

GOVERNOR'S OFFICE OF GENERAL COUNSEL

October 28, 2010

717-787-7060

Fax: 717-783-7911

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

RE: Joint Application of West Penn Power Company,  
D/B/A Allegheny Power, Trans-Allegheny  
Interstate Line Company and FirstEnergy  
Corporation for a Certificate of Public  
Convenience under Section 1102(a)(3) of the  
Public Utility Code Approving a Change of  
Control of West Penn Power Company and Trans-  
Allegheny Interstate Line Company  
PUC Docket No. A-2010-2176520  
A-2010-2176732

Dear Secretary Chiavetta:

Enclosed for filing is the Statement in Support of the Joint Petition for Partial Settlement ("Statement") filed in the above-captioned matter. The Joint Petition for Partial Settlement was filed by Joint Applicants on Monday, October 25, 2010.

The Statement was filed electronically with the Commission on this date. Per the attached Certificate of Service, copies of the Statement are being served on the Administrative Law Judges and the other parties to the proceeding.

Thank you for your assistance.

Sincerely,

Kurt E. Klapkowski  
Assistant Counsel

cc: Judge Wayne Weismandel  
Judge Mary Long  
Certificate of Service



**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PUBLIC UTILITY COMMISSION**

<b>JOINT APPLICATION OF WEST</b>	:	
<b>PENN POWER COMPANY, D/B/A</b>	:	
<b>ALLEGHENY POWER, TRANS-</b>	:	
<b>ALLEGHENY INTERSTATE LINE</b>	:	
<b>COMPANY AND FIRSTENERGY</b>	:	
<b>CORPORATION FOR A</b>	:	
<b>CERTIFICATE OF PUBLIC</b>	:	<b>Docket No. A-2010-2176520</b>
<b>CONVENIENCE UNDER SECTION</b>	:	<b>A-2010-2176732</b>
<b>1102(A)(3) OF THE PUBLIC UTILITY</b>	:	
<b>CODE APPROVING A CHANGE</b>	:	
<b>OF CONTROL OF WEST PENN</b>	:	
<b>POWER COMPANY AND TRANS-</b>	:	
<b>ALLEGHENY INTERSTATE</b>	:	
<b>LINE COMPANY</b>	:	

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of the attached Statement in Support of the Joint Petition for Settlement of the Department of Environmental Protection upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

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Dated: October 28, 2010

**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PUBLIC UTILITY COMMISSION**

<b>JOINT APPLICATION OF WEST</b>	:	
<b>PENN POWER COMPANY, D/B/A</b>	:	
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<b>LINE COMPANY</b>	:	

**PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL  
PROTECTION'S STATEMENT IN SUPPORT OF THE  
JOINT PETITION FOR PARTIAL SETTLEMENT**

1. On May 14, 2010, West Penn Power Company, d/b/a Allegheny Power (“West Penn”), Trans-Allegheny Interstate Line Company (“Trans-Allegheny”) and FirstEnergy Corporation (collectively, the “Utility Applicants”) filed for a certificate of public convenience under section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn and Trans-Allegheny (“Merger Application”) from the Pennsylvania Public Utility Commission (“Commission”).

2. A public utility seeking approval of a merger or other change of control must obtain a certificate of public convenience. 66 Pa.C.S. § 1102(a)(3). A certificate of public convenience “shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa.C.S. § 1102(a). The Supreme Court of Pennsylvania has interpreted this requirement to mean that the

Commission may grant a certificate of public convenience allowing a merger only if there is “substantial evidence” that the “merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972).

3. On June 14, 2010, the Department of Environmental Protection (“Department”) filed a Petition to Intervene in order to ensure that the Department's interests in environmental protection and energy related programs administered by the Department were adequately represented in this proceeding. The Department also identified reliability of service and economic impact of the merger as issues of concern, especially as reflected in employment levels at the four electric distribution companies after the merger.

4. On October 25, 2010, the Department, the Utility Applicants, the Pennsylvania Public Utility Commission Office of Trial Staff, the Office of Consumer Advocate, the International Brotherhood of Electrical Workers, the Utility Workers Union of America, AFL-CIO and UWUA System Local No. 102; the Pennsylvania State University, the Met-Ed Industrial Users Group and the Penelec Industrial Customer Alliance, the West Penn Power Industrial Intervenors, the Pennsylvania Rural Electric Association, the Pennsylvania Mountains Healthcare Alliance, the West Penn Power Sustainable Energy Fund, the York County Solid Waste and Refuse Authority, ARIPPA, the Clean Air Council, Citizens for Pennsylvania's Future, and Constellation New Energy, Inc. and Constellation Energy Commodities Group, Inc., (collectively referred to as the “Joint Petitioners”) filed a Joint Petition for Partial Settlement (“Joint Petition” or “Settlement”) seeking to resolve all of the Joint Petitioners' issues relating to the Merger Application.



