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August 25, 2010

**Via Email and First Class Mail**Hon. Wayne Weismandel  
Administrative Law Judge  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265Hon. Mary Long  
Administrative Law Judge  
PA Public Utility Commission  
301 Fifth Ave.  
Pittsburgh, PA 15222

Re: 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 Nos. A-2010-2176520 and A-2010-2176732

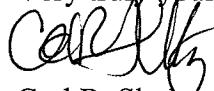
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Dear Judges Weismandel and Long:

On behalf of Direct Energy Services, Inc., enclosed for filing is the Motion to Compel The Production Of The Hart-Scott-Rodino Discovery Materials That Were Served On Three Other Parties along with the electronic filing confirmation page. Copies have been served in accordance with the attached Certificate of Service.

It is respectfully requested that oral argument be held (either by phone or in person) on this Motion. Additionally, given that rebuttal testimony is due on September 13, 2010, Direct Energy respectfully requests expeditious consideration of this Motion so that it can receive the requested materials with sufficient time to prepare rebuttal testimony, if deemed necessary.

Very truly yours,



Carl R. Shultz, Esq.

CRS/lww  
Enclosurecc: Rosemary Chiavetta, PUC Secretary (original copy)  
Cert. of Service w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy Direct Energy's Motion to Compel The Production Of The Hart-Scott-Rodino Discovery Materials That Were Served On Some, But Not All, Of The Parties upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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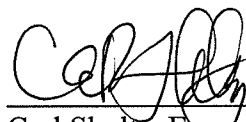
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Carl Shultz, Esq.

Dated: August 25, 2010

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of West Penn Power	:	
Company d/b/a Allegheny Power, Trans-	:	Docket No. A-2010-2176520
Allegheny Interstate Line Company and	:	Docket No. A-2010-2176732
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	:	

**DIRECT ENERGY SERVICES, LLC'S  
MOTION TO COMPEL THE PRODUCTION OF THE  
HART-SCOTT-RODINO DISCOVERY MATERIALS  
THAT WERE SERVED ON THREE OTHER PARTIES**

Direct Energy Services, LLC (“Direct Energy”), pursuant to 52 Pa. Code § 5.342, the Scheduling and Briefing Order of June 23, 2010 and the Protective Order of June 29, 2010, hereby requests that Your Honors compel the production to Direct Energy’s outside counsel and experts certain “Hart-Scott-Rodino” materials already produced by West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. (“Joint Applicants”) to three other parties in this matter.

Discovery in this proceeding is proper as to all materials “relevant to the subject matter involved” in this action and “reasonably calculated to lead to the discovery of admissible evidence.” *See* 52 Pa. Code § 5.321(c). A central issue underlying the Joint Applicants’ request for a merger approval is whether the merger will allow the Joint Applicants to exercise unlawful market power, engage in anticompetitive or discriminatory conduct or otherwise prevent the “benefits of a properly functioning and workable competitive retail electricity market.” 66 Pa. C.S. § 2811(e). The Office of Consumer Advocate (“OCA”) therefore requested from the Joint Applicants “a complete copy of [their] Hart-Scott-Rodino filing”; that is, filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, as amended (“HSR Act”).

*See* OCA Set IV Interrogatory No. 8. The Joint Applicants provided the requested documents to OCA and two other parties, subject to the Protective Order in this matter.

The Joint Applicants, however, have unlawfully refused to provide their HSR filing materials to Direct Energy. The Joint Applicants have no basis for their selective refusal to produce this highly relevant discovery material. The OCA even used the HSR materials (in part) to support the OCA's Proprietary Testimony. While the Joint Applicants have conceded that they must provide to Direct Energy the portions of the HSR materials used by OCA in its direct testimony, they have steadfastly refused to provide the rest of those materials.

Direct Energy is a full party in this proceeding. Direct Energy's counsel and expert witness have executed the required Acknowledgements of the Protective Order in this proceeding. And Direct Energy has agreed to treat the HSR materials as "highly sensitive" under the Protective Order. The Joint Applicants' failure to provide copies of discovery materials to Direct Energy notwithstanding Direct Energy's agreement to abide by the Protective Order means that the industry party most concerned with the anticompetitive aspects of this merger will not be able to access the most comprehensive and detailed compilation of data and documents concerning those issues, increasing the chances that the Commission will be faced with an incomplete record when it is asked to make its decision on whether the merger should be approved. The Joint Applicants' refusal has no support under either the Protective Order or Commission Rules, and severely prejudices Direct Energy.

The Commission's Rules provide that a failure to respond to discovery requests as required under the rules may be sanctioned if the party refusing to answer has not applied for a protective order. *See* 52 Pa. Code § 5.371(a) and (c). The Applicants have not applied for a protective order barring outright the production of claimed "highly sensitive" material to alleged

competitors. Instead, they have obtained a protective order requiring that highly sensitive discovery material “**shall be provided** solely to other parties’ counsel.” Protective Order, ¶ 4<sup>1</sup> (emphasis added). Therefore, as explained in greater detail below, it is respectfully requested the Joint Applicants be directed to produce to Direct Energy the HSR materials as previously produced to OCA and others, as required by the Protective Order and the Commission’s Rules.

### **Motion to Compel**

#### **The Requested HSR Act Materials are Discoverable**

1. Approval of the Applicants’ proposed merger requires the Commission to find that the merger will not result in the exercise of unlawful market power, anticompetitive or discriminatory behavior or otherwise prevent ratepayers from realizing the “benefits of a properly functioning and workable competitive retail electricity market.” See 66 Pa C.S. § 2811(e). The Applicants proposed merger also requires filing under and compliance with the HSR Act. The HSR Act provides federal agencies the opportunity to review significant commercial mergers before they occur and determine what effects the proposed merger may have on competition and whether it will violate federal antitrust laws. The HSR Act and the Pennsylvania merger approval statute thus serve similar purposes and facilitate similar inquiries. The Applicants have submitted information and documents (“HSR Act materials”) to the federal government pursuant to the HSR Act.<sup>2</sup>

2. The HSR Act materials are relevant to this proceeding and their discovery is reasonably calculated to lead to the production of admissible evidence. The HSR Act materials

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<sup>1</sup> The Protective Order also permits such materials to be provided to other individuals. Paragraph 4 of the Protective Order provides that disclosure is made only to counsel who may only copy that said information “for the limited purpose of review by a party’s expert or consultant.” Protective Order, at ¶ 4

<sup>2</sup> <http://www.firstenergycorp.com/allegHENYmerger/files/Merger%20FAQ.pdf>. Either the Department of Justice (“DOJ”) or the Federal Trade Commission (“FTC”) will conduct the review required by the HSR Act. *Id.*

are comprehensive and detailed and are designed to capture all necessary data to conclude whether there are anticompetitive aspects to the merger, or whether, if approved, the merger is likely to result in anticompetitive or discriminatory conduct. The HSR Act materials are arranged in a manner that facilitates such a review and makes it more likely that Direct Energy will be able to find the relevant data and present it to the Commission in a cogent form for its consideration. Thus, the information contained in the materials is likely to be highly relevant or, at the least, lead to highly relevant information.

For example, item 2(e) of the HSR filing form requires the filing entity to identify all person who performed a fair market valuation of the total aggregate value of the proposed transaction and item 3 requires a description of the transaction. See Exhibit A,<sup>3</sup> which is attached hereto and incorporated herein by reference. Item 4(c) of that form requires particularly illuminating information, including “all studies, surveys, analyses and reports prepared by or for any officer(s) or director(s) for the purpose of evaluating or analyzing the acquisition with respect to **market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets**” and the identities of any persons preparing such reports.<sup>4</sup> And items 5 through 7 of the HSR Act filing form require information regarding company revenues and businesses detailed by revenue within an industry, geographic market segments and the entities within the company filing under the HSR Act.<sup>5</sup>

3. In light of the importance of the HSR Act materials, OCA’s Interrogatory No. 9 of Set IV and Set VIII (Interrogatories Nos. 1 to 12) requested information and documents related to, or concerning, the Joint Applicant’s HSR Act materials. On June 30, 2010, the Joint

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<sup>3</sup> The “Instructions” and “Form” for filing HSR Act materials are attached as Exhibit A. They are also available at: <http://www.ftc.gov/bc/hsr/hsrform.shtm>.

<sup>4</sup> See Exhibit A, at the Instructions at v (emphasis added). See also Exhibit A, at the HSR Form at 6.

<sup>5</sup> Exhibit A, at Instructions at v-vii; Form at 7-14.



Applicants filed an Objection to OCA's request for HSR Act materials on myriad grounds, ranging from privilege to overbreadth. *See* Exhibit B, which is attached hereto and incorporated herein by reference.

*Production of the HSR Materials Will Harm No Privilege or Confidentiality Interests*

4. Despite their objections, the Joint Applicants provided copies of their HSR Act materials to the OCA, the Office of Trial Staff ("OTS") and the Office of Small Business Advocate ("OSBA"). They apparently did so pursuant to an undisclosed resolution of the discovery dispute between the parties and pursuant to the "highly sensitive" provisions of the Protective Order. *See* Exhibit C, which is attached hereto and incorporated herein by reference. By so doing, the Joint Applicants waived any claim that the HSR Act materials are privileged under the HSR Act or otherwise.

5. Indeed, the HSR Act does not protect the HSR materials from discovery, but rather makes them specifically *subject to discovery*. While the HSR Act protects filed materials from disclosure to the public under the Freedom of Information Act, 5 U.S.C. § 552, the HSR Act specifically allows filed information to be made public "as may be relevant to any administrative or judicial proceeding. 15 U.S.C. § 18a(h). In no way does the HSR Act make filed materials privileged as Joint Applicants claimed. *See Exhibit B, at* Objection, 2. Nor does the HSR Act create some sort of privilege with regard to further information exchanged between the HSR Act applicant and the government, as Joint Applicants claimed without supporting case or statutory authority in their June 30th Objection. The bottom line is that HSR Act materials, while perhaps confidential or sensitive, are clearly discoverable pursuant to a proper protective order. *See United States v. Sunguard Data Systems, Inc.*, 173 F. Supp. 2d 20 (D.D.C. 2001).

6. It may be that the Joint Applicants fear the release of “highly sensitive” materials may somehow aid its competitors in competing with them and it may even be that such fears should be acknowledged and accommodated. Clearly though, the Protective Order requested and obtained by Joint Applicants in this matter satisfies any legitimate confidentiality, proprietary or trade secret concerns Joint Applicants may have regarding the HSR Act materials. See 52 Pa. Code §§ 5.362(7), 5.423 (concerning protective orders). It must be remembered that the Protective Order – an enforceable Order of this Commission -guards against the use of the improper use of such disclosed information. The Protective Order expressly precludes the possession, use or disclosure of “Confidential Information” for the purpose of business or competition or any purpose other than the preparation for, and conduct of, this proceeding or any administrative or judicial review thereof. Protective Order, at ¶ 6. It should also be remembered that the disclosure is made only to counsel who may only copy that said information “for the limited purpose of review by a party’s expert or consultant.” Protective Order, at ¶ 4 or to outside experts who are testifying in the proceeding and similarly are independent of the “competitor” Direct Energy. The disclosed materials must be either returned or destroyed upon the completion of this proceeding. See also Protective Order, at ¶¶ 4, 10. In sum, Joint Applicants have no valid privilege or confidentiality concern restricting their HSR Act materials from discovery under the Protective Order and, indeed, the order obtained by the Joint Applicants in this case requires that the HSR Act materials “shall be provided to the other parties’ counsel and may be copied only for the limited purpose of review by a party’s expert or consultant.” Protective Order, at ¶¶ 4, 10 (emphasis added).

