

**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 Nos: A-2010-2176520
Certificate of Public Convenience under Section	:	A-2010-2176732
1102(a)(3) of the Public Utility Code Approving	:	
A change of control of West Penn Power Company	:	
And Trans-Allegheny Interstate Line Company	:	

MAIN BRIEF OF CITIZEN POWER, INC.

November 3, 2010

Theodore S. Robinson (PA Bar #203852)
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
(412) 421-7029 (phone)
(412) 412-6162 (fax)

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. STATEMENT OF THE CASE AND PROCEDURAL HISTORY.....2

III. STATEMENT OF THE QUESTION INVOLVED.....3

IV. SUMMARY OF CITIZEN POWER’S POSITION.....4

V. THE COMMISSION SHOULD NOT GRANT A CERTIFICATE OF CONVENIENCE FOR THE MERGER UNDER 66 PA. C.S. §1102(a)(3).....4

A. The Pennsylvania Merger Standards Require That The Applicants Demonstrate Both That The Proposed Merger Is Not Likely To Result In Anticompetitive Or Discriminatory Conduct Pursuant To 66 Pa. C.S. § 2811(e) And That The Proposed Merger Will Affirmatively Benefit The Public Interest In Some Substantial Way.....5

1. Certificate of Public Convenience Requirement.....5

2. Merger Standards under 66 Pa. C.S. § 2811(e).....5

3. Merger Standards under *City of York*.....7

4. The Joint Applicants’ burden of proof.....8

B. The Joint Applicants Have Not Met Their Burden Of Proof That The Merger Is Not Likely To Result In Anticompetitive Or Discriminatory Conduct.....8

1. The proposed merger will likely result in anticompetitive or discriminatory conduct in wholesale markets.....9

2. The proposed merger may result in anticompetitive or discriminatory conduct in retail markets.....11

3. The Competitive Market Issues and Retail Market Enhancements listed in the Joint Petition for Partial Settlement do not mitigate competitive concerns....12

C. The Merger Does Not Create Substantial And Affirmative Public Benefits.....13

VI. ANSWERS TO QUESTIONS FROM THE JUNE 3, 2010 SECRETARIAL LETTER.....15

VII. CONCLUSION.....19

Appendix A – Proposed Findings of Fact

Appendix B – Proposed Conclusions of Law

Appendix C – Proposed Ordering Paragraphs

I. INTRODUCTION

These proceedings involve the proposed merger of Allegheny Energy, Inc. (“Allegheny”) with FirstEnergy Corp. (“FirstEnergy”) (“Merger Proceeding”).¹ In the Merger Proceeding, West Penn Power Company (“West Penn”), Trans-Allegheny Interstate Line Company (“TrAILCo”), and FirstEnergy Corp. (“FirstEnergy”) (collectively the “Joint Applicants”) seek approval and the issuance of any and all authorizations required under the Pennsylvania Public Utility Code for a change of control of West Penn and TrAILCo to be effected by the merger of Allegheny with Element Merger Sub., Inc. (“Merger Sub”), a wholly-owned subsidiary of FirstEnergy.²

The proposed merger, if approved, will create the nation’s largest utility holding company with six million customers, two million in Pennsylvania alone, combining ten electric utilities spanning seven states and covering 67,000 square miles.³ This combined company will have 24,000 megawatts of domestic capacity and 20,000 miles of high voltage transmission lines.⁴ In addition, the proposed merger would eliminate Allegheny Energy Supply Company, a wholesale and retail competitor in the Commonwealth.⁵

As set forth below, the merger of Allegheny and FirstEnergy should not be approved as proposed by the Joint Applicants. The weight of the evidence in this proceeding shows that the Joint Applicants have failed to meet their burden of showing that the merger will affirmatively benefit the public interest as required by Sections 1102 and 1103 of the Public Utility Code, as

¹ Joint Applicants’ St. 1 at 1.

² Id.

³ Joint Applicants’ St. 1 at 3, 13.

⁴ Joint Applicants’ St. 1 at 3.

