

COMMONWEALTH OF PENNSYLVANIA



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October 28, 2010

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
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RE: 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

Dear Secretary Chiavetta:

Enclosed for filing is the Statement in Support of Settlement on behalf of the Office of Consumer Advocate, in the above-referenced proceeding.

Copies have been served as indicated on the Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Darryl Lawrence".

Darryl Lawrence
Assistant Consumer Advocate
PA Attorney I.D. # 93682

Enclosures

cc: Honorable Wayne L. Weismandel
Honorable Mary D. Long

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of West Penn Power	:	
Company doing business as Allegheny	:	
Power Company, Trans-Allegheny	:	
Interstate Line Company and FirstEnergy	:	Docket Nos. A-2010-2176520
Corporation 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	:	

STATEMENT OF THE OFFICE OF CONSUMER
ADVOCATE IN SUPPORT OF THE JOINT
PETITION FOR PARTIAL SETTLEMENT

The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Partial Settlement (Settlement) respectfully requests that the terms and conditions of the Settlement be approved by the Administrative Law Judges and the Pennsylvania Public Utility Commission (Commission). This request is based upon the OCA's conclusion that the proposed Settlement is in the public interest and is in the interest of the customers of Allegheny Power and the customers of the Pennsylvania FirstEnergy companies of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company.

I. INTRODUCTION

On May 14, 2010, Allegheny Power (West Penn), Trans-Allegheny Interstate Line Company (TrAILCo) (collectively, Allegheny) and FirstEnergy Corporation (FirstEnergy) (Joint Applicants) filed an Application seeking to obtain the approval of the Pennsylvania Public

Utility Commission (Commission) under Chapters 11 and 28 of the Public Utility Code for a change of control of West Penn and TrAILCo. The Joint Applicants also requested Commission approval of certain revisions to affiliated interest arrangements that are designed to facilitate the sharing of services between the Allegheny and FirstEnergy systems.

On May 24, 2010, the Office of Trial Staff (OTS) filed a Notice of Appearance in this matter. On June 14, 2010, the Office of Small Business Advocate (OSBA) filed its Protest, Notice of Appearance, and Notice of Intervention and the Office of Consumer Advocate (OCA) filed its Protest and Public Statement in this matter. The Pennsylvania State University (PSU) also filed a Protest. Petitions to Intervene were filed by: the International Brotherhood of Electrical Workers (IBEW); the York County Solid Waste and Refuse Authority (YCSWA); Duquesne Light Company (Duquesne); Pennsylvania Rural Electric Association (PREA); West Penn Power Sustainable Energy Fund (WPPSEF); ARIPPA; Citizens Power; Department of Environmental Protection (DEP); Direct Energy Services (Direct); Met-Ed Industrial Users Group and the Penelec Industrial Customer Alliance (MEIUG/PICA); Pennsylvania Mountains Healthcare Alliance (PMHA); Citizens for Pennsylvania's Future (PennFuture); Retail Energy Supply Association (RESA); Union Of America, AFL-CIO And UWUA System Local No. 102 (UWUA); Clean Air Council (CAC); Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (Constellation) and West Penn Power Industrial Intervenors (WPPII).

The matter was assigned to the Office of Administrative Law Judge and further assigned to Administrative Law Judges Wayne L. Weismandel and Mary D. Long. A prehearing conference was held in this matter on June 22, 2010. At the prehearing conference, a procedural schedule was agreed to by the parties and accepted by ALJs Weismandel and Long.

On August 17, 2010, in accord with the procedural schedule, the OCA served OCA Statement No. 1, the Direct Testimony of Richard Hahn in Public and Highly Confidential versions, and OCA Statement No. 2, the Direct Testimony of Barbara Alexander. Direct Testimony was also filed by CAC, Constellation, DEP, Direct, MEIUG/PICA, OSBA, OTS, PennFuture, PMHA, RESA, WPPSEF, and YCSWA. On September 13, 2010, the OCA served OCA Statement No. 1-R, the Rebuttal Testimony of Richard Hahn, and OCA Statement No. 2-R, the Rebuttal Testimony of Barbara Alexander. Rebuttal Testimony was also submitted by the Joint Applicants, OSBA, RESA, and WPPSEF. On October 6, 2010, the OCA served OCA Statement No. 1-S, the Surrebuttal Testimony of Richard Hahn, and OCA Statement No. 2-S, the Surrebuttal Testimony of Barbara Alexander. Surrebuttal testimony was also submitted by CAC, Constellation, DEP, Direct, OSBA, OTS, PennFuture, PSU, and RESA. On October 6, 2010, PMHA filed a letter requesting that PMHA's testimony be withdrawn, and on October 12, PSU filed a letter requesting that PSU's testimony be withdrawn.