Direct Energy is Entitled to Discovery of the HSR Materials

7. Having shown that the HSR Act materials are within the scope of discovery and not barred from disclosure by unresolved privilege or confidentiality concerns, it is clear that Direct Energy is entitled to the materials. As counsel for Direct Energy, Daniel Clearfield, Deanne O'Dell and Carl R. Shultz signed an acknowledgment of the Protective Order. Direct Energy's expert witness (Matthew Morey) has also signed acknowledgments of the Protective Order. Copies of these acknowledgements were produced to the parties. See Exhibit D, which is attached hereto and incorporated herein by reference.

8. Direct Energy's counsel specifically and timely requested the HSR Act materials. On August 4, 2010, well before the deadline for the submission of direct testimony, Counsel for Direct Energy requested from Joint Applicants copies of the HSR materials that were previously provided to the OCA, OTS and OSBA from the Joint Applicants (and which should have been provided to all parties under standard PUC rules). See Exhibit E, which is attached hereto and incorporated herein by reference. In doing so, Counsel explicitly agreed that the HSR materials were subject to the "highly sensitive" provisions of the Protective Order and that the "highly sensitive" information would either be either returned or destroyed upon the completion of this proceeding. *Id. See also* Protective Order, at ¶¶ 4, 10. The Joint Applicants did not respond to Direct Energy's request.

9. In the interim, the OCA prepared Proprietary Direct Testimony based in part on information related to, or concerning, the Joint Applicants' HSR materials. On Tuesday, August 17, 2010, the OCA served a public copy of its Direct Testimony upon Direct Energy. However, OCA did not serve a copy of its Proprietary Direct Testimony upon Direct Energy at that time.

10. On Thursday, August 19, 2010, Counsel for Direct Energy requested a copy of the OCA's Proprietary Direct Testimony from OCA. This request was initially denied by OCA based on Joint Applicants' specific instructions concerning the non-disclosure of HSR materials.

11. On Friday, August 20, 2010, Direct Energy again requested copies of the HSR Act materials from Joint Applicants.

12. On Monday, August 23, 2010, the Joint Applicants agreed that the OCA could produce the Proprietary Direct Testimony from the OCA (and the OCA did in fact provide a non-redacted version of the testimony to Direct Energy's counsel). See Exhibit F, which attached hereto and incorporated herein by reference. However, the Joint Applicants continued to refuse to produce any of the HSR materials, including (but not limited to) the underlying information and documents relied upon by the OCA's Proprietary Direct Testimony. The OCA supplied a copy of its Proprietary Direct Testimony to Direct Energy on August 23, 2010.

13. Having signed the required acknowledgements under the Protective Order and made proper requests, Counsel for Direct Energy and Direct Energy's expert<sup>6</sup> are entitled to receive copies of the Joint Applicants' HSR Act materials under the Protective Order and the Commission's Rules. *See* Protective Order, at ¶ 6. *See also* 52 Pa. Code §§ 1.54 (service by a party), 5.342(d) (service of answers to written interrogatories). In fact, the Protective Order explicitly states "highly sensitive" information requested from Joint Applicants "**shall be provided solely to other parties' counsel.**" Protective Order, ¶ 4 (emphasis added). No provision in the Protective Order allows Joint Applicant simply to withhold "highly sensitive" material.

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<sup>6</sup> If other expert witnesses for Direct Energy sign the required acknowledgement of the Protective Order, information protected by the Protective Order may also be disclosed to them.

14. The requirement to serve all discovery responses on all parties is obvious. “The parties of record are those entities whose legal rights are affected by what happens in the litigation. Lack of service robs the parties of the opportunity to respond to the filing in an appropriate and timely fashion -- thus creating a due process issue.” *Petition of PPL Electric Utilities for Approval of its Energy Efficiency and Conservation Plan Under Act 129 of 2008*, Docket No. M-2009-2093216 (Initial Decision by Susan D. Colwell, dated August 11, 2009).

15. It is uncooperative and/or evasive conduct to refuse to provide materials subject to the Protective Order to parties who have signed the required acknowledgement of the Protective Order. This is especially true when the producing party is responsive to some, but not all, of the other parties.

16. Nothing in the Protective Order contemplates that information and documents will only be shared by and between the Joint Applicants and the statutory parties. Having a “government-only” review of certain facts and issues is above and beyond the Protective Order<sup>7</sup> and is not consistent with due process or the public interest in a litigated proceeding.

17. It is imperative that Direct Energy be permitted to receive and review the HSR Act materials consistent with the Protective Order. As explained in paragraphs 2-3 of this Motion, *supra*, the materials relate to issues regarding potential exercise of market power and anticompetitive behavior, issues central both to the Joint Applicants’ Application and Direct Energy’s position and proposed resolution of this proceeding. Moreover, providing these data to Direct Energy’s counsel and outside experts will make it more likely that a full and complete record on the potentially anti-competitive aspects of the proposed merger will be presented to the

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<sup>7</sup> Since the Protective Order was originally requested and drafted by the Joint Applicants to protect their interests (See the Prehearing Memorandum of the Joint Applicants, dated June 15, 2010), it is appropriate to construe the Protective Order against the Joint Applicants. *See, e.g., Sun Co. Inc. (R&M) v. Pennsylvania Turnpike Commission*, 708 A.2d 875 (Pa. Commw. 1998) (If any ambiguity exists, then the principle of *contra proferentem* provides that the ambiguity be construed against the drafter. ).

Commission. Denying access to the party most concerned with the anticompetitive aspects of the merger makes it far more likely that legitimate concerns about the anticompetitive effects of the merger will not be raised.

Indeed, it is ironic – and perhaps worse – that Joint Applicants have previously objected to providing confidential information to Direct Energy because it is a “competitor.” As companies seeking permission to combine the assets of two incumbent- utility, wire-owning providers of standard offer service and default service, the Joint Applicants seem particularly interested in preventing competition with their retail marketing affiliates, First Energy Solutions, Inc. and Allegheny Energy Supply. It is exactly this kind of anti-competitive behavior that this proceeding, and the HSR Act are designed to – and Direct Energy hopes to – prevent.

18. In addition, information and documents from the HSR Act materials have already been used in this proceeding and certainly will be used further. By precluding Direct Energy’s access to the HSR Act materials, the Joint Applicants are preventing Direct Energy from protecting its interests and responding to issues raised both by the HSR Act materials and the OCA’s Direct Testimony. In brief, Joint Applicants have precluded Direct Energy from both fully addressing issues central to this proceeding and from being on equal footing with the four other parties to this proceeding that can use the HSR Act materials to fully address such issues – and thereby denying the Commission a full and complete record on which to determine whether the merger can be approved under the applicable statutory standard.

19. Given that rebuttal testimony is due on September 13, 2010, Direct Energy respectfully requests expeditious consideration of this Motion so that it can receive the requested HSR Act materials with sufficient time to prepare rebuttal testimony, if deemed necessary.

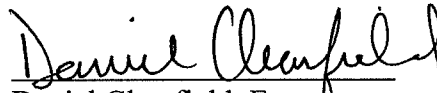
**Conclusion**

Based on the foregoing, there is no basis for the Joint Applicants' refusal to produce copies of the Joint Applicants' HSR materials to Direct Energy consistent with the Protective Order and the Commission's Rules.

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

- (1) grant this motion;
- (2) direct the Joint Applicants to produce copies of their HSR materials to Direct Energy counsel and outside experts under the Protective Order within seven (7) days;
- (3) grant any other relief deemed appropriate.

Respectfully submitted,



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Deanne M. O'Dell, Esq.  
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Dated: August 25, 2010

# **Exhibit A**





**16 C.F.R. Part 803 - Appendix**  
**NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS**

Approved by OMB  
 3084-0005  
 Expires 05/31/2010

THE INFORMATION REQUIRED TO BE SUPPLIED ON THESE ANSWER SHEETS IS SPECIFIED IN THE INSTRUCTIONS

↓ Attach the Affidavit required by § 803.5 to this page.

**FEE INFORMATION** TAXPAYER IDENTIFICATION NUMBER \_\_\_\_\_  
 or SOCIAL SECURITY NUMBER of payer \_\_\_\_\_  
 (acquiring person (and payer if different from acquiring person))  
 AMOUNT PAID \$ \_\_\_\_\_  
 In cases where your filing fee would be higher if CHECK ATTACHED  MONEY ORDER ATTACHED   
 based on acquisition price or where the acquisition WIRE TRANSFER  CONFIRMATION NO. \_\_\_\_\_  
 price is undetermined to the extent that it may FROM: NAME OF INSTITUTION \_\_\_\_\_  
 straddle a filing fee threshold, attach an explanation NAME OF PAYER (if different from PERSON FILING) \_\_\_\_\_  
 of how you determined the appropriate fee  
 (acquiring persons only).  
 Attachment Number \_\_\_\_\_

IS THIS A CORRECTIVE FILING?  YES  NO

IS THIS ACQUISITION SUBJECT TO FOREIGN FILING REQUIREMENTS?  YES  NO  
 If YES, list jurisdictions: (voluntary) \_\_\_\_\_

IS THIS ACQUISITION A CASH TENDER OFFER?  YES  NO BANKRUPTCY?  YES  NO

DO YOU REQUEST EARLY TERMINATION OF THE WAITING PERIOD? (Grants of early termination are published in the Federal Register AND on the FTC web site www.ftc.gov)  
 YES  NO

**ITEM 1 – PERSON FILING**

1(a) NAME and HEADQUARTERS ADDRESS of PERSON FILING \_\_\_\_\_

1(b) PERSON FILING NOTIFICATION IS  
 an acquiring person  an acquired person  both

1(c) PUT AN "X" IN THE APPROPRIATE BOX TO DESCRIBE PERSON FILING NOTIFICATION  
 Corporation  Unincorporated Entity  Other (Specify): \_\_\_\_\_

1(d) DATA FURNISHED BY  
 calendar year  fiscal year (specify period) \_\_\_\_\_ (month/year) to \_\_\_\_\_ (month/year)

THIS FORM IS REQUIRED BY LAW and must be filed separately by each person which, by reason of a merger, consolidation or acquisition, is subject to §7A of the Clayton Act, 15 U.S.C. §18a, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1390, and rules promulgated thereunder (hereinafter referred to as "the rules" or by section number). The statute and rules are set forth in the *Federal Register* at 43 FR 33450; the rules may also be found at 16 CFR Parts 801-03. Failure to file this **Notification and Report Form**, and to observe the required waiting period before consummating the acquisition in accordance with the applicable provisions of 15 U.S.C. §18a and the rules, subjects any "person," as defined in the rules, or any individuals responsible for noncompliance, to liability for a penalty of not more than \$11,000 for each day during which such person is in violation of 15 U.S.C. §18a.

Pursuant to the Hart-Scott-Rodino Act, information and documentary material filed in or with this Form is confidential. It is exempt from disclosure under the Freedom of Information Act, and may be made public only in an administrative or judicial proceeding, or disclosed to Congress or to a duly authorized committee or subcommittee of Congress.

**Filing** - Complete and return *two* copies (with one original affidavit and certification and one set of documentary attachments) of this Notification and Report Form to: Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. *Three* copies (with one set of documentary attachments) should be sent to: Director of Operations and Merger Enforcement, Antitrust Division, Department of Justice, 950 Pennsylvania Avenue N.W., Room #3335, Washington, D.C. 20530. (For FEDEX airbills to the Department of Justice do not use the 20530 zip code; use zip code 20004.)

**DISCLOSURE NOTICE** - Public reporting burden for this report is estimated to vary from 8 to 160 hours per response, with an average of 39 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this report, including suggestions for reducing this burden to: Premerger Notification Office, H-303, Federal Trade Commission, Washington, DC 20580 and Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503

Privacy Act Statement--Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. Our authority to collect Social Security numbers is 31 U.S.C. 7701. The primary use of information submitted on this Form is to determine whether the reported merger or acquisition may violate the antitrust laws. Taxpayer information is collected, used, and may be shared with other agencies and contractors for payment processing, debt collection and reporting purposes. Furnishing the information on the Form is voluntary. Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to \$11,000 per day. We also may be unable to process the Form unless you provide all of the requested information.