5. As indicated in the Joint Petition, the Department believes that the proposed Settlement is in the public interest. As conditioned by the Settlement, and taken together with the Merger Application and the rest of the record developed in this proceeding, there is “substantial evidence” that “the merger will affirmatively promote the service, accommodation, convenience, or safety of the public” in several substantial ways.

6. Issues implicated by the merger concerning energy efficiency, renewable energy, smart meter deployment and long-term contracting for solar renewable energy credits were raised by a witness for the Department, Daniel Griffiths.<sup>1</sup> The proposed Settlement addresses each of these issues.

7. In addition to the Joint Applicants’ statements in the Merger Application concerning maintaining employment levels in the Commonwealth, the Joint Petition provides significant protections for employment in Westmoreland County for the next five years. As a result of the settlement, the headquarters for the West Penn electric distribution company will remain in Greensburg and significant staffing levels will be maintained through at least year five after the merger.

8. The proposed settlement also addresses issues related to the testimony of Daniel Griffiths, including long-term contracting for renewable energy credits under the Alternative Energy Portfolio Standards Act, smart meter technology deployment under Act 129 and funding for alternative energy and energy efficiency programs.

9. Paragraphs 25 and 26 of the Settlement address long-term contracting for solar renewable energy credits. These provisions help the electric distribution companies meet

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<sup>1</sup> The Department also sponsored testimony from two witnesses relating to environmental compliance at the Joint Applicants’ facilities. Given the procedural rulings on those issues in the proceeding, neither the Joint Petition nor this Statement addresses those issues.

the requirements of Act 129, allow for financing of alternative renewable energy projects and should result in lower costs to ratepayers as long-term contracts should provide cheaper renewable energy credits over time than spot market purchases. The commitments should result in substantial increases in long-term contracting, especially in the West Penn service territory. Finally, the development of solar power generation projects should have a positive impact on the economy of and employment in the Commonwealth.

10. Paragraphs 23 and 24 of the Settlement address deployment of smart meters in the electric distribution companies' territory. A customer cannot receive any benefits of smart meter technology unless the meters are actually installed. These benefits include significant control over electricity costs through time of use and real-time pricing, as well as demand response. The Settlement gives a firm target for substantially complete deployment in all four electric distribution companies' territories by the end of 2018. This is a substantial acceleration over the current approved plan for the FirstEnergy companies and is in line with the recent settlement filed in the West Penn smart meter proceeding (October 20, 2010; Docket No. M-2009-2123951).

11. Paragraphs 22 and 27-29 of the Settlement address funding for alternative energy and energy efficiency programs. Under the Settlement, the Joint Applicants will provide significant funding for several programs focused on energy efficiency and alternative energy. Dedicated merger funding under the Settlement includes \$3.8 million over two years for the West Penn Power Sustainable Energy Fund, an additional \$4 million over five years for the Low Income Usage Reduction Program in the West Penn service territory, \$1 million for the Keystone HELP program and \$1 million for the PA Sunshine program. These programs promote environmental quality as well as economic

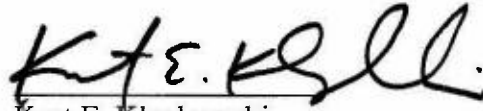
development and jobs in the Commonwealth. They also have the additional benefit of avoiding significant pollution through development of renewable energy sources and reduced demand for electricity through energy efficiency programs.

12. In addition to the benefits of the Settlement related specifically to issues identified as concerns by the Department, the Settlement also provides substantial benefits and shields the citizens of the Commonwealth from potential negative impacts in several areas. These include rate stay-outs and credits for customers of the FirstEnergy and West Penn electric distribution companies, respectively; distribution system reliability and quality improvements, financial governance protections, retail market enhancements and competitive market reporting and non-utility generation contract guarantees.

13. The Department's responses to the 12 questions posed in the Commission's June 3, 2010 Secretarial Letter are provided in Attachment A.

14. The Department submits that the settlement terms described above will help minimize the economic impacts of the merger and maintain the reliability of service received by the Joint Applicants' customers, will improve energy efficiency and conservation and will promote environmentally friendly economic development in the Joint Applicants' service territories and the Commonwealth. As such, the Department submits that the Joint Petition for Settlement is in the public interest and, therefore, requests that the Commission: (1) approve without modification the proposed Settlement; (2) issue the Certificates of Public Convenience and enter Orders granting the approvals requested in the Merger Application; and (3) approve all affiliated interest agreements attached as exhibits to the Joint Application under Section 2101, *et seq.* of the Public Utility Code.