Hearings were held on October 12, 13, 14, and 15, 2010, at which time written testimony previously submitted in this proceeding was admitted into the official record. During the course of this proceeding, the parties engaged in extensive negotiations. As a result of those discussions, several of the parties reached the Settlement which was provided to the ALJs and all parties to this case on October 25, 2010. The OCA submits this Statement in Support to provide its views on why this Settlement is in the public interest and should be approved.

In accord with the procedural schedule adopted in this proceeding, on November 3, 2010, the OCA will file its Main Brief presenting its recommendations to the ALJs and the Commission as to those issues that were not resolved by the Settlement. The OCA's Main Brief

will also address the Commission's 12 questions enclosed in the Secretarial Letter of June 3, 2010.

II. TERMS AND CONDITIONS OF JOINT SETTLEMENT AGREEMENT

For a merger to be approved by the Commission, it must present substantial affirmative benefits to the public. City of York v. Pa. PUC, 295 A.2d 825, 828 (Pa. 1973); Popowsky v. Pa. PUC, 937 A.2d 1040 (Pa. 2007). The comprehensive nature of this Settlement satisfies that standard. The signatory parties to this Settlement (Settling Parties) have addressed and proposed a number of key benefits within the Settlement document, including the preservation of Pennsylvania jobs, the affirmative sharing of merger savings with ratepayers, additional funding for renewable energy programs, increased commitments to customer service and reliability, provisions to enhance the competitive markets for electricity and increased funding for low-income programs. The Settling Parties have also provided key financial protections to insulate the regulated operations from the unregulated operations of FirstEnergy. The OCA submits that the Settlement, taken as a whole, provides substantial affirmative benefits to the public, is in the public interest, and therefore should be approved.

The following represents the terms of the Settlement that directly address the OCA's concerns in this case. The OCA expects that the other signatory parties will address those areas of the Settlement that apply to their issues.

A. Jobs (Joint Petition, ¶¶ 14, 15).

The Corporate Headquarters of Allegheny Energy is located in Greensburg, Pennsylvania. There are approximately 910 employees currently assigned to the Greensburg area, with 65 of those employees scheduled to be relocated to West Virginia in the near future (a move that has nothing to do with this merger). Tr. at 303-304. The Joint Applicants had made

no commitments in their filings as to the continued employment of the remaining 845 employees of Allegheny Energy located in the Greensburg, Westmoreland County area. Tr. at 290, 294-297. Two public input hearings were scheduled in Greensburg.

At the public input hearings in Greensburg, State Senator Kim Ward testified as to her concerns over possible job losses in the Greensburg area. Tr. at 58-63. Senator Ward testified as to the high rate of unemployment in Westmoreland County, and how the potential loss of jobs in Greensburg due to the merger would be “devastating.” Tr. at 60. Senator Ward urged the Commission to adopt some type of work force protection if the merger was approved. Tr. at 60.

OTS witness Amanda Gordon provided testimony as to the possible loss of jobs at the Greensburg, Pennsylvania headquarters of Allegheny Energy as a result of the merger. OTS St. 1 at 2-5. Ms. Gordon testified that the Joint Applicants’ on-the-record commitments to jobs were insufficient. OTS St. 1 at 5. Ms. Gordon recommended that Joint Applicants commit to a 5-year jobs commitment for the Greensburg area. Id.

The OCA and other parties to this Settlement engaged in numerous and lengthy discussions with Joint Applicants about the preservation of Pennsylvania jobs. The Settling Parties agreed to address these concerns in Paragraph 14 of the Settlement. Where Joint Applicants’ on-the-record commitments to preserving Pennsylvania jobs were somewhat vague, the commitments made in the Settlement are clear and unambiguous. These Settlement provisions provide certain guaranteed minimum employment levels for the Greensburg area and Westmoreland County over the next five years. In addition, the current regional headquarters of Met-Ed and Penelec are guaranteed to remain in Pennsylvania for at least the next 5 years. Settlement at ¶ 15. These commitments are in addition to the employment commitment made in

the Joint Applicants' filed materials. JA St. 1 at 14. As such, the OCA submits that these terms are in the public interest.

B. Merger Savings (Joint Petition, ¶¶ 16, 17, 18 and 19).

OCA witness Richard Hahn testified as to the lack of substantial affirmative benefits for Pennsylvania ratepayers as a result of the merger. OCA St. 1 at 16-21, Public Version. Specifically, Mr. Hahn testified that Joint Applicants were not proposing to affirmatively share any of the estimated merger savings with ratepayers. Rather, the estimated \$52 million in savings expected to be generated in Pennsylvania would serve to potentially reduce the size of future rate increases. OCA St. 1 at 16, 20, Public Version. Mr. Hahn testified that ratepayers may never actually realize the benefit of these savings under the Joint Applicants' proposal. OCA St. 1 at 16, Public Version.