Under the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. That number is 3084-0005, which also appears in the upper right-hand corner of the first page of this form.

NAME OF PERSON FILING NOTIFICATION	DATE
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1(e) PUT AN X IN THE APPROPRIATE BOX AND GIVE THE NAME AND ADDRESS OF ENTITY FILING NOTIFICATION (if other than ultimate parent entity)

NA     
 This report is being filed on behalf of a foreign person pursuant to § 803.4.     
 This report is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file pursuant to § 803.2(a).

NAME OF ENTITY FILING NOTIFICATION	ADDRESS
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1(f) NAME AND ADDRESS OF ENTITY MAKING ACQUISITION OR WHOSE ASSETS, VOTING SECURITIES OR NON-CORPORATE INTERESTS ARE BEING ACQUIRED IF DIFFERENT FROM THE ULTIMATE PARENT ENTITY IDENTIFIED IN ITEM 1(a)

PERCENT OF VOTING SECURITIES OR NON-CORPORATE INTERESTS HELD BY EACH ENTITY IDENTIFIED IN ITEM 1(a)

**1(g) IDENTIFICATION OF PERSON TO CONTACT REGARDING THIS REPORT**

NAME OF CONTACT PERSON TITLE FIRM NAME BUSINESS ADDRESS  TELEPHONE NUMBER FAX NUMBER E-MAIL ADDRESS	
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**(h) IDENTIFICATION OF AN INDIVIDUAL LOCATED IN THE UNITED STATES DESIGNATED FOR THE LIMITED PURPOSE OF RECEIVING NOTICE OF ISSUANCE OF A REQUEST FOR ADDITIONAL INFORMATION OR DOCUMENTS. (See § 803.20(b)(2)(iii))**

NAME OF CONTACT PERSON TITLE FIRM NAME BUSINESS ADDRESS  TELEPHONE NUMBER FAX NUMBER E-MAIL ADDRESS	
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**ITEM 2**

2(a) LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRING PERSONS	LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRED PERSONS
--	--

2(b) THIS ACQUISITION IS (put an X in all the boxes that apply)

<input type="checkbox"/> an acquisition of assets <input type="checkbox"/> a merger (see § 801.2) <input type="checkbox"/> an acquisition subject to § 801.2(e) <input type="checkbox"/> a formation of a joint venture or other corporation or unincorporated entity (see § 801.40 or § 801.50) <input type="checkbox"/> an acquisition subject to § 801.30 (specify type) <input type="checkbox"/> other (specify) _____	<input type="checkbox"/> a consolidation (see § 801.2) <input type="checkbox"/> an acquisition of voting securities <input type="checkbox"/> a secondary acquisition <input type="checkbox"/> an acquisition subject to § 801.31 <input type="checkbox"/> acquisition of non-corporate interests
---	--

2(c) INDICATE THE HIGHEST NOTIFICATION THRESHOLD IN § 801.1(h) FOR WHICH THIS FORM IS BEING FILED (acquiring person only in an acquisition of voting securities)

<input type="checkbox"/> \$50 million (as adjusted)	<input type="checkbox"/> \$100 million (as adjusted)	<input type="checkbox"/> \$500 million (as adjusted)	<input type="checkbox"/> 25% (see Instructions) (as adjusted)	<input type="checkbox"/> 50%
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2(d)(i) VALUE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION	(ii) PERCENTAGE OF VOTING SECURITIES	(iii) VALUE OF ASSETS TO BE HELD AS A RESULT OF THE ACQUISITION	(iv) VALUE OF NONCORPORATE INTERESTS TO BE HELD AS A RESULT OF THE ACQUISITION	(v) AGGREGATE TOTAL VALUE
\$	%	\$	\$	\$

---

NAME OF PERSON FILING NOTIFICATION

DATE

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2(e) If aggregate total value in 2(d)(v) is based in whole or in part on a fair market valuation pursuant to § 801.10(c)(3), identify the person or persons responsible for making the valuation (*acquiring persons only*).

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**ITEM 3**

3(a) DESCRIPTION OF ACQUISITION

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NAME OF PERSON FILING NOTIFICATION

DATE

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3(b)(i) ASSETS TO BE ACQUIRED (to be completed only for asset acquisitions)

---

3(b)(ii) ASSETS HELD BY ACQUIRING PERSON

---

3(b)(iii) ASSETS HELD BY UNINCORPORATED ENTITIES

---

3(c) VOTING SECURITIES TO BE ACQUIRED

3(c)(i) LIST AND DESCRIPTION OF VOTING SECURITIES AND LIST OF NON-VOTING SECURITIES:

3(c)(ii) TOTAL NUMBER OF SHARES OF EACH CLASS OF SECURITY:

3(c)(iii) TOTAL NUMBER OF SHARES OF EACH CLASS OF SECURITY BEING ACQUIRED:

3(c)(iv) IDENTITY OF PERSONS ACQUIRING SECURITIES:

3(c)(v) DOLLAR VALUE OF SECURITIES IN EACH CLASS BEING ACQUIRED:

3(c)(vi) TOTAL NUMBER OF EACH CLASS OF SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION:

3(d) SUBMIT A COPY OF THE MOST RECENT VERSION OF CONTRACT OR AGREEMENT (or letter of intent to merge or acquire)

DO NOT ATTACH THIS DOCUMENT TO THIS PAGE

ATTACHMENT OR REFERENCE NUMBER OF CONTRACT OR AGREEMENT \_\_\_\_\_

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NAME OF PERSON FILING NOTIFICATION

DATE

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**ITEM 4** PERSONS FILING NOTIFICATION MAY PROVIDE BELOW AN OPTIONAL INDEX OF DOCUMENTS REQUIRED TO BE SUBMITTED BY ITEM 4  
(See Item by Item instructions). THESE DOCUMENTS SHOULD NOT BE ATTACHED TO THIS PAGE.

4(a) DOCUMENTS FILED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION      ATTACHMENT OR REFERENCE NUMBER

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4(b) ANNUAL REPORTS, ANNUAL AUDIT REPORTS, AND REGULARLY PREPARED BALANCE SHEETS      ATTACHMENT OR REFERENCE NUMBER

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4(c) STUDIES, SURVEYS, ANALYSES, AND REPORTS      ATTACHMENT OR REFERENCE NUMBER

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**ITEM 5** (See "References" listed in the General Instructions to the Form. Refer to the *North American Industry Classification System-United States, 2002 (2002 NAICS Manual)* for the 6-digit (NAICS) industry codes. Refer to the *2002 Numerical List of Manufactured and Mineral Products (EC02M31R-NL)* for the 7-digit product class codes and the 10-digit product codes. Report revenues for the 7-digit product class codes and 10-digit product codes using the codes in the columns labeled "Product code." For further information on NAICS-based codes visit the [www.census.gov](http://www.census.gov) web site.)

## 5(a) DOLLAR REVENUES BY INDUSTRY

6-DIGIT INDUSTRY CODE	DESCRIPTION	2002 TOTAL DOLLAR REVENUES

ITEM 5(b)(i) DOLLAR REVENUES BY MANUFACTURED PRODUCTS

10-DIGIT PRODUCT CODE	DESCRIPTION	2002 TOTAL DOLLAR REVENUES



NAME OF PERSON FILING NOTIFICATION	DATE
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ITEM 5(b)(ii) PRODUCTS ADDED OR DELETED

DESCRIPTION (10-DIGIT PRODUCT CODE)	ADD	DELETE	YEAR OF CHANGE	TOTAL DOLLAR REVENUES

ITEM 5(b)(iii) DOLLAR REVENUES BY MANUFACTURED PRODUCT CLASS

7-DIGIT PRODUCT CLASS	DESCRIPTION	<table border="1"> <tr> <td style="text-align: center;">YEAR</td> </tr> <tr> <td style="text-align: center;">  _____  </td> </tr> <tr> <td>TOTAL DOLLAR REVENUES</td> </tr> </table>	YEAR	_____	TOTAL DOLLAR REVENUES
YEAR					
_____					
TOTAL DOLLAR REVENUES					

(Item 5(b)(iii) continued on page 10)

ITEM 5(b)(iii) DOLLAR REVENUES BY MANUFACTURED PRODUCT CLASS - CONTINUED

7-DIGIT PRODUCT CLASS	DESCRIPTION	YEAR  _____  TOTAL DOLLAR REVENUES

ITEM 5(c) DOLLAR REVENUES BY NON-MANUFACTURING INDUSTRY

6-DIGIT INDUSTRY CODE	DESCRIPTION	YEAR  _____  TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION

DATE

5(d) COMPLETE ONLY IF ACQUISITION IS IN THE FORMATION OF A JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY.

5(d)(i) NAME AND ADDRESS OF THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY

5(d)(ii)  
(A) CONTRIBUTIONS THAT EACH PERSON FORMING THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY HAS AGREED TO MAKE

(B) DESCRIPTION OF ANY CONTRACTS OR AGREEMENTS

(C) DESCRIPTION OF ANY CREDIT GUARANTEES OR OBLIGATIONS

(D) DESCRIPTION OF CONSIDERATION WHICH EACH PERSON FORMING THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY WILL RECEIVE

5(d)(iii) DESCRIPTION OF THE BUSINESS IN WHICH THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY WILL ENGAGE

5(d)(iv) SOURCE OF DOLLAR REVENUES BY 6-DIGIT INDUSTRY CODE (non-manufacturing) AND BY 7-DIGIT PRODUCT CLASS (manufacturing)

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NAME OF PERSON FILING NOTIFICATION

DATE

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**ITEM 6**

6(a) ENTITIES WITHIN PERSON FILING NOTIFICATION

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6(b) SHAREHOLDERS OF PERSON FILING NOTIFICATION

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NAME OF PERSON FILING NOTIFICATION

DATE

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6(c) HOLDINGS OF PERSON FILING NOTIFICATION

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**ITEM 7** DOLLAR REVENUES

7(a) 6-DIGIT NAICS CODE AND DESCRIPTION

---

7(b) NAME OF EACH PERSON WHICH ALSO DERIVED DOLLAR REVENUES

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NAME OF PERSON FILING NOTIFICATION

DATE

---

7(c) GEOGRAPHIC MARKET INFORMATION

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**ITEM 8** PRIOR ACQUISITIONS (to be completed by acquiring person only)

NAME OF PERSON FILING NOTIFICATION

DATE

**CERTIFICATION**

This **NOTIFICATION AND REPORT FORM**, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

NAME (Please print or type)

TITLE

SIGNATURE

DATE

Subscribed and sworn to before me at the

City of \_\_\_\_\_, State of \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_, the year \_\_\_\_\_

Signature \_\_\_\_\_

My Commission expires \_\_\_\_\_

[SEAL]

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# ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM for Certain Mergers and Acquisitions

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## INSTRUCTIONS

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### GENERAL

The Notification and Report Form ("the Form") is required to be submitted pursuant to § 803.1(a) of the premerger notification rules ("the rules"). An electronic version of the Form is available at <https://www.hsr.gov> and may be used for the direct electronic submission of filings or used to generate a print version of the Form for paper copy submission.

These instructions specify the information which must be provided in response to the Items on the Form. The completed Form, together with all documentary attachments, are to be filed with the Federal Trade Commission and the Department of Justice.

Persons providing responses on attachment pages rather than on the Form must submit a complete set of attachment pages with each copy of the Form.

The term "documentary attachments" refers to materials supplied in responses to Item 3(d), Item 4 and to submissions pursuant to §§ 803.1(b) and 803.11 of the rules.

**Information**-The central office for information and assistance concerning the rules, 16 CFR Parts 801-803, and the Form is Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, phone (202) 326-3100, e-mail [HSRHelp@hsr.gov](mailto:HSRHelp@hsr.gov). Program information and the electronic version of the Form can be found at <https://www.hsr.gov>.