⁵ Joint Applicants’ St. 4 at 13.

interpreted in the *City of York* case.⁶ Conversely, the record shows that the merger poses numerous risks to Allegheny customers and Pennsylvania citizens. In addition, the Applicants have not met their burden to prove that the merger will not have an adverse effect on retail competition as required by the Competition Act.

It is Citizen Power's belief that the lack of persuasive evidence demonstrating a net benefit from the merger, given the evidence of serious potential detriment to the public interest, warrants a finding that the merger should be rejected. The evidence shows that it is near certain that the merger will result in job losses in Western Pennsylvania. Further, Applicants have failed their burden to show that the merger is unlikely to result in harm to Pennsylvania retail competition, as required by Section 2811(e) of the Electricity Generation Customer Choice and Competition Act ("Competition Act"), 66 Pa. C.S. §2811(e). The merger should be denied outright because the Joint Applicants have failed to meet their burden under either legal standard applicable to this proposed merger, and because the substantial harm to the public interest that may result if the merger is approved is not easily remediable by attaching conditions.

II. STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On May 14, 2010, West Penn Power Company, Trans-Allegheny Interstate Line Company, and FirstEnergy filed a Joint Application to obtain the approval of the Commission under Chapters 11 and 28 of the Public Utility Code for a change of control of West Penn and TrAILCo to be effected by the merger of Allegheny Energy, Inc. with Element Merger Sub., Inc., a wholly-owned subsidiary of FirstEnergy.⁷ The Joint Applicants also requested that the Commission approve certain revisions to affiliated interest arrangements under Chapter 21 of the

⁶ *City of York v. PA Public Utility Commission*, 449 Pa. 136, 295 A. 2d 825 (Pa. 1972).

⁷ Joint Applicant's Ex. 1, at ¶¶ 1, 10 to 15.

Public Utility Code, which they believe will facilitate the sharing of services between the Allegheny and FirstEnergy systems.⁸

On June 3, 2010, a Secretarial Letter was issued directing the parties to address certain identified areas of concern related to the proposed merger.⁹ On June 22, 2010 a Prehearing Conference was held before Administrative Law Judges Wayne L. Weismandel and Mary D. Long (collectively, the “ALJs”).¹⁰ Citizen Power filed a timely Petition for Intervention, which was granted. On June 23, 2010, a Scheduling and Briefing Order was issued by the ALJs.¹¹ On July 7, 2010, the ALJs issued an order scheduling two public input hearing sessions, which were held on August 3, 2010.¹² Citizen Power participated in these sessions.

A hearing was held in accordance with the *Scheduling and Briefing Order* in Harrisburg, between the dates of October 12, 2010 and October 15, 2010 before the ALJs.¹³ A Joint Petition for Partial Settlement was filed on October 25, 2010 by the Joint Applicants and several of the parties to the proceeding.¹⁴ On November 15, 2010, the record will be closed at 4:30 p.m.¹⁵

III. STATEMENT OF THE QUESTION INVOLVED

Should the proposed merger between the Applicants be approved?

No. The Joint Applicants have failed to meet their burden of proof that the merger would not result in anti-competitive or discriminatory conduct under 66 Pa. C.S. §2811(e) or produce affirmative public benefits as required by Sections 1102 and 1103 of the Public Utility Code, as interpreted in the City of York case.

⁸ Joint Applicant’s Ex. 1, at ¶¶ 1, 23 to 26.

⁹ Secretarial Letter of June 3, 2010 and Attachment A at Docket Nos. A-2010-2176520 and A-2010-2176732.

¹⁰ *Scheduling and Briefing Order* (June 23, 2010).

¹¹ *Id.*

¹² *Order Scheduling Public Input Hearing* (July 7, 2010).

¹³ *Scheduling and Briefing Order* (June 23, 2010), ¶ 12.

¹⁴ Joint Petition for Partial Settlement (October 25, 2010).

¹⁵ *Scheduling and Briefing Order* (June 23, 2010), ¶ 15.