The Settling Parties agreed to address these concerns in Paragraphs 16, 17, 18 and 19. The Settlement provisions therein provide for no base rate increases for Met-Ed, Penelec and Penn Power customers prior to October 1, 2012. In addition to the rate case stay-out for these utilities, if at any time during this period either Met-Ed, Penelec or Penn Power earn in excess of a 10.1% return on equity, those excess amounts will be returned to the customers of those utilities as a bill credit. Settlement at ¶ 16. This use of merger savings will ensure rate stability for the customers of these utilities and also ensures that any excess earnings will be returned to customers.

As to West Penn's customers, in the three years following consummation of the merger residential customers will receive distribution rate credits equaling approximately \$11 million, and Tariff 37 customers (the Penn State University) will receive credits of \$45,000 over three years. Settlement at ¶ 17. Consistent with Mr. Hahn's recommendations, these affirmative

merger savings provide some immediate benefits to West Penn customers without any uncertainties as to what may or may not happen in future base rate cases. West Penn's commercial customers will receive a credit of approximately \$6 million to offset potential increases in Energy Efficiency and Conservation costs. Settlement at ¶ 18. In addition, acquisition and certain transaction costs will be excluded from recovery in rates for all of the post-merger First Energy electric distribution companies, Met-Ed, Penelec, Penn Power and West Penn Power (FE EDCs). Settlement at ¶ 19. The OCA submits that these provisions provide substantial affirmative benefits and are in the public interest.

C. Universal Service (Joint Petition, ¶¶ 20, 21 and 22).

OCA witness Barbara Alexander testified as to her concerns regarding the Joint Applicants' lack of any commitments to improve the universal service programs offered by West Penn. OCA St. 2 at 31-35. Specifically, Ms. Alexander recommended improving the efficiency, penetration and funding for West Penn's Customer Assistance Program (CAP). OCA St. 2 at 35. Ms. Alexander also recommended that FirstEnergy should build on the success of West Penn in its fundraising activities for the Hardship Fund, and commit to incorporate those successes in similar programs for the other FE EDCs. Ms. Alexander also testified that the current Low Income Usage Reduction Program (LIURP) spending for West Penn was far below that of the other FirstEnergy Pennsylvania EDCs.

The Settling Parties agreed to address these concerns in Paragraphs 20, 21 and 22. These provisions provide enhanced funding and commitments for West Penn's CAP program. Joint Applicants have committed to increasing the penetration rates for West Penn's CAP program in order to reach the current penetration levels of the other FirstEnergy EDCs. This 5-year commitment with expenditures of up to \$750,000 per year will not be recovered from

ratepayers in any future rate proceedings. Settlement at ¶ 20. Joint Applicants have committed to using best practices obtained from the West Penn fundraising activities in order to benefit the Hardship Funds for the remaining FE EDCs. Settlement at ¶ 21. In addition, over the next five years FirstEnergy will provide additional funding for West Penn's LIURP of \$4 million. Settlement at ¶ 22. As with the CAP commitment, these significant expenditures will not be recoverable from ratepayers in future rate proceedings. The OCA submits that these provisions provide substantial affirmative benefits and are in the public interest.

D. Ring Fencing (Joint Petition, ¶¶ 35, 36).

OCA witness Hahn testified as to the need for specific ring-fencing provisions in order to protect and insulate the regulated utilities from the new parent company and also the unregulated affiliates of the utilities. OCA St. 1 at 26-27, Public Version. Mr. Hahn explained that such measures are necessary in order to protect Pennsylvania ratepayers from any adverse and unintended consequences of the merger. Id. Joint Applicants had made no firm commitments in their originally-filed materials to put these ring fencing measures in place as part of the proposed merger.

The Settling Parties agreed to address these concerns in Paragraphs 35 and 36. These provisions are substantially consistent with the recommendations of OCA witness Hahn as to necessary ring-fencing protections. Settlement at ¶ 35. The agreed to provisions also include continued reporting requirements to the Commission in the event that any of the FirstEnergy EDCs capitalization metrics become of concern. Settlement at ¶ 36. The OCA submits that these provisions provide key protections for the regulated operations and are in the public interest.

E. Reliability and Customer Service (Joint Petition, ¶¶49, 50, 51 and 52).

OCA witness Alexander testified as to her concerns over the lack of any commitments by the Joint Applicants to improve customer service and electric reliability metrics in the West Penn service territory. OCA St. 2 at 11-31. Ms. Alexander specifically testified that in seeking to generate merger savings, the new owners of West Penn may not invest the necessary capital for improvements to the reliability of the system and also to improve customer service metrics. OCA St. 2 at 12. Ms. Alexander provided documentation in her Direct Testimony as to the current state of West Penn's reliability and customer service indices, which are currently both less than stellar. OCA St. 2 at 21-22.