**Definitions**-The definitions and other provisions governing this Form are set forth in the rules, 16 CFR Parts 801-803. The governing statute, the rules, and the Statement of Basis and Purpose for the rules are set forth at 43 FR 33450 (July 31, 1978), 44 FR 66781 (November 22, 1979) 48 FR 34427 (July 29, 1983), 61 FR 13688 (March 28, 1996), 66 FR 8693 (February 1, 2001), 70 FR 4994 (January 31, 2005), 70 FR 11513 (March 8, 2005), 70 FR 73369 (December 12, 2005), 70 FR 77312 (December 30, 2005), 71 FR 2943 (January 18, 2006), and Pub. L. No. 106-533, 114 Stat. 2762.

**Affidavit**-Attach the affidavit required by § 803.5 to the Form. Affidavits are not required if the person filing notification is an acquired person in a transaction covered by § 801.30. (See § 803.5(a)).

For acquisitions to which § 801.30 does not apply, the affidavit must attest that a contract, agreement in principle or letter of intent to merge or acquire has been executed, and further attest to the good faith intention of the person filing notification to complete the transaction.

For acquisitions to which § 801.30 does apply, the affidavit must also attest that the issuer whose voting securities are to be acquired has received notice; the identity of the acquiring person and the fact that the acquiring person

intends to acquire voting securities of the issuer; the specific notification threshold that the acquiring person intends to meet or exceed; the fact that the acquisition may be subject to the act, and that the acquiring person will file notification under the act; the anticipated date of receipt of such notification; and the fact that the person within which the issuer is included may be required to file notification under the act.

In the case of a tender offer the affidavit must also attest that the intention to make the tender offer has been publicly announced.

The language found in 28 U.S.C. § 1746 relating to unsworn declarations under penalty of perjury may be used instead of notarization of the affidavit.

**Responses**-Each answer should identify the Item to which it is addressed. Use the reverse side of the corresponding answer sheet or attach separate additional sheets as necessary in answering each Item. Each additional sheet should identify at the top of the page the Item to which it is addressed. Voluntary submissions pursuant to § 803.1(b) should also be identified.

For electronic filings, all Items are automatically identified within the Form. Electronic attachments and endnotes may be appended to the Form for any Item prior to submission.

Enter the name of the person filing notification appearing in Item 1(a) on page 1 of the Form and the date on which the Form is completed at the top of each page of the Form, at the top of any sheets attached to complete the response to any Item, and at the top of the first or cover page of each documentary attachment. For electronic filings, Items 1(a) and 1(b) must be completed before proceeding to pages 2-15 of the Form. Entering the date on page 2 will automatically fill out the date on all other pages of the Form.

If unable to answer any Item fully, give such information as is available and provide a statement of reasons for non-compliance as required by § 803.3. If exact answers to any Item cannot be given, enter best estimates and indicate the sources or bases of such estimates. All financial information should be expressed in millions of dollars rounded to the nearest one-tenth of a million dollars. Estimated data should be followed by the notation, "est." For electronic filings, add an endnote with the notation, "est." to any Item where data is estimated.

**Year**-All references to "year" refer to calendar year. If the data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recent calendar or fiscal year for which the requested information is available.

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**Privacy Act Statement**--Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. Our authority to collect Social Security numbers is 31 U.S.C. 7701. The primary use of information submitted on this Form is to determine whether the reported merger or acquisition may violate the antitrust laws. Taxpayer information is collected, used, and may be shared with other agencies and contractors for payment processing, debt

collection and reporting purposes. Furnishing the information on the Form is voluntary. Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to \$11,000 per day. We also may be unable to process the Form unless you provide all of the requested information.



### North American Industry Classification System (NAICS) Data-

The Form requests information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) All persons must submit certain data at the 6-digit NAICS national industry code level. To the extent that dollar revenues are derived from *manufacturing operations* (NAICS Sectors 31-33), data must also be submitted at the 7-digit NAICS product class and 10-digit NAICS product code levels. The term "dollar revenues" is defined in § 803.2(d).

**References**-In reporting information by 6-digit NAICS industry code refer to the *North American Industry Classification System - United States, 2002 (2002 NAICS Manual)* published by the Executive Office of the President, Office of Management and Budget. In reporting information by 7-digit NAICS product class and 10-digit NAICS product code refer to the *2002 Numerical List of Manufactured and Mineral Products (EC02M31R-NL)* published by the Bureau of the Census. Information regarding NAICS also is available at [www.census.gov](http://www.census.gov).

**Thresholds**-Filing fee and notification thresholds are adjusted annually pursuant to Section 7A(a)(2) of the Clayton Act based on the change in gross national product, in accordance with Section 8(a)(5). The current threshold values can be found at [www.ftc.gov](http://www.ftc.gov).

**Items 5, 7, 8**-Supply information only with respect to operations conducted within the United States, including its commonwealths, territories, possessions and the District of Columbia. (See §§ 801.1(k); 803.2(c)(1).)

Information need not be supplied regarding assets or voting securities currently being acquired, when the acquisition is exempt under the statute or rules. (See § 803.2(c)(2).)

The acquired person should limit its response in the case of an acquisition of assets, to the assets being sold, and in the case of an acquisition of voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such issuer. Separate responses may be required where a person is both acquiring and acquired. (See § 803.2(b) and (c).)

**Filing**- Filers have three options: (1) Complete and return two copies (with one notarized original affidavit and certification and one set of documentary attachments) of this Notification and Report Form to the Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Three copies (with one set of documentary attachments) should be sent to: Director of Operations, Antitrust Division, Department of Justice, 950 Pennsylvania Avenue, N.W., Room #3335, Washington, D.C. 20530. (For FEDEX airbills to the Department of Justice, do not use the 20530 zip code; use zip code 20004); (2) Complete the electronic version of the Form and submit the completed Form with all electronic attachments as directed at <https://www.hsr.gov>; or (3) Complete the electronic version of the Form (with the electronic affidavit form) and submit it electronically while providing the documentary attachments in paper copy to the FTC and DOJ as in Option 1 above. Note that for option three, the attachments must be listed on the attachments page of the Form and classified as "paper to follow". If one or both delivery sites are unavailable, the agencies may announce, through the media and, if possible, [www.ftc.gov](http://www.ftc.gov) and [www.hsr.gov](http://www.hsr.gov), alternate sites for delivery.

### ITEM BY ITEM

**Affidavit**- Attach the affidavit required by § 803.5 to page 1 of the Form. If filing electronically, submit the electronic version of the affidavit as attachment 1. Acquiring persons in transactions covered by § 801.30 are required to also submit a copy of the notice served on the acquired person pursuant to § 803.5(a)(1). (See § 803.5(a)(3).)

**Fee Information**-The fee for filing the Notification and Report Form is based on the aggregate total amount of assets and voting securities to be held as a result of the acquisition:

Value of assets or voting securities to be held	Fee Amount
greater than \$50 million but less than \$100 million (as adjusted)	\$45,000
\$100 million or greater but less than \$500 million (as adjusted)	\$125,000
\$500 million or greater (as adjusted)	\$280,000

**Amount Paid**-Indicate the amount of the filing fee paid. This amount should be net of any banking or financial institution charges. Where an explanatory attachment is required, include in your explanation any adjustments to the acquisition price that serve to lower the fee from that which would otherwise be due. If there is no acquisition price or if the acquisition price may fall within a range that straddles two filing fee thresholds, state the transaction value on which the fee is based and explain the valuation method used. Include in your explanation a description of any exempt assets, the value assigned to each, and the valuation method used.

A Valuation Worksheet available from the Premerger Notification Office will be helpful in determining the value of a transaction for filing and fee purposes. This Worksheet need not be submitted with the Notification and Report Form, but it or something similar should be utilized and retained by the acquiring person in the event Commission staff has questions about the valuation of the transaction.

**Payer Identification**- Provide the 9-digit Taxpayer Identification Number (TIN) of the acquiring person and, if different from the filing person, the TIN of the payer(s) of the filing fee. A payer or filing person who is a natural person having no TIN must provide the name and social security number (SSN) of the payer. If the payer or filing person is a foreign person, only the name of the payer and the name of the filing person need be supplied if different.

**Method of Payment**-Check the box indicating the method of fee payment. If paying by electronic wire transfer (EWT), provide the name of the financial institution from which the EWT is being sent and the confirmation number.

To insure filing fees paid by EWT are attributed to the appropriate payer filing notification, the payer must provide the following information to the financial institution initiating the EWT:

The Department of Treasury's ABA Number: 021030004;  
and  
The Federal Trade Commission's ALC Number: 29000001.

If the name used to transmit the EWT differs from the filer's name, provide the alternative name. If the confirmation number is unavailable at the time notification is filed, provide this information by letter within one business day of filing.

If paying by certified check or money order send the payment to the Premerger Notification Office at the address above.

**Corrective Filing**-Put an X in the appropriate box to indicate whether the notification is a corrective filing being made for an acquisition that has already taken place in violation of the statute. Attach a detailed, written explanation signed by a company official explaining (1) how the violation occurred, (2) when and how the violation was discovered and (3) what steps will be taken to ensure compliance in the future.

**Transactions Subject to Foreign Antitrust Notification**-If to the knowledge or belief of the filing person at the time of filing this notification, a foreign antitrust or competition authority has been or will be notified of the proposed transaction, list the name of each such authority and the date or anticipated date of each such notification. Response to this item is voluntary.

**Cash Tender Offer**-Put an X in the appropriate box to indicate whether the acquisition is a cash tender offer.

**Bankruptcy**-Put an X in the appropriate box to indicate whether the acquired person's filing is being made by a trustee in bankruptcy or a debtor-in-possession for a transaction that is subject to section 363(b) of the Bankruptcy Code (11USC § 363).

**Early Termination**-Put an X in the yes box to request early termination of the waiting period. Notification of each grant of early termination will be published in the Federal Register as required by § 7A(b)(2) of the Clayton Act and on the FTC web site [www.ftc.gov](http://www.ftc.gov).

## ITEM 1

Note: When using the electronic version of the Form, Items 1(a) and 1(b) must be completed before proceeding to pages 2-15 of the Form.

**Item 1(a)**-Give the name and headquarters address of the person filing notification. The name of the person is the name of the ultimate parent entity included within that person.

**Item 1(b)**-Indicate whether the person filing notification is an acquiring person, an acquired person, or both an acquiring and acquired person. (See § 801.2.)

**Item 1(c)**-Put an X in the appropriate box to indicate whether the person in Item 1(a) is a corporation, unincorporated entity or other (specify).

**Item 1(d)**-Put an X in the appropriate box to indicate whether data furnished is by calendar year or fiscal year. If fiscal year, specify period.

**Item 1(e)**-Put an X in the appropriate box to indicate if this Form is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file notification on its behalf pursuant to § 803.2(a), or if this Form is being filed pursuant to § 803.4 on behalf of a foreign person. Then provide the name and mailing address of the entity filing notification on behalf of the reporting person named in Item 1(a) of the Form.

**Item 1(f)**-If an entity within the person filing notification other than the ultimate parent entity listed in Item 1(a) is the entity which is making the acquisition, or if the assets, voting securities or non-corporate interests of an entity other than the ultimate parent entity listed in Item 1(a) are being acquired, provide the name and mailing address of that entity and the percentage of its voting securities or non-corporate interest held by the person named in Item 1(a) above. (If control is effected by means other than the direct holding of the entity's voting securities, describe the intermediaries or the contract through which control is effected (see § 801.1(b)).

**Item 1(g)**-Print or type the name and title, firm name, address, telephone number, fax number and e-mail address of the individual to contact regarding this Notification and Report Form. (See § 803.20(b)(2)(ii).)

**Item 1(h)**-Foreign filing persons print or type the name and title, firm name, address, telephone number, fax number and e-mail address of an individual located in the United States designated for the limited purpose of receiving notice of the issuance of a request for additional information or documentary material. (See § 803.20(b)(2)(iii).)

## ITEM 2

**Item 2(a)**-Give the names of all ultimate parent entities of acquiring and acquired person which are parties to the acquisition whether or not they are required to file notification.