IV. SUMMARY OF CITIZEN POWER'S POSITION

In order to obtain approval for their proposed merger, the Applicants must show that the merger is not likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers from obtaining the benefits of a properly functioning and workable competitive electricity market under 66 Pa. C.S. § 2811(e). In addition, Applicants must demonstrate that the proposed merger will affirmatively benefit the public interest in some substantial way under the *City of York* standard. This determination of substantial benefit must take into account any harm caused by the proposed merger, in other words, the net impact must be substantially beneficial to the public interest.¹⁶ Included in this determination of net impact are “anticompetitive effects [which] may offset or negate advantages and result in a denial of regulatory approval.”¹⁷

Citizen Power believes that the evidence shows that there it is highly likely there will be anti-competitive impacts that could result from the proposed merger on both the wholesale and retail levels and that these would impact the functioning of a competitive retail market. In addition, these anticompetitive effects, when added to other negative impacts of the merger, outweigh any advantages of the merger. Therefore, the merger does not "affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some substantial way" as required under the *City of York* standard.¹⁸

V. THE COMMISSION SHOULD NOT GRANT A CERTIFICATE OF CONVENIENCE FOR THE MERGER UNDER 66 PA. C.S. § 1102(a)(3)

¹⁶ *Popowsky v. Pennsylvania Public Utility Commission*, 937 A.2d 1040, 1056 (Pa. 2007); *Middletown Township v. Pennsylvania Public Utility Commission*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984).

¹⁷ *Popowsky v. Pennsylvania Public Utility Commission*, 937 A.2d 1040, 1056-1057 (Pa. 2007).

¹⁸ See also: *Middletown Township v. Pennsylvania Public Utility Commission*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984); *ARIPPA v. Pennsylvania Public Utility Commission*, 792 A.2d 636, 654-655 (Pa. Cmwlth. 2002).

A. The Pennsylvania Merger Standards Require That The Applicants Demonstrate Both That The Proposed Merger Is Not Likely To Result In Anticompetitive Or Discriminatory Conduct Pursuant To 66 Pa. C.S. § 2811(e) And That The Proposed Merger Will Affirmatively Benefit The Public Interest In Some Substantial Way

1. Certificate of Public Convenience Requirement

Under Section 1102(a)(3) of the Public Utility Code, the authorization of a “public utility or an affiliated interest of a public utility” to “acquire from, or transfer to, any person or corporation...the title to, or the possession or use of, any tangible or intangible property used or useful in the public service” requires a certificate of public convenience.¹⁹ The Commission has applied the certificate of public convenience requirement to the transfer of stock if there was a transfer in the control of the utility in *Joint Application of Commonwealth Telephone Company, et al.*, Docket No. A-310800F0006 (October 22, 1993).²⁰ 52 Pa. Code § 69.901 clarified the circumstances that would constitute when there was a new controlling interest for the purposes of applying Section 1102(a)(3).²¹ The Joint Applicants have determined that the proposed merger would result in FirstEnergy holding a “new controlling interest” in West Penn and TrAILCo as defined at 52 Pa. Code § 69.901.²² Therefore, the proposed merger requires that the Joint Applicants obtain a certificate of public convenience.

2. Merger Standards under 66 Pa. C.S. § 2811(e)

Chapter 28 of the Competition Act requires that the Commission consider the potential anti-competitive nature of a merger in evaluating whether to approve a merger.²³ The significance of providing this competitive protection within the Competition Act itself reflects

¹⁹ 66 Pa. C.S. § 1102(a)(3); Joint Applicant’s Ex. 1, at ¶ 16.

²⁰ Joint Applicant’s Ex. 1, at ¶ 18.

²¹ *Id.*, at ¶ 19.

²² *Id.*, at ¶ 20.

²³ 66 Pa. C.S. § 2811(e)(1).

the understanding that central to the policy goal that “[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity”, is that markets must be competitive.²⁴

The Joint Applicants contend that Section 2811 does not confer any additional authority to the Commission to approve mergers beyond that held by the Commission under Chapter 11.²⁵ In other words, the Joint Applicants believe that a determination of a likelihood of anticompetitive conduct is only a factor to be considered by the Commission in forming their Chapter 11 *City of York* determination and they do not ascribe an independent authority under Chapter 28 of the Public Utility Code. As evidence, the Joint Applicants point out that under 66 Pa. C.S. § 2811(e)(1) the Commission’s consideration of whether a merger is likely to result in anticompetitive conduct rests only “in the exercise of authority the commission otherwise may have to approve mergers or consolidations” entailing electric utilities.²⁶ However, 66 Pa. C.S. § 2811(e)(2) provides, in part,

If the commission finds, after hearing, that a proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market, the commission shall not approve such proposed merger, consolidation, acquisition or disposition, except upon such terms and conditions as it finds necessary to preserve the benefits of a properly function and workable competitive retail electricity market.