The Settling Parties agreed to address these concerns in Paragraphs 49 and 50. These provisions will ensure that customers of West Penn will see measurable improvements in reliability and customer service as a result of the merger. Settlement at ¶ 49. FirstEnergy has also agreed to conduct further studies on improving reliability and customer service and to make copies of those studies available to the participants in this proceeding. Settlement at ¶ 50. As such, the OCA submits that these provisions provide substantial affirmative benefits and are in the public interest. In addition, other Settlement provisions also relate to the same areas of concern that Ms. Alexander testified to.

In Paragraph 51, the Settling Parties have agreed to form a joint technical committee to study and seek to resolve local reliability issues faced by industrial customers. In Paragraph 52, FirstEnergy has committed to an additional \$4 million per year for a five-year period to continue the study and resolution of rural electric reliability issues. Both of these initiatives, as they deal with electric reliability, could add to and enhance the reliability commitments that were the focus of the OCA's concerns. As such, these additional measures

provide further assurances of the public receiving substantial affirmative benefits from this merger.

F. Market Power (Joint Petition, ¶¶ 53, 54 and 55).

OCA witness Hahn testified as to potential market power concerns in the post-merger service territories, and how the merger could potentially impact the competitive market for default service procurements. OCA St. 1 at 27-37, Public Version. The Settling Parties agreed to address these concerns in Paragraphs 53, 54 and 55. These provisions will allow the Commission, the OTS, OSBA and the OCA to receive timely and accurate information as to the state of the markets in the post-merger service territories and will enable corrective actions to be taken if the need arises. The OCA submits that these provisions provide important protections and are in the public interest.

G. Environmental and Competitive Market Provisions (Joint Petition, ¶¶ 25-29, 38-48).

Although the OCA did not directly address many of the environmental and competitive market issues raised by some of the other intervenors, certain provisions of the Settlement that address those parties' concerns are of substantial importance to consumers and the public. The OCA will briefly comment on these important issues here, as further support for the Settlement.

In paragraphs 25 through 29, the Settling Parties have agreed to programs and substantial financial commitments to the continued growth of solar power in the Commonwealth, the continued growth of all forms of renewable energy, and the growth of funding to assist consumers with implementing energy efficiency measures. Included are a total of \$2 million in funding for the Keystone HELP Program and the PA Sunshine Program, and continued funding

for the West Penn Power Sustainable Energy Fund, which promotes the growth and retention of renewable energy businesses in the West Penn service territory.

In paragraphs 38 through 48, the Settling Parties have agreed to a slate of improvements to the existing processes in use at the FE EDCs as to the interactions of the EDCs with electric generation suppliers (EGSs). With rate caps coming off in the majority of the service territories at issue in this proceeding, it is important that the exchange of information between the EDCs and the EGSs is streamlined. These provisions should assist in the development of the competitive market as the rate caps expire.

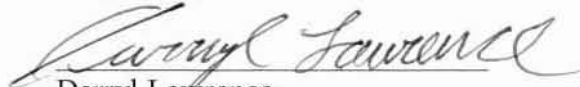
F. Conclusion.

The OCA supports the Settlement as containing substantial affirmative benefits for the public in various key areas and as providing necessary protections for the regulated operations. The Settlement effectively resolves all of the issues that the OCA raised and investigated during the course of this proceeding. Although, as with all settlements, it is a product of compromise, the OCA submits that the broad spectrum of benefits contained in the Settlement are in the public interest and should be accepted by the ALJs and the Commission.

III. CONCLUSION

For the foregoing reasons, the Office of Consumer Advocate submits that the terms and conditions of the Settlement are in the public interest and therefore, should be approved.

Respectfully Submitted,



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Dated: October 28, 2010

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CERTIFICATE OF SERVICE

Joint Application of West Penn Power :
Company doing business as Allegheny :
Power Company, Trans-Allegheny :
Interstate Line Company and FirstEnergy : Docket Nos. A-2010-2176520
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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 :

I hereby certify that I have this day served a true copy of the foregoing document, the Statement in Support of Settlement on behalf of the Office of Consumer Advocate, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 28th day of October 2010.

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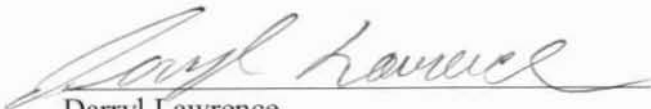
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