**Item 2(b)**-Put an X in all the boxes that apply to this acquisition.

**Item 2(c)**-*Acquiring persons* put an X in the box to indicate the highest threshold for which notification is being filed (see § 801.1(h)): \$50 million (as adjusted), \$100 million (as adjusted), \$500 million (as adjusted), 25% (if value of voting securities to be held is greater than \$1 billion, as adjusted), or 50%. The notification threshold selected should be based on voting securities only that will be held as a result of the acquisition.

Note that the 50% notification threshold is the highest threshold and should be used for any acquisition of 50% or more of the voting securities of an issuer, regardless of the value of the voting securities (e.g. an acquisition of 100% of the voting securities of an issuer, valued in excess of \$500 million (as adjusted) would cross the 50% notification threshold, not the \$500 million (as adjusted) threshold.

**Item 2(d)**-*Assets and voting securities held as a result of the acquisition* (to be completed by both acquiring and acquired persons). State:

**Item 2(d)(i)**-the value of voting securities;

**Item 2(d)(ii)**-the percentage of voting securities;

**Item 2(d)(iii)**-the value of assets;

**Item 2(d)(iv)**-the value of non-corporate interests;

**Item 2(d)(v)**-the aggregate total amount of voting securities, assets and non-corporate interests of the acquired person to be held by each acquiring person, as a result of the acquisition (see §§ 801.12, 801.13, and 801.14).

**Item 2(e)**-Acquiring persons must provide the name(s) of the person(s) who performed any fair market valuation used to determine the aggregate total value of the transaction reported in Item 2(d)(v).

### ITEM 3

**Item 3(a)**-*Description of acquisition.* Briefly describe the transaction. Include a list of the name and mailing address of each acquiring and acquired person, whether or not required to file notification. Indicate for each party whether assets or voting securities (or both) are to be acquired. Also indicate what consideration will be received by each party. In describing the acquisition, include the expected dates of any major events required to consummate the transaction (e.g., stockholders' meetings, filing of requests for approval, other public filings, terminations of tender offers) and the scheduled consummation date of the transaction.

If the voting securities are to be acquired from a holder other than the issuer (or an entity within the same person as the issuer) separately identify (if known) such holder and the issuer of the voting securities. Acquiring persons involved in tender offers should describe the terms of the offer.

**Item 3(b)(i)**-*Assets to be acquired.* This Item is to be completed only to the extent that the transaction is an acquisition of assets. Describe all general classes of assets (other than cash and securities) to be acquired by each party to the transaction, giving dollar values thereof.

Give the total value of the assets to be acquired in this transaction.

Examples of general classes of assets other than cash and securities are land, merchandising inventory, manufacturing plants (specify location and products produced), and retail stores. For each general class of assets, indicate the page or paragraph number of the contract or other document submitted with this Form in which the assets are more particularly described.

**Item 3(b)(ii)**-*Assets held by acquiring person.* (To be completed by acquiring persons). If assets of the acquired person (see § 801.13) are presently held by the person filing notification, furnish a description of each general class of such assets in the manner required by Item 3(b)(i), and the dollar value or estimated dollar value at the time they were acquired.

**Item 3(b)(iii)** -*Assets held by unincorporated entities.* This item is to be completed only to the extent that the transaction is an acquisition of non-corporate interests. Describe all general classes of assets (other than cash and securities) to be acquired by each party to the transaction. For examples of general classes of assets refer to Item 3(b)(i).

**Item 3(c)**-*Voting securities to be acquired.* Furnish the following information separately for each issuer whose voting securities will be acquired in the acquisition: (If, as a result of the acquisition, the acquiring person will hold 100 percent of the voting securities of the acquired issuer or if the acquisition is a merger or consolidation (see § 801.2(d)), the parties may so state and provide the total dollar value of the transaction instead of responding to Items 3(c)(i)-3(c)(vi).

**Item 3(c)(i)**-List each class of voting securities (including convertible voting securities) which will be outstanding after the acquisition has been completed. If there is more than one class of voting securities, include a description of the voting rights of each class. Also list each class of non-voting securities which will be acquired in the acquisition;

**Item 3(c)(ii)**-Total number of shares of each class of securities listed which will be outstanding after the acquisition has been completed;

**Item 3(c)(iii)**-Total number of shares of each class of securities listed which will be acquired in this acquisition. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

**Item 3(c)(iv)**-Identity of each person acquiring any securities of any class listed. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

**Item 3(c)(v)**-Dollar value of securities of each class listed to be acquired in this transaction (see § 801.10). If there is more than one acquiring person of any class of securities, show data separately for each acquiring person (If the exact dollar value cannot be determined at the time of filing, provide an estimated value and indicate the basis on which the estimate was made);

**Item 3(c)(vi)**-Total number of each class of securities listed which will be held by acquiring person(s) after the acquisition has been accomplished. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

**Item 3(d)**-Furnish copies of final or most recent versions of all documents which constitute the agreement among the acquiring person(s) and the person(s) whose voting securities or assets are to be acquired. (For paper copy submissions, do not attach these documents to the Form.)

### ITEM 4

Furnish one copy of each of the following documents. For each entity included within the person filing notification which has prepared its own such documents different from those prepared by the person filing notification, furnish, in addition, one copy of each document from each such other entity. Furnish copies of:

**Item 4(a)**-all of the following documents which have been filed with the United States Securities and Exchange Commission (or are to be filed contemporaneously in connection with this acquisition); the most recent proxy statement and Form 10-K, each dated not more than three years prior to the date of this Notification and Report Form; all Forms 10-Q and 8-K filed since the end of the period reflected by the Form 10-K being supplied; any registration statement filed in connection with the transaction for which notification is being filed; if the acquisition is a tender offer, Schedule TO. Alternatively, the person filing notification may incorporate a document by reference to an internet address directly linking to the document (see §803.2(e)(2));

**NOTE:** In response to Item 4(a), the person filing notification may incorporate by reference documents submitted with an earlier filing as explained in the staff formal interpretations dated April 10, 1979, and April 7, 1981, and in § 803.2(e).

**Item 4(b)**-the most recent annual reports and most recent annual audit reports (of person filing notification and of each unconsolidated United States issuer included within such person) and, if different, the most recently regularly prepared balance sheet of the person filing notification and of each unconsolidated United States issuer included within such person. Alternatively, the person filing notification may incorporate a document by reference to an internet address directly linking to the document (see §803.2(e)(2));

**Item 4(c)**-all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and indicate (if not contained in the document itself) the date of preparation, and the name and title of each individual who prepared each such document.

Persons filing notification may provide an optional index of documents called for by Item 4 of the Answer Sheets.

**NOTE:** If the person filing notification withholds any documents called for by Item 4(c) based on a claim of privilege, the person must provide a statement of reasons for such noncompliance as specified in the staff formal interpretation dated September 13, 1979, and § 803.3(d).

#### ITEMS 5 through 8

**NOTE:** For Items 5 through 8, the acquired person should limit its response in the case of an acquisition of assets, to the assets to be sold, in the case of an acquisition of non-corporate interests, to the unincorporated entity being acquired, and in the case of an acquisition of voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such issuer. A person filing as both acquiring and acquired may be required to provide a separate response to these items in each capacity so that it can properly limit its response as an acquired person. (See § 803.2(b) and (c).)

**Items 5(a)-5(c):** These items request information regarding dollar revenues and lines of commerce at three NAICS levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) All persons must submit certain data at the 6-digit NAICS industry code level. To the extent that dollar revenues are derived from manufacturing operations (NAICS Sectors 31-33), data must also be submitted at the 7-digit product class level and 10-digit product code level (NAICS-based codes). Where certain published NAICS industry codes contain only 5 digits, the filing person should add a zero (0) after the fifth (5<sup>th</sup>) digit.

**NOTE:** See "References" listed in the General Instructions to the Form. Refer to the *2002 NAICS Manual* for the 6-digit industry codes and the *2002 Numerical List of Manufactured and Mineral Products (2002 Numerical List)* for the 7-digit product classes and 10-digit product codes. Report revenues for the 7-digit NAICS product classes and 10-digit NAICS product codes using the codes in the columns labeled "Product code" in the *2002 Numerical List*.

Nondepository credit intermediation (NAICS Industry Group Code 5222); securities, commodity contracts, and other financial investments (NAICS Subsector 523); funds, trusts, and other financial vehicles (NAICS Subsector 525); real estate (NAICS Subsector 531); lessors of nonfinancial intangible assets, except copyright works (NAICS Subsector 533); and management of companies and enterprises (NAICS Subsector 551) should identify or explain the revenues reported (e.g. dollar sales receipts).

Persons filing notification should include the total dollar revenues for all entities included within the person filing notification at the time this Notification and Report Form is prepared (even if such entities have become included within the person since 2002). For example, if the person filing notification acquired an entity in 2003, it must include that entity's 2002 revenues in items 5(a) and 5(b)(i). It must also include that entity's most recent year's revenues in Item 5(b)(iii) and/or Item 5(c).

**Item 5(a)**-*Dollar revenues by industry.* Provide aggregate 6-digit NAICS industry data for 2002.

**Item 5(b)(i)**-*Dollar revenues by manufactured product.* Provide the following information on the aggregate operations for the person filing notification for 2002 for each 10-digit NAICS product of the person in NAICS Sectors 31-33 (manufacturing industries).

**NOTE:** Where the *2002 Numerical List* denotes footnote 1 at the end of a specific Subsector, refer to Appendices A, and then B for detail collected in a specified Current Industrial Report. You must provide 10-digit NAICS product codes and descriptions listed in Appendix B.

**Item 5(b)(ii)**-*Products added or deleted.* Within NAICS Sectors 31-33 (manufacturing industries), identify each product of the person filing notification added or deleted subsequent to 2002, indicate the year of addition or deletion, and state total dollar revenues in the most recent year for each product that has been added. Products may be identified either by 10-digit NAICS product code or in the manner ordinarily used by the person filing notification.

Do not include products added since 2002 by reason of mergers or acquisitions of entities occurring since 2002. Dollar revenues derived from such products should be included in response to Item 5(b)(i). However, if an entity acquired since 2002 by the person filing notification (and now included within the person) itself has added any products since 2002, these products and the dollar revenues derived therefrom should be listed here. Products deleted by reason of dispositions of assets constituting less than substantially all of the assets of an entity since 2002 should also be listed here.

**Item 5(b)(iii)**-*Dollar revenues by manufactured product class.* Provide the following information concerning the aggregate operations of the person filing notification for the most recent year for each 7-digit NAICS product class within NAICS Sectors 31-33 (manufacturing industries) in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 7-digit NAICS product class may be provided if a statement describing the method of estimation is furnished.

**Item 5(c)-Dollar revenues by non-manufacturing industry.** Provide the following information concerning the aggregate operations of the person filing notification for the most recent year for each 6-digit NAICS industry code in NAICS Sectors other than 31-33 (manufacturing industries) in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 6-digit NAICS industry code may be provided if a statement describing the method of estimation is furnished. Industries for which the dollar revenues totaled less than one million dollars in the most recent year may be omitted.

**NOTE:** This million dollar minimum is applicable only to Item 5(c).

#### **JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY**

**Item 5(d)**-Supply the following information only if the acquisition is the formation of a joint venture corporation or unincorporated entity. (See § 801.40.)

**Item 5(d)(i)**-List the name and mailing address of the joint venture corporation or unincorporated entity.

**Item 5(d)(ii)(A)**-List contributions that each person forming the joint venture corporation or unincorporated entity has agreed to make, specifying when each contribution is to be made and the value of the contribution as agreed by the contributors.

**Item 5(d)(ii)(B)**-Describe any contracts or agreements whereby the joint venture corporation or unincorporated entity will obtain assets or capital from sources other than the persons forming it.

**Item 5(d)(ii)(C)**-Specify whether and in what amount the persons forming the joint venture corporation or unincorporated entity have agreed to guarantee its credit or obligations.