When taken together, the meaning of both Section 2811(e)(1) and Section 2811(e)(2) become apparent. Section 2811(e)(1) applies to the *City of York* determination under Chapter 11 because it is limited to the exercise of existing Commission authority. In fact, this view that anticompetitive effects can be used as a factor in determining whether there are net public

²⁴ 66 Pa. C.S. § 2802(5).

²⁵ Joint Applicant’s Ex. 1, at ¶ 22.

²⁶ *Id.*

benefits is consistent with a recent Pennsylvania Supreme Court case.²⁷ On the other hand, the plain language of Section 2811(e)(2) does not include any restrictions on its application to the exercise of existing Commission authority. Section 2811(e)(2) creates an additional requirement for mergers and it endows the Commission with the authority to disapprove mergers or impose conditions on mergers it determines are likely to result in anticompetitive or discriminatory conduct which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market.

However, further analysis needs to be conducted to determine what it means for a merger “to result in anticompetitive or discriminatory conduct” in order to determine which mergers should not be approved or have conditions placed upon them. First, if a merger is likely to allow for anticompetitive or discriminatory conduct in a retail electricity market where no anticompetitive or discriminatory conduct currently exists, then it can be said that the merger would “result in anticompetitive or discriminatory conduct.” The second case is not as simple. If a merger is likely to allow for anticompetitive or discriminatory conduct in a retail electricity market where anticompetitive or discriminatory conduct currently exists, then it can be said that the merger would “result in anticompetitive or discriminatory conduct” in two cases: if it is likely that there will be an increase in anticompetitive or discriminatory conduct after the merger is consummated or, if it is likely that the merger will inhibit a reduction in the amount of anticompetitive or discriminatory conduct over time after the merger is consummated.

3. Merger Standards under *City of York*

In interpreting Sections 1102 and 1103 of the Public Utility Code, the Supreme Court in *City of York* found that merger applicants must show that the transaction will affirmatively

²⁷ *Popowsky v. Pennsylvania Public Utility Commission*, 937 A.2d 1040, 1056 (Pa. 2007).

promote the service, accommodation, convenience, or safety of the public by creating substantial and affirmative public benefits.²⁸ In the application of this public interest standard, the Commission must look at the benefits and detriments of the acquisition as they impact all affected parties.²⁹ In other words, a net benefit determination is used.³⁰ Potential anticompetitive effects under Section 2811(e)(1) are included in this net benefit calculation.³¹

4. The Joint Applicants' burden of proof

Under 66 Pa. C.S. § 332(a), the Joint Applicants bear the burden of proof. This burden of proof is satisfied by a showing of a preponderance of the evidence.³² A preponderance of the evidence standard is simply a requirement that the evidence that is presented must be more convincing than that presented by the other party.³³ Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.³⁴ A mere trace of evidence or the suspicion of a fact is not considered substantial.³⁵ The Joint Applicants must show by a preponderance of the evidence, based upon substantial evidence, that the merger will not result in harm to retail Pennsylvania competition and that the merger will create substantial and affirmative public benefits.

B. The Joint Applicants Have Not Met Their Burden Of Proof That The Merger Is Not Likely To Result In Anticompetitive Or Discriminatory Conduct

²⁸ *City of York v. Pennsylvania Public Utility Commission*, 295 A.2d 825 (Pa. 1972).

²⁹ *Middletown Township v. Pennsylvania Public Utility Commission*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984).

³⁰ *Popowsky v. Pennsylvania Public Utility Commission*, 937 A.2d 1040, 1056 (Pa. 2007); *Middletown Township v. Pennsylvania Public Utility Commission*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984).

³¹ *Popowsky v. Pennsylvania Public Utility Commission*, 937 A.2d 1040, 1056-1057 (Pa. 2007).

