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October 28, 2010

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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 1101(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:

On behalf of the Pennsylvania Mountains Healthcare Alliance ("PMHA"), please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") an original and three (3) copies of Statement in Support of the Joint Petition for Partial Settlement filed on October 25, 2010, in the above-referenced proceeding.

This document was filed electronically with the Commission on this date. All parties have been served a copy of this document in accordance with the enclosed Certificate of Service.

Please do not hesitate to contact me if you have any questions concerning this filing.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC

By

Barry A. Naum

BAN/lhi
Enclosures

c: Administrative Law Judge Wayne L. Weismandel (via Electronic Mail and First Class Mail)
Administrative Law Judge Mary D. Long (via Electronic Mail and Federal Express)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of West Penn Power Company :
d/b/a Allegheny Power, Trans-Allegheny Interstate :
Line Company and FirstEnergy Corp. for a : Docket No. A-2010-2176520
Certificate of Public Convenience under Section : Docket No. A-2010-2176732
1102(a)(3) of the Public Utility Code approving :
A change in control of West Penn Power Company :
And Trans-Allegheny Interstate Line Company :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the following parties to this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Barry A. Naum

Dated: October 28, 2010

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of West Penn Power Company :
d/b/a Allegheny Power, Trans-Allegheny Interstate :
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**STATEMENT OF THE PENNSYLVANIA MOUNTAINS HEALTHCARE ALLIANCE
IN SUPPORT OF THE JOINT PETITION FOR PARTIAL SETTLEMENT**

I. BACKGROUND

On May 18, West Penn Power Company d/b/a Allegheny Power ("West Penn"), Trans-Allegheny Interstate Line Company ("TrAILCo"), and FirstEnergy Corporation ("FirstEnergy") (collectively, the "Merger Applicants") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") in the above-referenced docket a Joint Application for approval of a change in control of West Penn and TrAILCo, and the merger of Allegheny Energy, Inc. ("Allegheny") (parent company of West Penn and TrAILCo), and FirstEnergy.

On June 14, 2010, the Pennsylvania Mountains Healthcare Alliance ("PMHA") filed a Petition to Intervene¹ in order to participate in the proceeding as an active party and to address some initial concerns that PMHA had with respect to the Merger Applicants' proposed merger, including the potential impact that the transaction might have on system reliability, customer service, quality of service, and competitive electricity markets. In addition, PMHA was

¹ PMHA's Petition to Intervene was addressed at the Prehearing Conference on June 22, 2010, and granted by Order issued on June 23, 2010.

concerned that the merger, as proposed, did not adequately reflect the intent of the Merger Applicants to share with ratepayers the anticipated synergies and cost savings that would result from the merger.

On October 25, 2010, the Merger Applicants filed with the Commission, on behalf of eighteen other active parties, including PMHA, a Joint Petition for Partial Settlement ("Joint Petition" or "Settlement") of the issues presented in this proceeding. PMHA, by and through its counsel, submits that the Joint Petition reflects a reasonable settlement among the Joint Petitioners with respect to the proposed merger transaction.

II. STATEMENT IN SUPPORT

For the reasons stated herein, PMHA supports the Joint Petition and recommends that the Commission approve it as being in the public interest:

1. The Joint Petition results in substantial affirmative benefits to the public, as required by the Pennsylvania Supreme Court's City of York standard for mergers and acquisitions. See City of York v. Pa. PUC, 295 A.2d 825 (Pa. 1972). Specifically, the Merger Applicants have committed to pass directly to ratepayers a number of synergies, cost savings and efficiencies that will result from the merger, including: (1) a conditional distribution base rate increase "stay out" for the FirstEnergy operating companies² through October 1, 2012, and accompanying ratepayer credit for any FirstEnergy operating company net distribution investment earnings that exceed a 10.1% Return on Equity ("RoE") during the "stay out" period; and (2) direct sharing of merger savings with West Penn's residential and commercial ratepayers

² Pennsylvania Electric Company ("Penelec"), Metropolitan Edison Company ("Met-Ed"), and Pennsylvania Power Company ("Penn Power").

through respective credits equivalent to approximately \$3.57 million annually for three years and \$6.19 million. (Joint Petition, ¶¶ 16-18).

2. As a result of the Joint Petition, the Merger Applicants have agreed to exclude any acquisition premiums and certain transaction costs from the West Penn and FirstEnergy operating companies' rates. (Joint Petition, ¶ 19).

3. As a result of the Joint Petition, the Merger Applicants have committed to forego consolidation of West Penn and FirstEnergy operating companies' distribution rates without first obtaining a certificate of public convenience from the PUC for consolidation of any of these companies into a single Electric Distribution Company ("EDC"). (Joint Petition, ¶ 30).