**Item 5(d)(ii)(D)**-Describe fully the consideration which each person forming the joint venture corporation or unincorporated entity will receive in exchange for its contribution(s).

**Item 5(d)(iii)**-Describe generally the business in which the joint venture corporation or unincorporated entity will engage, including location of headquarters and principal plants, warehouses, retail establishments or other places of business, its principal types of products or activities, and the geographic areas in which it will do business.

**Item 5(d)(iv)**-Identify each 6-digit NAICS industry code in which the joint venture corporation or unincorporated entity will derive dollar revenues. If the joint venture corporation or unincorporated entity will be engaged in manufacturing also specify each 7-digit NAICS product class in which it will derive dollar revenues.

#### **ITEM 6**

This item need not be completed by a person filing notification only as an acquired person if only assets are to be acquired. Persons filing notification may respond to Items 6(a), 6(b), or 6(c) by referencing a "document attachment" furnished with this Form if the information so referenced is a complete response and is up-to-date and accurate. Indicate for each Item the specific page(s) of the document that are responsive to that Item.

**Item 6(a)-Entities within the person filing notification.** List the name and headquarters mailing address of each entity included within the person filing notification. Entities with total assets of less than \$10 million may be omitted.

**Item 6(b)-Shareholders of person filing notification.** For each entity (including the ultimate parent entity) included within the person filing notification the voting securities of which are held (see § 801.1(c)) by one or more other persons, list the issuer and class of voting securities, the name and headquarters mailing address of each other person which holds five percent or more of the outstanding voting securities of the class and the number and percentage held by that person. Holders need not be listed for entities with total assets of less than \$10 million.

**Item 6(c)-Holdings of person filing notification.** If the person filing notification holds voting securities of any issuer not included within the person filing notification, list the issuer and class, the number and percentage held, and (optionally) the entity within the person filing notification which holds the securities. Holdings of less than five percent of the outstanding voting securities of any issuers, and holding of issuers with total assets of less than \$10 million may be omitted.

#### **ITEM 7**

If, to the knowledge or belief of the person filing notification, the acquiring person filing notification derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which any acquired person that is a party to the acquisition also derived dollar revenues in the most recent year (or in which a joint venture corporation or unincorporated entity will derive dollar revenues), then for each such 6-digit NAICS industry code:

**Item 7(a)**-supply the 6-digit NAICS industry code and description for the industry;

**Item 7(b)**-list the name of each person which is a party to the acquisition which also derived dollar revenues in the 6-digit industry;

**Item 7(c)-Geographic market information:**

**Item 7(c)(i)**-for each 6-digit NAICS industry code within NAICS Sectors 31-33 (manufacturing industries) listed in Item 7(a) above, list the states or, if desired, portions thereof in which, to the knowledge or belief of the person filing notification, the products in that 6-digit NAICS code produced by the person filing notification are sold without a significant change in their form, whether they are sold by the person filing notification or by others to whom such products have been sold or resold;

**Item 7(c)(ii)**- for each 6-digit NAICS industry code within NAICS Sectors or Subsectors 11 (agriculture, forestry, fishing and hunting); 21 (mining); 22 (utilities); 23 (construction); 48-49 (transportation and warehousing); 511 (publishing industries); 515 (broadcasting); 517 (telecommunications); and 71 (arts, entertainment and recreation) listed in item 7(a) above, list the states or, if desired, portions thereof in which the person filing notification conducts such operations;

**Item 7(c)(iii)**-for each 6-digit NAICS industry code within NAICS Sector 42 (wholesale trade) listed in Item 7(a) above, list the states or, if desired, portions thereof in which the customers of the person filing notification are located;

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**Item 7(c)(iv)**-for each 6-digit NAICS industry code within NAICS Sectors or Subsectors 44-45 (retail trade); 512 (motion picture and sound recording industries); 521 (monetary authorities-central bank); 522 (credit intermediation and related activities); 532 (rental and leasing services); 62 (health care and social assistance); 72 (accommodations and food services); 811 (repair and maintenance); and 812 (personal and laundry services) listed in Item 7(a) above, provide the address, **arranged by state, county and city or town**, of each establishment from which dollar revenues were derived in the most recent year by the person filing notification;

**Item 7(c)(v)**- for each 6-digit NAICS industry code within NAICS Subsectors 516 (internet publishing & broadcasting); 518 (internet service providers); 519 (other information services); 523 (securities, commodity contracts and other financial investments and related activities); 525 (funds, trusts and other financial vehicles); 53 (real estate and rental and leasing); 54 (professional, scientific and technical services); 55 (management of companies and enterprises); 56 (administrative and support and waste management and remediation services); 61 (educational services); 813 (religious, grantmaking, civic, professional, and similar organizations); and NAICS Industry Group 5242 (insurance agencies and brokerages, and other insurance related activities) listed in Item 7(a) above, list the states or, if desired, portions thereof in which establishments were located from which the person filing notification derived revenues in the most recent year; and

**Item 7(c)(vi)**-for each 6-digit NAICS industry code within NAICS Industry Group 5241 (insurance carriers) listed in Item 7(a) above, list the state(s) in which the person filing notification is licensed to write insurance.

**NOTE:** Except in the case of those NAICS major industries in the Sectors and Subsectors mentioned in Item 7(c)(iv) above, the person filing notification may respond with the word "national" if business is conducted in all 50 states.

## ITEM 8

**Item 8-Previous acquisitions** (to be completed by acquiring persons). Determine each 6-digit NAICS industry code listed in Item 7(a) above, in which the person filing notification derived dollar revenues of \$1 million or more in the most recent year and in which either the acquired issuer derived revenues of \$1 million or more in the recent year (or, in which, in the case of the formation of a joint venture corporation or unincorporated entity, the joint venture corporation or unincorporated entity reasonably can be expected to derive revenues of \$1 million or more), or revenues of \$1 million or more in the most recent year were attributable to the acquired assets. For each such 6-digit NAICS industry code, list all acquisitions made by the person filing notification in the five years prior to the date of filing of entities deriving dollar revenues in that 6-digit NAICS industry code. List only acquisitions of 50 percent or more of the voting securities of an issuer which had annual net sales or total assets greater than \$10 million in the year prior to the acquisition, and any acquisitions of assets valued at or above the statutory size-of-transaction test at the time of their acquisition.

For each such acquisition, supply:

- (a) the name of the entity acquired;
- (b) the headquarters address of the entity prior to the acquisition;
- (c) whether securities or assets were acquired;
- (d) the consummation date of the acquisition; and
- (e) the 6-digit (NAICS code) industries by (number and description) identified above in which the acquired entity derived dollar revenues.

### CERTIFICATION- (See § 803.6.)

The language found in 28 U.S.C. § 1746 relating to unsworn declarations under penalty of perjury may be used instead of notarization of the certification.

# **Exhibit B**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JOINT APPLICATION OF WEST PENN  
POWER COMPANY doing business as  
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**

**COPY**

**DOCKET NOS. A-2010-2176520  
A-2010-2176732**

**OBJECTIONS OF WEST PENN POWER COMPANY, TRANS-ALLEGHENY  
INTERSTATE LINE COMPANY, AND FIRSTENERGY CORP.  
TO THE INTERROGATORIES (SET IV)  
OF THE OFFICE OF CONSUMER ADVOCATE**

Pursuant to 66 Pa. C.S. §333(d) and 52 Pa. Code §5.342, West Penn Power Company, Trans-Allegheny Interstate Line Company, and FirstEnergy Corp. (collectively, the Companies) hereby object to Set IV Interrogatory Nos. 8 and 9 propounded by the Office of Consumer Advocate (OCA). A copy of the Interrogatories is attached as Appendix A and incorporated herein by reference.

**OBJECTIONS TO OCA SET IV INTERROGATORY NO. 8**

1. The Commission's regulations at 52 Pa. Code § 5.361 provide that a party is permitted to seek discovery that requests another party to make a study or analysis "if the study or analysis cannot reasonably be conducted by the party making the request." The Companies object to OCA Interrogatory No. 8 because it requests that the Companies' expert conduct an additional analysis that could reasonably be conducted by the OCA. The OCA has retained Richard Hahn as an expert witness in this proceeding to address, among other things, market



power. *See* OCA Prehearing Memorandum, p. 6. Therefore, the OCA has the capability of conducting the kind of market power analysis it is requesting from the Companies' expert. In addition, a demand that the Companies' expert conduct an analysis that can, and should, be prepared by the OCA's own witness(es) represents an unreasonable burden and expense, which is a further grounds for objection, under 52 Pa. Code § 5.361(a)(2).

#### **OBJECTIONS TO OCA SET IV INTERROGATORY NO. 9**

2. Information and documents submitted to the government pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. §18a (HSR Act), including "second requests" for information made by the government after the initial filing, are privileged communications subject to strict confidentiality requirements. *See* 15 U.S.C. §18a(h). The confidentiality of such material has been made an essential element of the HSR Act and its implementation by the Federal Trade Commission and the U.S. Department of Justice for several reasons. First, there is a broad range of information that must be provided to the government pertaining to the merging parties and their affiliates, including trade secrets, proprietary information and commercially sensitive information. It would be highly prejudicial to the merging parties if their competitors could gain access to such material. Second, because the information is part of a wide-ranging government review, its release would improperly reveal to third parties the nature, extent and direction of the government's pre-decisional investigative and deliberative process, even if that process does not lead to formal action. Third, because the breadth and scope of the government's review is not constrained by the rules and procedures of formal litigation discovery, permitting third-party access to the merging parties' submissions would be an abuse of the discovery process because it would permit the inquirers to conduct an unfocused "fishing expedition" into the vast amount of material that must be accumulated and

supplied to the government. Finally, the privilege against disclosure recognizes that third-party access would have a chilling effect on both the government and the merging parties that would inhibit the free and open communication and exchange between them that the HSR Act was designed to promote.

3. For the reasons set forth in Paragraph No. 2, above, OCA Interrogatory No. 9 improperly seeks disclosure of information, documents and communications that are privileged and confidential. Pursuant to the Commission's regulations at 52 Pa. Code § 5.361(a)(3), such information, documents and communications are not discoverable.

4. In addition, a substantial amount of documents and information that would be comprehended by OCA Interrogatory No. 9 would relate to competitive business lines and would include trade secrets and proprietary and commercially sensitive information of entities other than the Companies. Consequently, such information and documents should not be discoverable.

5. OCA Interrogatory No. 9 is also improper because it is overly broad and excessive in scope and therefore objectionable under 52 Pa. Code § 5.361(a)(2). As previously explained, the materials provided to the government pursuant to the HSR Act are very broad and have no necessary correlation to the material that is within the scope of discovery in this proceeding.

6. The Companies object to OCA Interrogatory No. 9 to the extent that it seeks information, documents and/or materials from the Companies that contain trade secrets, other confidential research, developmental or commercial information that is of a proprietary or commercially sensitive nature.

7. Subject to, and without waiving, its objections, the Companies are prepared to pursue with the OCA means by which specific documents might be provided.

WHEREFORE, the Objections of West Penn Power Company, Trans-Allegheny Interstate Line Company, and FirstEnergy Corp. to the Office of Consumer Advocate's Set IV Interrogatories should be granted.

Respectfully submitted,

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*Counsel for West Penn Power  
Company and Trans-Allegheny  
Interstate Line Company*

Date: June 30, 2010



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*Counsel for FirstEnergy Corp.*

## **APPENDIX A**

Joint Application of West Penn Power Company doing business as  
Allegheny Power Company, 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  
Docket Nos. A-2010-2176520  
A-2010-2176732

Office of Consumer Advocate  
Interrogatories Set IV

8. Please provide a market power analysis similar to those provided in Exhibit J-7 using a market definition that assumes that ATSI is in PJM but that excludes the ComEd zone and also excludes PJM East. Please provide a list of the individual generating units that comprise this market in an electronic file format (such as Excel). Also include the owner, the unit's size in MW, the unit's assumed dispatch price in \$/MWH, and the geographic area or zone where that unit is located.
9. Please provide a complete copy of the Joint Applicant's Hart-Scott-Rodino filing.