³² *Samual J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602, 1990 Pa. Cmwlth LEXIS 402, alloc. den., 602 A.2d 863 (Pa. Cmwlth. 1992).

³³ *Se-Ling Hosiery v. Marquies*, 70 A.2d 854 (Pa. 1950).

³⁴ 2 Pa. C.S. § 704; *Mill v. Pennsylvania Public Utility Commission*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pennsylvania Public Utility Commission*, 623 A.2d 6 (Pa. Cmwlth. 1993).

³⁵ *Norfolk and Western Ry. v. Pa P.U.C.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployed Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

1. The proposed merger will likely result in anticompetitive or discriminatory conduct in wholesale markets

The evidence clearly shows that there are concerns regarding the impact of the proposed merger on wholesale markets. The testimony of Dr. William Hieronymus showed that as a result of the merger there would be an increase in concentration in PJM wholesale electric energy markets.³⁶ This increase in concentration would lead, in Dr. Hieronymus' analysis, to a failure of the market screen in three different time periods using a methodology employed by the Federal Energy Regulatory Commission ("FERC") in their Merger Policy Guidelines.³⁷ In three other time periods analyzed, there were near failures of the market screen.³⁸

Dr. Hieronymus did note that "[u]nder FERC's merger policy guidelines, a failure of the screen, such as an increase of more than 100 points in a market that becomes moderately concentrated, triggers a further consideration of whether the merger is competitively benign."³⁹ Similarly, Dr. Hieronymus also stated that "...conducting an HHI screen is only the first step required to find that a proposed merger raises market power concerns. If HHI screen thresholds are exceeded, it is appropriate then to evaluate in more detail whether the Applicants in fact would be able to exercise market power."⁴⁰

Dr. Hieronymus ultimately found that these screen failures were not indicative of competitive market issues because the screen failures involved were relatively small, occurred during off-peak time periods, and that the merger does not create a dominant company within

³⁶ Joint Applicants' St. 4 at 8; Joint Applicants' St. 4-R at 20.

³⁷ Joint Applicants' St. 4 at 9, Table 1. The screen failures occurred during summer off-peak, winter off-peak and shoulder off-peak.

³⁸ Id. The near screen failures occurred during summer peak, winter peak, and shoulder peak.

³⁹ Joint Applicants' St. 4 at 9.

⁴⁰ Joint Applicants' St. 4-R at 3-4.

PJM.⁴¹ However, if even a “small” screen failure triggers increased scrutiny into whether there are market concerns, it is unclear whether the analysis of Dr. Hieronymus is sufficient to allay the concerns raised by three such screen failures, especially since the burden is on the Joint Applicants to show that the merger is not likely to result in anticompetitive conduct.

In addition, there is evidence that passing the FERC Market Screens does not necessarily indicate that there are not any competition concerns. Dr. Hieronymus noted that “FERC policy is to treat each RTO as a market unless the existence of persistent constraints within an RTO suggests an analysis of a smaller market is necessary.”⁴² However, Dr. Hieronymus also admitted the possibility that a smaller market may exist not because of transmission constraints looked for in a FERC analysis, but because price differentials may deter transmission into a certain geographic area.⁴³ Therefore, by only looking at transmission constraints to determine the relevant market, it is possible to miss a smaller market where market power is present. Also, Dr. Hieronymus admitted that there could be markets that did not fail the market screens under the FERC methodology, but were not competitive.⁴⁴

Finally, the testimony of Dr. Morey points out that structural problems identified by the PJM Market Monitor may be exacerbated by an increase in concentration of generation assets.⁴⁵ In addition, citing the *2009 State of the Market Report for PJM, Volume 2*, Dr. Morey notes that that PJM offer-capping rules were only effective in preventing the exercise of local market power most of the time.⁴⁶ One obvious issue is that the HHI thresholds applied in the FERC analysis are the same for all markets regardless of the functionality of the market. The validity of

⁴¹ Joint Applicants’ St. 4 at 9-11. Furthermore, Dr. Hieronymus noted that FERC may in the future adopt guidelines that delineate different HHI thresholds for determining whether a market is unconcentrated, although he admits that FERC has yet to adopt those guidelines. Joint Applicants’ St. 4 at 10; Joint Applicants’ St. 4-R at 4, 10.

