



Pennsylvania Department of Environmental Protection

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August 6, 2010

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Honorable Rosemary Chiavetta, Secretary

Public Utility Commission

P.O. Box 3265

Harrisburg, PA 17105-3265

RE: Joint Application of West Penn Power Company,  
D/B/A Allegheny Power, Trans-Allegheny  
Interstate Line Company and FirstEnergy  
Corporation 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  
PUC Docket No. A-2010-2176520  
A-2010-2176732

Dear Secretary Chiavetta:

Per the June 23, 2010 Scheduling and Briefing Order, "on or before Friday, July 30, 2010 all parties and intervenors were required to serve a list of the witnesses they intend to have sponsor written testimony" in this proceeding. The Department identified two witnesses last week but is seeking leave to amend its Prehearing Memorandum to add one additional witness. The third witness the Department would sponsor direct written testimony for is:

Daniel W. Griffiths  
Special Assistant for Energy and Climate Change  
Pennsylvania Department of Environmental Protection  
400 Market Street  
Harrisburg, PA 17101

Mr. Griffiths will provide direct testimony on issues relevant to this proceeding, including alternative energy issues, energy efficiency and conservation, and smart meters. In support of this request, the Department's original Motion for Leave to Amend its Prehearing Memorandum to Include an Additional Witness is enclosed for filing. The Department respectfully requests that its Prehearing Memorandum be updated to reflect Mr. Griffiths' status as an additional witness for the Department.

As indicated on the attached Certificate of Service, all parties to this proceeding are being served with a copy of this letter.

Thank you for your assistance.

Sincerely,

*/s/ Kurt E. Klapkowski*

Kurt E. Klapkowski  
Assistant Counsel

cc: Certificate of Service  
Honorable Wayne Weismandel, PUC ALJ, w/enc.  
Honorable Mary D. Long, PUC ALJ, w/enc.

**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 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 No. A-2010-2176520  
Docket No. A-2010-2176732

**MOTION OF THE PENNSYLVANIA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION REQUESTING LEAVE TO AMEND  
PREHEARING MEMORANDUM TO INCLUDE AN ADDITIONAL WITNESS**

Pursuant to 52 Pa. Code §§ 5.103 and 5.331 and the Scheduling and Briefing Order of June 23, 2010, the Pennsylvania Department of Environmental Protection (“Department”) hereby requests that Your Honors grant leave to the Department to amend its Prehearing Memorandum to include an additional witness, Daniel W. Griffiths, for the reasons set forth as follows:

1. The June 23, 2010 Scheduling and Briefing Order in the above captioned matter (“Scheduling Order”) stated that: “on or before Friday, July 30, 2010, all parties and intervenors shall serve a list of the witnesses they intend to have sponsor written testimony in the above-captioned case. Persons not identified by July 30, 2010, will not be allowed to appear as witnesses except for good cause.”

2. The Department acknowledges that the identification of this additional witness comes after the July 30, 2010 deadline and therefore the additional witness will only be allowed if the Department can show that the deadline was missed for

good cause.

3. For the reasons outlined below, the Department believes that good cause exists for Your Honors to grant the Department leave to add an additional witness.

#### **Grounds for Leave to Add an Additional Witness**

4. The issue of good cause for allowance to add an additional untimely identified witness is not directly addressed in the rules governing practice before the Commission. However, in *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for approval of their Default Service Programs*, P-2009-2093053 & P-2009-2093054 (“*MetEd*”), the issue of “due cause” for allowance of an untimely petition for intervention under 52 Pa.Code § 5.74 was discussed. Because identification of an additional witness does not rise to the procedural level of intervention, if the Department can meet the test for intervention then the additional witness should be allowed.