Respectfully submitted,



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Dated: October 28, 2010

**ATTACHMENT A**

**PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
RESPONSES TO QUESTIONS POSED IN THE COMMISSION'S JUNE 3, 2010  
SECRETARIAL LETTER**

1. How will the merger impact employment levels in Pennsylvania, particularly, but not limited to, those employees not covered by collective bargaining agreements? What will the impact be on Allegheny Energy's corporate headquarters in Greensburg, PA, as well as the operating companies' offices?

The Settlement provides significant protections for employees of the merged company, in particular those employees not covered by collective bargaining agreements. Paragraphs 14-15 of the Settlement outline the commitments made by the Joint Applicants to maintain electric company distribution headquarters in the Commonwealth and employment levels in Westmoreland County over the next five years.

2. How will the merger affect the customer service and system reliability of West Penn Power and the FirstEnergy Pennsylvania utilities? How will the merger affect West Penn Power and the FirstEnergy Pennsylvania utilities ability to respond to outages and other emergencies?

In addition to the jobs retained for "line" positions after the merger, paragraphs 49-52 of the Settlement address service quality and reliability issues. The Department believes that these provisions should lead to overall improvements in the reliability of the Joint Applicants' electric service in the Commonwealth.

3. Review the impact of the initially proposed corporate structure of the merger versus the alternately proposed corporate structure. Which corporate structure will better protect the public interest?

The Department is not taking a position on this issue.

4. What, if any, ring-fencing mechanisms are presently in place, or proposed as part of this transaction, to protect West Penn Power, Met-Ed, Penn Power, and Penelec from the business and financial risk of the parent and other non-regulated affiliates? Are any changes or additions necessary to better protect the public interest and make the regulated electric distribution subsidiaries bankruptcy remote?

Paragraphs 35-37 of the Settlement provide protections for the regulated entities involved with this merger. The Department did not raise these issues in the proceeding and so does not take a position on this question. The Department notes that several parties who did raise this issue vigorously are included in the Joint Petitioners.

5. How will the merger impact the Act 129 smart meter and energy efficiency implementation plans of West Penn Power and First Energy's regulated utilities, Met-Ed, Penelec and Penn Power?

Paragraphs 18, 22 (LIURP), 23 and 24 of the Settlement address these issues. Under paragraph 18, the Joint Applicants will provide funds to offset the impact of changes to West Penn's energy efficiency implementation plan to certain customers who

would otherwise incur additional expense. Paragraph 22 requires the Joint Applicants to provide additional funding to the West Penn LIURP program. While LIURP is not an Act 129 program, it is directed toward energy efficiency improvements. Paragraphs 23-24 directly address smart meter deployment in the four electric distribution companies' service territories, and require proposals for significant deployment of smart meter technology no later than the end of 2018. This is a substantial acceleration over the current approved plan for the FirstEnergy companies and is in line with the recent settlement filed in the West Penn smart meter proceeding

6. How will the merger affect the capital structure of FirstEnergy Corporation? Will the merger create a more leveraged organization? How will the proposed merger impact the credit rating of FirstEnergy?

See response to Question 4.

7. Will West Penn Power and the other Allegheny Energy subsidiaries that currently issue their own debt maintain their own external borrowing authority and separate bond rating?

See response to Question 4.

8. Will West Penn Power participate in the FirstEnergy Utility money pool? If, yes, please provide an updated agreement.

See response to Question 4.

9. How will the proposed merger savings benefit Pennsylvania ratepayers? Will cost savings benefit ratepayers or only shareholders?

The Joint Applicants have made representations in the Merger Application that merger savings will be passed on to ratepayers in the Commonwealth through lower distribution rate charges than would otherwise be required absent the merger. In addition, paragraph 16 and 17 of the Settlement contain requirements for the Joint Applicants to freeze distribution rates in the FirstEnergy distribution companies' territories through October 2012 and certain credits to West Penn customers, respectively. In addition, the Settlement pledges certain merger savings to be used for the benefit of ratepayers, such as the increased LIURP funding provided for in paragraph 22.

10. Are the proposed affiliated interest agreements and cost allocation proposals reasonable and consistent with the public interest under Section 2102(b) of the Public Utility Code?

The Department is not taking a position on this issue.

11. Investigate the impact the proposed merger may have on the potential for anticompetitive behavior per 66 Pa. C.S. § 2811(e)(1). How will the merger affect wholesale and retail competition for power/electric generation and transmission?

The Department did not raise this issue in the proceeding. Several competitors of the Joint Applicants did participate in the proceeding and some are included in the Joint Petitioners. Paragraphs 38-48 of the Settlement address retail competition issues and appear to provide access to the Joint Applicants' distribution customers for retail competition. Paragraphs 53-55 of the Settlement also require the Joint Applicants to provide information to the statutory parties and the Commission concerning these issues through 2015.

12. How will transmission projects in the western part of the state be affected by the merger?

The Department is not taking a position on this issue.