# **Exhibit C**

File

Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Tel: 215.963.5000  
Fax: 215.963.5001  
www.morganlewis.com

**Morgan Lewis**  
COUNSELORS AT LAW

**Kenneth M. Kulak**  
Partner  
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August 2, 2010

**VIA FEDERAL EXPRESS**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Joint Application of West Penn Power Company doing business as 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, A-2010-2176732**

Dear Secretary Chiavetta:

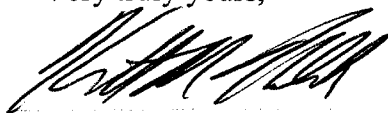
Enclosed for filing are Certificates of Service (original and three copies) evidencing service upon the parties of record of the Responses of West Penn Power Company, Trans-Allegheny Interstate Line Company, and FirstEnergy Corp. ("Joint Applicants") to the Interrogatories (Set VII, Questions, 1-3, 5-10, 13-18 and Set VIII, Questions 1-12) of the Office of Consumer Advocate ("OCA").

The Response to OCA Set VIII relates to the Hart-Scott-Rodino filing materials provided only to OCA, the Office of Small Business Advocate ("OSBA"), and the Office of Trial Staff ("OTS")

Rosemary Chiavetta  
August 2, 2010  
Page 2

by the Joint Applicants in response to OCA Set IV, Question 9. This Response is similarly being provided only to the OCA, OSBA and OTS and is subject to the "highly sensitive" provisions of the Protective Order entered in this proceeding.

Very truly yours,



Kenneth M. Kulak

KMK/tp  
Enclosures

c: Per Certificate of Service (w/encls.)



# **Exhibit D**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JOINT APPLICATION OF WEST PENN** :  
**POWER COMPANY doing business as** :  
**ALLEGHENY POWER, TRANS-** :  
**ALLEGHENY INTERSTATE LINE** :  
**COMPANY AND FIRSTENERGY CORP.** : **DOCKET NOS. A-2010-2176520**  
**FOR A CERTIFICATE OF PUBLIC** : **A-2010-2176732**  
**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** :

TO WHOM IT MAY CONCERN;

The undersigned is the expert, counsel, employee, member or officer of Direct Energy Services, LLC and the Retail Energy Supply Association (RESA) (the retaining party).

The undersigned has read and understands the Protective Order issued in the above-captioned proceeding deals with the treatment of Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order. The undersigned agrees that any Confidential Information shall be used or disclosed only for purposes of preparation for, and conduct of the above-captioned proceeding, and any administrative or judicial review thereof, and shall not be disclosed or used for purposes of business or competition.

  
Signature

Daniel Clearfield  
Print Name

213 Market Street, 8th Floor  
Harrisburg, PA 17101  
Address

Date: June 30, 2010

Eckert Seamans Cherin & Mellott, LLC  
Employer

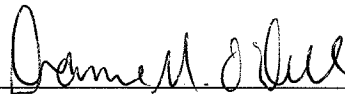
**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JOINT APPLICATION OF WEST PENN** :  
**POWER COMPANY doing business as** :  
**ALLEGHENY POWER, TRANS-** :  
**ALLEGHENY INTERSTATE LINE** :  
**COMPANY AND FIRSTENERGY CORP.** : **DOCKET NOS. A-2010-2176520**  
**FOR A CERTIFICATE OF PUBLIC** : **A-2010-2176732**  
**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** :

TO WHOM IT MAY CONCERN;

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\_\_\_\_\_  
Signature

Deanne M. O'Dell

\_\_\_\_\_  
Print Name

213 Market Street, 8th Floor

Harrisburg, PA 17101

\_\_\_\_\_  
Address

Date: July 11, 2010

Eckert Seamans Cherin & Mellott, LLC

\_\_\_\_\_  
Employer

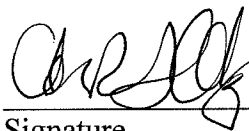
**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JOINT APPLICATION OF WEST PENN** :  
**POWER COMPANY doing business as** :  
**ALLEGHENY POWER, TRANS-** :  
**ALLEGHENY INTERSTATE LINE** :  
**COMPANY AND FIRSTENERGY CORP.** : **DOCKET NOS. A-2010-2176520**  
**FOR A CERTIFICATE OF PUBLIC** : **A-2010-2176732**  
**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** :

TO WHOM IT MAY CONCERN;

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\_\_\_\_\_  
Signature

Carl R. Shultz

\_\_\_\_\_  
Print Name

213 Market Street, 8th Floor

Harrisburg, PA 17101

\_\_\_\_\_  
Address

Date: June 30, 2010

Eckert Seamans Cherin & Mellott, LLC  
Employer

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

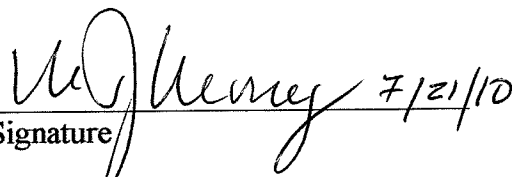
**JOINT APPLICATION OF WEST PENN  
POWER COMPANY doing business as  
ALLEGHENY POWER, TRANS-  
ALLEGHENY INTERSTATE LINE  
COMPANY AND FIRSTENERGY CORP.  
FOR A CERTIFICATE OF PUBLIC  
CONVENIENCE UNDER SECTION  
1102(A)(3) OF THE PUBLIC UTILITY CODE  
APPROVING A CHANGE OF CONTROL OF  
WEST PENN POWER COMPANY AND  
TRANS-ALLEGHENY INTERSTATE LINE  
COMPANY**

**DOCKET NOS. A-2010-2176520  
A-2010-2176732**

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Signature

Mathew J. Morey  
Print Name

409 Cambridge Road  
Alexandria, VA 22314-4813213  
Address

Date: July , 2010


Christensen Associates Energy Consulting, LLC  
Employer

Carl R Shultz/ESCM  
06/30/2010 01:47 PM

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To John Baillie <baillie@pennfuture.org>  
cc "akanagy@postschell.com" <akanagy@postschell.com>, "akaster@state.pa.us" <akaster@state.pa.us>, "asetzer@ryanrussell.com" <asetzer@ryanrussell.com>, "barbalex@ctel.net" <barbalex@ctel.net>, "bingamanb@firstenergycorp.com" <bingamanb@firstenergycorp.com>, "blw@bwilleylaw.com" <blw@bwilleylaw.com>, "carwright@state.pa.us" <carwright@state.pa.us>, "cmincavage@mwn.com" <cmincavage@mwn.com>, "Charles E. Thomas, Jr" <cthomasjr@thomaslonglaw.com>, "cswick@mwn.com" <cswick@mwn.com>, Daniel Clearfield/ESCM@ESCM, "dasmus@state.pa.us" <dasmus@state.pa.us>, "David.Fein@Constellation.com" <David.Fein@Constellation.com>, "david\_dulick@prea.com" <david\_dulick@prea.com>, Deanne M O'Dell/ESCM@ESCM, "Divesh.Gupta@Constellation.com" <Divesh.Gupta@Constellation.com>, "DLawrence@paoca.org" <DLawrence@paoca.org>, "dwilliamson@spilmanlaw.com" <dwilliamson@spilmanlaw.com>, "d.vollero@ycswa.com" <d.vollero@ycswa.com>, "echeung@cleanair.org" <echeung@cleanair.org>, "eogden@ryanrussell.com" <eogden@ryanrussell.com>, "george.bibikos@klgates.com" <george.bibikos@klgates.com>, "gjack@duqlight.com" <gjack@duqlight.com>, "jamcnelly1@arippa.org" <jamcnelly1@arippa.org>, "jcris@aol.com" <jcris@aol.com>, "jhorner@paoca.org" <jhorner@paoca.org>, "Jennifer M. Sultzaberger" <jms@thomaslonglaw.com>, "Joe\_minott@cleanair.org" <Joe\_minott@cleanair.org>, "jpetrisek@alleghenyenergy.com" <jpetrisek@alleghenyenergy.com>, "katharine.mapes@spiegelmcd.com" <katharine.mapes@spiegelmcd.com>, "kgeer@duqlight.com" <kgeer@duqlight.com>, "kklapkowski@state.pa.us" <kklapkowski@state.pa.us>, "kkulak@morganlewis.com" <kkulak@morganlewis.com>, "mgang@postschell.com" <mgang@postschell.com>, "rhahn@lacapra.com" <rhahn@lacapra.com>, "Regina L. Matz" <rmatz@thomaslonglaw.com>, "robinson@citizenpower.com" <robinson@citizenpower.com>, "rpalmer@alleghenyenergy.com" <rpalmer@alleghenyenergy.com>, "rstrickler@gslsc.com" <rstrickler@gslsc.com>, "sbruce@mwn.com" <sbruce@mwn.com>, "Scott.J.Rubin@gmail.com" <Scott.J.Rubin@gmail.com>, "scott.strauss@spiegelmcd.com" <scott.strauss@spiegelmcd.com>, "shjordan@rothmangordon.com" <shjordan@rothmangordon.com>, "ssp@bwilleylaw.com" <ssp@bwilleylaw.com>, "starkw@firstenergycorp.com" <starkw@firstenergycorp.com>, "tgadsden@morganlewis.com" <tgadsden@morganlewis.com>, "tjsniscak@hmslegal.com" <tjsniscak@hmslegal.com>, "tmccloskey@paoca.org" <tmccloskey@paoca.org>, "Thomas T. Niesen" <tniesen@thomaslonglaw.com>, "tsstewart@hmslegal.com" <tsstewart@hmslegal.com>, "vkarandrikas@mwn.com" <vkarandrikas@mwn.com>, "welehman@hmslegal.com" <welehman@hmslegal.com>

bcc Carl R Shultz/ESCM

Subject Re: FirstEnergy / Allegheny Energy Merger, PUC docket  
Nos. A-2010-2176520 and A-2010-2176732 - Protective  
Order Affirmations - Direct Energy and RESA 

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For Follow Up:  Normal Priority

History:  This message has been replied to.

All,

The signed Protective Order affirmations of Dan Clearfield and myself for on behalf of Direct Energy and RESA are attached.



SIGNED PAGES.PDF

---

Carl R. Shultz, Esquire  
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Email: cshultz@eckertseamans.com  
www.eckertseamans.com

This communication may contain federal tax advice. Recent IRS regulations require us to advise you that any discussion of federal tax issues in this communication was not intended or written to be used and cannot be used to avoid any penalty under federal tax law or to promote, market or recommend any transaction or matter addressed herein. Only formal, written tax opinions meeting these IRS requirements may be relied upon for the purpose of avoiding tax-related penalties. Please contact one of the Firm's Tax partners if you have any questions regarding federal tax advice.