⁴² Joint Applicants’ St. 4 at 4-5.

⁴³ Tr. 653.

⁴⁴ Tr. 664-668.

⁴⁵ Direct Energy St. 1 at 22.

⁴⁶ Direct Energy St. 1 at 23.

the HHI thresholds can therefore be questioned as applied to a particular market based upon a known tendency for the exercise of market power.

2. The proposed merger will likely result in anticompetitive or discriminatory conduct in retail markets

The retail markets in the FirstEnergy and Allegheny service territories are not currently “workably competitive” as evidenced by the small number of customers being served by an EGS.⁴⁷ After the merger is consummated, it is likely that the merger will result in anticompetitive conduct for a variety of reasons.

First of all, any impact on wholesale markets from the proposed merger, as indicated in the previous section, would have an effect upon retail markets since default service auctions are influenced by the prices available to suppliers in the wholesale markets.

In addition, the proposed merger will directly impact competition in retail markets by eliminating an electric generation supplier. In analyzing the impact of the proposed merger upon retail markets, FE’s witness Dr. Hieronymus admitted that the merger would remove Allegheny Energy Supply Company (“AES”), an EGS, from both wholesale and retail markets.⁴⁸ Dr. Hieronymus stresses that he believes that the impact upon competition is not meaningful because AES is “a very small participant in the competitive retail market.”⁴⁹ However, Dr. Hieronymus also testified that there is no reason that AES could not expand into competitive retail markets.⁵⁰

Furthermore, an EDC has a privileged competitive position because most customers are not motivated to switch to an EGS.⁵¹ Many customers may be reluctant to switch to an EGS

⁴⁷ Direct Energy Cross-Exam Exhibit 7.

⁴⁸ Joint Applicants’ St. 4-R at 37.

⁴⁹ Joint Applicants’ St. 4 at 12.

⁵⁰ Tr. 669-670.

⁵¹ Direct Energy St. 1 at 12; Direct Energy St. 2 at 12.

because of a misunderstanding that the service provided by an EDC is more reliable.⁵² In addition, when a customer does shop, it is likely that they will choose the EGS affiliated with the EDC because of familiarity with the EDC's brand name.⁵³ Because of the EDC's dominant market position, other EGSs may anticipate having trouble attaining the level of scale necessary to provide competitive generation service and may decline to enter that EDCs service territory.⁵⁴ A merger that combines adjacent EDC service territories may provide an even greater barrier to entry than before the merger occurred.

3. The Competitive Market Issues and Retail Market Enhancements listed in the Joint Petition for Partial Settlement do not mitigate competitive concerns

The Joint Applicants and several parties filed a Joint Petition for Partial Settlement ("Joint Petition") on October 25, 2010 which contained a number of terms and conditions that, if approved, would amend the original application.⁵⁵ The Joint Petition asks for the ALJs to find that the proposed merger meets the requirements of Section 2811(e) of the Public Utility Code.⁵⁶ Included in the terms and conditions of the Joint Petition are the sections "Competitive Market Issues" and "Retail Market Enhancements," both of which are relevant in determining whether the Application, as modified by the Petition, does in fact meet the requirements of Section 2811(e) of the Public Utility Code.

The "Competitive Market Issues" section contains terms which provide certain parties information regarding the process and results of procuring default service power supplies and reports regarding wholesale market prices and trends.⁵⁷ Although this information may be beneficial to those parties, it is difficult to see how this information alone would prevent possible

⁵² Direct Energy St. 2 at 12-13.

⁵³ Direct Energy St. 3 at 19.

⁵⁴ Direct Energy St. 2 at 21.

⁵⁵ Joint Petition for Partial Settlement of October 25, 2010 filed in Docket Nos. A-2010-2176520 and A-2176732.

⁵⁶ Joint Petition at 36.

⁵⁷ Joint Petition at ¶¶ 53-54.

anticompetitive or discriminatory conduct in either default service auctions or wholesale markets.