5. In the *Met Ed* proceeding, a four-part test was articulated for evaluation of whether or not an untimely petition for intervention would be allowed. The four parts of the test that must be met before untimely intervention is allowed are:

- (1) where the petitioner has a reasonable excuse for missing the protest due date;
- (2) where the proceeding is contested at the time of the filing of a petition for intervention;
- (3) where the grant of intervention will not delay the orderly progress of the case;
- and
- (4) where the grant of intervention will not broaden significantly the issues, or

shift the burden of proof.

*MetEd*, citing to *Re S.T.S. Motor Freight, Inc.*, 54 Pa. PUC 343, 344 (1980).

6. Meeting the test for “good cause” for allowance of an untimely petition for intervention should provide the tribunal with adequate demonstration of “good cause” to allow the Department to amend its Prehearing Memorandum to sponsor direct testimony from an additional witness identified after July 30, 2010.

7. For the reasons outlined below, the Department believes that it meets the test in this situation and should be granted leave to amend its Prehearing Memorandum.

#### **Reasonable Excuse**

8. The Department is requesting to add Daniel W. Griffiths as a witness to provide direct testimony on matters including alternative energy issues, energy efficiency and conservation, and smart meters. Mr. Griffiths has a unique ability to testify to such matters on behalf of the Department, due both to his extensive experience in the subject area and his direct involvement with the issues on which he will provide direct testimony.

9. Mr. Griffiths recently announced his intent to depart from Commonwealth service with the Department. His departure date is set prior to the dates set by the Scheduling Order for the formal hearing on the merits in this proceeding (commencing the afternoon of October 12, 2010). It therefore became necessary for the Department to ensure that his services would be available after his formal departure from service with the Department. This could not be accomplished prior to the July 30, 2010 deadline, and so the Department could not identify Mr. Griffiths as a witness prior to that date. The Department believes that this is a reasonable excuse for missing the Scheduling Order date for witness identification.

### **Contested Proceeding**

10. This prong of the test is clearly met in this proceeding, as the appearance of the legislative parties and the 19 intervenors shows. This is not a case that was uncontested prior to the filing of this motion. Therefore the second prong of the test for allowance is met.

### **Delay to the Orderly Progress of the Case**

11. Granting the Department's motion will not delay the orderly progress of this proceeding. Direct testimony is not scheduled to be submitted under the Scheduling Order until August 17, 2010, and the Department is not requesting any extension of that deadline as a part of filing this motion. Relative to the number of parties of record and the number of witnesses sponsoring direct testimony, the additional testimony of Mr. Griffiths will not add a significant burden to the parties of record. Because there will not be undue delay to the orderly progress of the case by granting the Department's motion, the third prong of the test is met.

### **Significant Broadening of Issues or Shifting the Burden of Proof**

12. Granting the Department's motion will not significantly broaden the issues in this proceeding or shift the burden of proof. As noted above, Mr. Griffiths will be providing testimony on alternative energy issues, energy efficiency and conservation, and smart meters. This testimony will address issues that are already before the tribunal in this proceeding, and touches on issues included in the list of "items to be investigated in detail before the Administrative Law Judge" in the Commission's June 3, 2010 Secretarial Letter (specifically issue 5). The Department is in a relatively unique position to provide testimony on these issues, given the statutory obligations placed on the

Department and outlined in our Petition to Intervene and Prehearing Memorandum. Mr. Griffiths testimony will not result in shifting the burden of proof in this proceeding. Therefore, the fourth and final prong of the test is met.

WHEREFORE, the Department requests that Your Honors and the Pennsylvania Public Utility Commission:

- (1) grant this motion;
- (2) allow the Department leave to amend its Prehearing Memorandum to identify an additional witness after the July 30, 2010 deadline;
- (3) accept the identification of Daniel W. Griffiths as the Department's third witness sponsoring direct testimony; and,
- (4) grant any other relief deemed appropriate.

Respectfully submitted,

/s/ Kurt E. Klapkowski  
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Dated: August 6, 2010



## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the attached Motion of the Pennsylvania Department of Environmental Protection Requesting Leave to Amend Prehearing Memorandum to Include an Additional Witness upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

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