Carl R Shultz/ESCM  
07/12/2010 11:58 AM

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To "Ted Robinson" <robinson@citizenpower.com>, "Allison C. Kaster" <akaster@state.pa.us>, "Anthony D. Kanagy" <akanagy@postschell.com>, "Alan Michael Seltzer" <aseltzer@ryanrussell.com>, "John Baillie" <baillie@pennfuture.org>, "Carrie B. Wright" <carwright@state.pa.us>, "BLW" <blw@bwilleylaw.com>, "Charles E. Thomas, Jr." <cthomasjr@thomaslonglaw.com>, "Mincavage, Charis" <CMincava@mwn.com>, "Zwick, CJ" <CZwick@mwn.com>, "Daniel G. Asmus" <dasmus@state.pa.us>, "David Fein" <david.fein@constellation.com>, "David J. Dulick" <david\_dulick@prea.com>, "Divesh Gupta" <divesh.gupta@constellation.com>, "Derrick Price Williamson" <dwilliamson@spilmanlaw.com>, "W. Edwin Ogden" <eogden@ryanrussell.com>, "Eric Cheung" <echeung@cleanair.org>, "Gary A. Jack" <gjack@duqlight.com>, "Jennifer M. Sultzberger" <jms@thomaslonglaw.com>, "Dave Vollero" <d.vollero@ycswa.com>, "Johnnie E. Simms" <josimms@state.pa.us>, "Joe Minott" <joe\_minott@cleanair.org>, "Kelly L. Geer" <kgeer@duqlight.com>, "Katharine M. Mapes" <katharine.mapes@spiegelmc.com>, "Kurt E. Klapkowski" <kklapkowsk@state.pa.us>, "Charles MacPhedran" <mcphedran@pennfuture.org>, "Michael W. Gang" <mgang@postschell.com>, "Kenneth M. Kulak" <kkulak@morganlewis.com>, "Regina L. Matz" <rmatz@thomaslonglaw.com>, "Theodore S. Robinson" <robinson@citizenpower.com>, "Robert M. Strickler" <rstrickler@gslsc.com>, "Randall B. Palmer" <rpalmer@alleghenyenergy.com>, "Scott J. Rubin" <scott.j.rubin@gmail.com>, "Bruce, Susan" <SBruce@mwn.com>, "Scott H. Strauss" <scott.strauss@spiegelmc.com>, "Irwin A. Popowsky" <spopowsky@paoca.org>, "Stephen H. Jordan" <shjordan@rothmangordon.com>, "Wendy E. Stark" <starkw@firstenergycorp.com>, "Sally Patton" <ssp@bwilleylaw.com>, "Thomas P. Gadsden" <tgadsden@morganlewis.com>, "Thomas J. Sniscak" <TJSniscak@hmslegal.com>, "Karandrikas, Vicki" <VKarandr@mwn.com>, "Thomas P. Niesen" <tniesen@thomaslonglaw.com>, "Todd S. Stewart" <TSSStewart@hmslegal.com>, "William E. Lehman" <WELehman@hmslegal.com>, "William R. Lloyd" <wlloyd@state.pa.us>

cc Daniel Clearfield/ESCM@ESCM, Deanne M O'Dell/ESCM@ESCM, Carl R Shultz/ESCM@ESCM

bcc

Subject FirstEnergy/Allegheny Merger Proceeding - Docket No. A-2010-2176520 - Additional Protective Order Affirmation - Direct Energy and RESA 

All,

The signed Protective Order affirmation of Deanne O'Dell on behalf of Direct Energy and RESA is attached.





ODELL PAGE.PDF

---

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[www.eckertseamans.com](http://www.eckertseamans.com)

This communication may contain federal tax advice. Recent IRS regulations require us to advise you that any discussion of federal tax issues in this communication was not intended or written to be used and cannot be used to avoid any penalty under federal tax law or to promote, market or recommend any transaction or matter addressed herein. Only formal, written tax opinions meeting these IRS requirements may be relied upon for the purpose of avoiding tax-related penalties. Please contact one of the Firm's Tax partners if you have any questions regarding federal tax advice.

Carl R Shultz/ESCM  
07/27/2010 01:55 PM

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<blw@bwilleylaw.com>, "carwright@state.pa.us"  
<carwright@state.pa.us>, "cmincavage@mwn.com"  
<cmincavage@mwn.com>, "Charles E. Thomas, Jr"  
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<dasmus@state.pa.us>, "David.Fein@Constellation.com"  
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<d.vollero@ycswa.com>, "echeung@cleanair.org"  
<echeung@cleanair.org>, "eogden@ryanrussell.com"  
<eogden@ryanrussell.com>, "gjack@duqlight.com"  
<gjack@duqlight.com>, "george.bibikos@klgates.com"  
<george.bibikos@klgates.com>, "jhorner@paoca.org"  
<jhorner@paoca.org>, "jcris@aol.com" <jcris@aol.com>,  
"jamcnelly1@arippa.org" <jamcnelly1@arippa.org>,  
"Jennifer M. Sultzaberger" <jms@thomaslonglaw.com>,  
"Joe\_minott@cleanair.org" <Joe\_minott@cleanair.org>,  
"jpetrisek@alleghenyenergy.com"  
<jpetrisek@alleghenyenergy.com>,  
"katharine.mapes@spiegelmc.com"  
<katharine.mapes@spiegelmc.com>,  
"kgeer@duqlight.com" <kgeer@duqlight.com>,  
"kklapkowski@state.pa.us" <kklapkowski@state.pa.us>,  
"kkulak@morganlewis.com" <kkulak@morganlewis.com>,  
"mgang@postschell.com" <mgang@postschell.com>,  
"rhahn@lacapra.com" <rhahn@lacapra.com>, "Regina L.  
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"robinson@citizenpower.com"  
<robinson@citizenpower.com>,  
"rpalmer@alleghenyenergy.com"  
<rpalmer@alleghenyenergy.com>, "sbruce@mwn.com"  
<sbruce@mwn.com>, "Scott.J.Rubin@gmail.com"  
<Scott.J.Rubin@gmail.com>, "rstrickler@gslsc.com"  
<rstrickler@gslsc.com>, "scott.strauss@spiegelmc.com"  
<scott.strauss@spiegelmc.com>,  
"shjordan@rothmangordon.com"  
<shjordan@rothmangordon.com>, "ssp@bwilleylaw.com"  
<ssp@bwilleylaw.com>, "starkw@firstenergycorp.com"  
<starkw@firstenergycorp.com>,  
"tgadsden@morganlewis.com"  
<tgadsden@morganlewis.com>, "tjnsniscak@hmslegal.com"  
<tjnsniscak@hmslegal.com>, "Thomas T. Niesen"  
<tniesen@thomaslonglaw.com>, "tsstewart@hmslegal.com"  
<tsstewart@hmslegal.com>, "vkarandrikas@mwn.com"  
<vkarandrikas@mwn.com>, "tmccloskey@paoca.org"  
<tmccloskey@paoca.org>, "welehman@hmslegal.com"  
<welehman@hmslegal.com>

cc Daniel Clearfield/ESCM@ESCM, Deanne M  
O'Dell/ESCM@ESCM

bcc

Subject FirstEnergy / Allegheny Energy Merger, PUC docket Nos.

All,

The signed Protective Order affirmation of Direct Energy's expert, Mathew J. Morey, is attached.



DIRECT EXPERT SIGNATURE PAGE.PDF

---

Carl R. Shultz, Esquire  
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[www.eckertseamans.com](http://www.eckertseamans.com)

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# **Exhibit E**

Carl R Shultz/ESCM  
08/20/2010 09:42 AM

To kkulak@morganlewis.com  
cc Daniel Clearfield/ESCM@ESCM, Deanne M  
O'Dell/ESCM@ESCM

**ECKERT  
SEAMANS**  
www.eckertseamans.com

bcc

Subject Fw: Joint Application of West Penn Power Company d/b/a  
Allegheny Power, et al., Docket Nos. A-2010-2176520 and  
A-2010-2176732

Ken,

We have not heard from you concerning our request for the HSR materials (copy below). We assume that the delay has been caused by the press of business. In any event, as you are aware, the OCA has relied on the HSR materials in its Proprietary Direct Testimony. Please be advised that we intend to file a motion to compel seeking production of the OCA Proprietary Testimony and/or the HSR materials. If you would like to discuss possible resolution of this issue, please contact Dan either today (08-20) or on Monday morning (08-23). Thank you.

---

Carl R. Shultz, Esquire  
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----- Forwarded by Carl R Shultz/ESCM on 08/20/2010 09:29 AM -----

Carl R Shultz/ESCM  
08/04/2010 02:20 PM

To "Kulak, Kenneth M." <kkulak@morganlewis.com>

cc Daniel Clearfield/ESCM@ESCM, Deanne M  
O'Dell/ESCM@ESCM

Subject Re: Joint Application of West Penn Power Company d/b/a  
Allegheny Power, et al., Docket Nos. A-2010-2176520 and  
A-2010-2176732

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Ken,

Your letter of August 2, 2010 concerning the Joint Applicants' discovery responses to OCA indicates that Hart-Scott-Rodino filing materials are only being provided to the OCA, OSBA and OTS. We respectfully request that these materials be made available to Direct Energy and RESA. Both of them are parties to this case, and, as you know, all discovery responses are to be

circulated to all parties in accordance with PUC rules.

We understand that the Hart-Scott-Rodino filing materials are subject to the “highly sensitive” provisions of the Protective Order. Under those provisions, Confidential Information that is “highly sensitive” shall be provided to the other parties’ counsel and may be copied only for the limited purpose of review by a party’s expert or consultant. Protective Order, at ¶ 4. This “highly sensitive” information must be either returned or destroyed upon the completion of this proceeding. Protective Order, at ¶ 10.

Please note that Dan, Deanne and I, as counsel for Direct Energy and RESA, we have signed an acknowledgment of the Protective Order. Direct Energy’s outside consultant (Matt Morey) has also signed. (We expect that RESA’s witness, Richard J. Hudson, will sign his acknowledgment in the next few days). We are, therefore, entitled to review these materials on behalf of Direct Energy and RESA in accordance with the Protective Order and the PUC’s rules.

Please send us copies of the Hart-Scott-Rodino filing materials previously served on the OCA, OSBA, and OTS. Thank you.

---

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[www.eckertseamans.com](http://www.eckertseamans.com)

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# **Exhibit F**



"Kulak, Kenneth M."  
<kkulak@morganlewis.com>  
08/23/2010 12:59 PM

To "Lawrence, Darryl A." <DLawrence@paoca.org>, Daniel  
Clearfield/ESCM@ESCM, "McCloskey, Tanya"  
<TMcCloskey@paoca.org>  
cc "Brad Bingaman" <bbingaman@firstenergycorp.com>, Carl  
R Shultz/ESCM@ESCM, "Gadsden, Thomas P."  
<tgadsden@morganlewis.com>  
bcc

Subject RE: FE Merger - Hahn etc

History: This message has been forwarded.

Darryl: I have conferred with Dan Clearfield and we have agreed that the OCA may produce the confidential version of the Hahn testimony to Direct Energy per Dan's request below. If you could please forward the confidential testimony to Dan with a cc: to us, I would appreciate it.

Please note that this agreement with Direct Energy pertains only to this testimony and the Companies have not agreed to the production of any other HSR material. As I am out of the office, please contact Tom Gadsden at 215.963.5234 if you have any questions. Thanks.

Ken

Kenneth M. Kulak  
Morgan, Lewis & Bockius LLP  
1701 Market Street | Philadelphia, PA 19103-2921  
Direct: 215.963.5384 | Fax: 215.963.5001  
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-----Original Message-----

From: Lawrence, Darryl A. [mailto:DLawrence@paoca.org]  
Sent: Thursday, August 19, 2010 2:40 PM  
To: Clearfield, Daniel; McCloskey, Tanya  
Cc: Kulak, Kenneth M.  
Subject: Re: FE Merger - Hahn etc

Dan,

I am unable to do that. The confidential testimony relied on Hart-Scott-Rodino materials that were only supplied to the statutory advocates. No part of the OCA confidential testimony includes any regular confidential information. You will need to talk to FirstEnergy as the restrictions on this information was applied by them.

Darryl

----- Original Message -----

From: DClearfield@eckertseamans.com <DClearfield@eckertseamans.com>  
To: Lawrence, Darryl A.  
Cc: Kulak, Kenneth  
Sent: Thu Aug 19 14:22:17 2010  
Subject: FE Merger - Hahn etc

Darryl, could you send over a copy of the non-redacted version of your testimony. I will attest that I and my lawyers have signed the protective



agreement and will on distribute the confidential version to my witnesses who also have so signed. Please let me know ASAP if there is a problem.

Daniel Clearfield  
Eckert Seamans  
213 Market St., 8th Fl.  
Harrisburg PA 17101  
(717) 237-7173(v)  
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