4. The Merger Applicants have further agreed as a condition of the Joint Petition to forego harmonization of default service procurements for West Penn and the FirstEnergy operating companies through May 31, 2013; thereby preserving the current Default Service Plans ("DSPs") and procurements already approved by the Commission and currently in place for default service customers. In addition, the Joint Petition preserves the right of the parties to propose modifications to the design of each of the operating companies' provision of default service for the period beginning on June 1, 2013. (Joint Petition, ¶¶ 32-33).

5. As a result of the Joint Petition, the Merger Applicants have agreed to a number of important provisions regarding the financial governance of the post-merger entity that will shield ratepayers from certain financial risks of the merger transaction. These provisions include, but are not limited to, requirements for the maintenance of separate money pools for regulated and non-regulated affiliates and maintenance of separate financial statements, credit ratings, capital structures, and debt issuances. (Joint Petition, ¶¶ 35-37).

6. The Joint Petition also contains a broad number of provisions related to retail market enhancements and the competitive markets that PMHA believes are likely to preserve or encourage competition in the combined entity's service territory. Moreover, the Joint Petition establishes reporting requirements that the post-merger combined entity must satisfy with respect to both default service procurement practices and results and the impact that the merger may have on wholesale market prices and price trends. As a further safeguard, the Joint Petition also preserves the right of parties to seek a Commission investigation of the impact of the merger on the proper functioning of a fully competitive retail electricity market in Pennsylvania pursuant to 66 Pa. C.S. § 2811. (Joint Petition, ¶¶ 38-48 and 53-55).

7. With respect to concerns regarding reliability and quality of service, the Joint Petition also contains commitments by the Merger Applicants to achieve tangible performance benchmarks in the West Penn territory in order to increase reliability and enhance customer service. The Joint Petition also requires the Merger Applicants to establish a joint technical committee to identify, discuss, and address reliability issues that impact industrial customers in the various EDC – to include the FirstEnergy operating companies' – territories. (Joint Petition, ¶¶ 49-52).

8. Finally, the Joint Petition is consistent with the Commission's regulations and strong policy favoring settlements in contested proceedings. Specifically, Section 69.391 states that "the Commission encourages parties to seek negotiated settlements of contested proceedings in lieu of incurring the time, expense and uncertainty of litigation." 52 Pa. Code § 69.391; see also 52 Pa. Code § 5.231. The Joint Petition embodies terms that the Joint Petitioners have agreed upon as a direct result of extensive settlement discussions.

III. RESPONSES TO THE COMMISSION'S DIRECTED ISSUES AND AREAS OF CONCERN

On June 3, 2010, the Commission issued a Secretarial Letter assigning this case to the Office of Administrative Law Judge for hearing and a Recommended Decision. In order to assist with the creation of a complete record of the proceeding, the Secretarial Letter required the Merger Applicants and all parties to "address the issues and areas of concern" specifically identified by the Commission. Specifically, the Secretarial Letter included an attachment containing twelve issues and accompanying questions for the parties to address.

By way of response to this Secretarial Letter requirement, PMHA submits that it generally concurs with and adopts the representations made by the Merger Applicants with respect to these issues and believes that the Joint Petition effectively addresses each of these issues to the benefit of the public. PMHA, however, provides the following further responses with respect to specific issues of importance to PMHA and its members:

- A. **Issue No. 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?**

As discussed above, PMHA submits that the Joint Petition, if approved, would establish a number of conditions that will enhance reliability and customer service in the Merger Applicants' various service territories, and indeed should result in the affirmative benefit of increased reliability for most customers, and West Penn ratepayers in particular. Specifically, the Joint Petition contains commitments by the Merger Applicants to achieve tangible performance benchmarks in the West Penn territory to increase reliability and responsiveness. To the extent that concerns remain with respect to the FirstEnergy operating companies' reliability of service to


its largest customers, including some PMHA members, the Joint Petition further provides an avenue for these customers to pursue remediation of such reliability shortfalls.

B. Issue No. 9: How will the proposed merger savings benefit Pennsylvania ratepayers? Will cost savings benefit ratepayers or only shareholders?

PMHA is confident that the Joint Petition, if approved, will result in affirmative benefits to the Merger Applicants' ratepayers. As noted above, the Joint Petition includes: (1) a conditional distribution base rate increase "stay out" for the FirstEnergy operating companies through October 1, 2012, and accompanying ratepayer credit for any FirstEnergy operating company net distribution investment earnings that exceed a 10.1% Return on Equity ("RoE") during the "stay out" period; and (2) direct sharing of merger savings with West Penn's residential and commercial ratepayers through respective credits equivalent to approximately \$17 million in total. In addition to other benefits that the Settlement provides, these terms will ensure that ratepayers receive significant, direct benefits from the merger.

WHEREFORE, the Pennsylvania Mountains Healthcare Alliance requests that Administrative Law Judges Weismandel and Long, and the Pennsylvania Public Utility Commission, approve the Joint Petition for Partial Settlement as filed in this proceeding.

Respectfully submitted,

By 
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