.com](mailto:eogden@ryanrussell.com)  
[aseltzer@ryanrussell.com](mailto:aseltzer@ryanrussell.com)  
(West Penn Power Company &  
Trans Allegheny Interstate Line Company)

Randall B. Palmer, Esquire  
Jennifer L. Petrisek, Esquire  
Allegheny Energy, Inc.  
800 Cabin Hill Drive  
Greensburg, PA 15601  
[rpalmer@alleghenyenergy.com](mailto:rpalmer@alleghenyenergy.com)  
[jpetrisek@alleghenyenergy.com](mailto:jpetrisek@alleghenyenergy.com)

Thomas P. Gadsden, Esquire  
Kenneth M. Kulak, Esquire  
Anthony C. DeCusatis, Esquire  
Morgan, Lewis & Bockius, LLP  
1701 Market Street  
Philadelphia, PA 19102-2921  
[tgadsden@morganlewis.com](mailto:tgadsden@morganlewis.com)  
[kkluak@morganlewis.com](mailto:kkluak@morganlewis.com)  
[adecusatis@morganlewis.com](mailto:adecusatis@morganlewis.com)  
(FirstEnergy Corp.)

Wendy E. Stark, Esquire  
Bradley E. Bingaman, Esquire  
FirstEnergy Service Company

2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001  
[starkw@firstenergycorp.com](mailto:starkw@firstenergycorp.com)  
[bingamanb@firstenergycorp.com](mailto:bingamanb@firstenergycorp.com)

Daniel P. Delaney, Esquire  
George A. Bibikos, Esquire  
K&L Gates, LLP  
17 North Second Street, 18<sup>th</sup> Floor  
Harrisburg, PA 17101

Allison C. Kaster, Esquire  
Carrie B. Wright, Esquire  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street – 2 West  
PO Box 3265  
Harrisburg, PA 17105-3265

Johnnie E. Simms, Esquire  
PA PUC Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[josimms@state.pa.us](mailto:josimms@state.pa.us)

Irwin A. Popowsky, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923  
[spopowsky@paoca.org](mailto:spopowsky@paoca.org)

William R. Lloyd, Esquire  
Office of Small Business Advocate  
Commerce Building, Suite 1102  
300 North Second Street  
Harrisburg, PA 17101-1303  
[willlloyd@state.pa.us](mailto:willlloyd@state.pa.us)

Scott Rubin, Esquire  
333 Oak Lane  
Bloomsburg, PA 17815  
[scott.j.rubin@gmail.com](mailto:scott.j.rubin@gmail.com)  
(International Brotherhood of Electrical Workers)

Regina L. Matz, Esquire  
Thomas T. Niesen, Esquire  
Thomas, Long, Niesen & Kennard  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
[rmatz@thomaslonglaw.com](mailto:rmatz@thomaslonglaw.com)  
[tniesen@thomaslonglaw.com](mailto:tniesen@thomaslonglaw.com)


Robert M. Strickler  
Griffith, Strickler, Lerman, Solymos &  
Calkins  
110 S. Northern Way  
York, PA 17402-3737  
[rstrickler@gslsc.com](mailto:rstrickler@gslsc.com)  
(York County Solid Waste and Refuse Authority)

Benjamin L. Willey  
Law Offices of Benjamin L. Willey  
7272 Wisconsin Avenue  
Suite 300  
Bethesda, MD 20814  
[blw@bwilleylaw.com](mailto:blw@bwilleylaw.com)

Gary A. Jack, Esquire  
Kelly L. Geer, Esquire  
Duquesne Light Company  
411 Seventh Avenue, 16-4  
Pittsburgh, PA 15219  
[gjack@duqlight.com](mailto:gjack@duqlight.com)  
[kgeer@duqlight.com](mailto:kgeer@duqlight.com)

Michael W. Gang, Esquire  
Anthony D. Kanagy, Esquire  
Post & Schell, P.C.  
17 North Second Street  
12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
(Duquesne Light)  
[mgang@postschell.com](mailto:mgang@postschell.com)  
[akanagy@postschell.com](mailto:akanagy@postschell.com)

Dated this 14<sup>th</sup> day of June, 2010.

By:   
Theodore S. Robinson (PA Bar #203852)  
Citizen Power  
2121 Murray Avenue  
Pittsburgh, PA 15217  
(412) 421-7029 (phone)  
(412) 412-6162 (fax)