The “Retail Market Enhancements” similarly are slight improvements to a less than robust retail market structure and do not address the substantial competitive concerns that will result from the merger. The enhancements may have a positive impact on competition within the West Penn Power territory. However, this impact will be insignificant because the suggested enhancements do not address the fundamental issue that the advantages of being an EDC or an EGS affiliated with an EDC are significant, and this explains the low levels of shopping with non-affiliated EGSs.

In summary, though the “Competitive Market Issues” section and the “Retail Market Enhancements” section in the Joint Petition contain terms that may slightly improve competition. However, they do not substantially address the likelihood that the proposed merger will result in anticompetitive behavior and therefore cannot be found to remedy this deficiency in the Joint Application.

C. The Merger Does Not Create Substantial And Affirmative Public Benefits

Under the *City of York* standard, the merger applicant must show that the transaction will affirmatively promote the service, accommodation, convenience, or safety of the public by creating substantial and affirmative public benefits.⁵⁸ The Commission must look at the net benefits, including competitive effects, as they impact all the parties.⁵⁹

In applying the *City of York* standard to the evidence it must be acknowledged that the Joint Petition does contain some public benefits that were not in the Joint Application. For

⁵⁸ *City of York v. Pennsylvania Public Utility Commission*, 295 A.2d 825 (Pa. 1972).

⁵⁹ *Popowsky v. Pennsylvania Public Utility Commission*, 937 A.2d 1040, 1056-1057 (Pa. 2007); *Middletown Township v. Pennsylvania Public Utility Commission*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984).

example, in ¶ 17, the Joint Petition provides immediate rate credits to West Penn Power residential customers in the amount of \$3.57 million per year for three years. In ¶ 16, the Joint Petition provides that the distribution rates of the FirstEnergy Pennsylvania utilities will not be increased through October 1, 2012. In ¶ 20, the Joint Petition provides for expanded universal service for West Penn customers. In ¶ 22, the Joint Petition provides for an increase in LIURP spending of \$4 million dollars over five years. In ¶¶25-29 the Joint Petition provides for expanded procurement of solar energy.

However, in order to satisfy the *City of York* standard, any benefits of the proposed merger to the public must significantly outweigh the detriments associated with the proposed merger. In this case, there are two very significant negatives. The first is the impact on competition as demonstrated in Section V.B. of this Brief. The second is the significant job losses that are associated with the proposed merger. According to ¶14, the Joint Applicants are phasing out the jobs located in Greensburg, PA. In the first year after the merger, the number of jobs will be reduced to no less than 800. In the second year, the number of jobs will be further reduced to no less than 675. In year three, the number of jobs will be cut to no less than 650. In years four and five, the number of jobs will be cut to no less than 600. After year five, there is no guarantee that any jobs will remain in Greensburg.⁶⁰

The short term benefits proposed in the Joint Petition are potentially dwarfed by costs to the public from the proposed merger. The long term costs related to less than adequately functioning retail markets are undeterminable, but probably quite significant given the volume of energy sold in the FirstEnergy territories. The income impact of Greensburg potentially losing over 800 jobs five years after the completion of the merger will be millions of dollars a year based on a conservative estimate. For example, if each worker was making \$25,000 per year, the

⁶⁰ Joint Petition at ¶ 14.

lost salary would be \$20 million per year. For these reasons, the benefits attributed to the merger are not likely to be substantial or affirmative. Therefore, the Commission should reject the merger based upon the *City of York* standard.

VI. ANSWERS TO QUESTIONS FROM THE JUNE 3, 2010 SECRETARIAL LETTER

On June 3, 2010, a Secretarial Letter was issued directing the parties to address certain identified areas of concern related to the proposed merger.⁶¹ Although Citizen Power does not claim to have knowledge related to all of the areas of concern, Citizen Power has attempted to address certain issues. Each of these responses is given based upon the evidentiary record including the conditions listed in the Joint Petition for Partial Settlement filed on October 25, 2010.

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?

Based upon ¶14 of the Joint Petition, there could be significant job losses associated with the merger. The number of employees that the Joint Applicants will guarantee at the Greensburg location gradually is reduced over the first five years after the merger. After five years, there is no guarantee that there will be any jobs left in Greensburg. See pages 14-15 of this Brief, *supra*.

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

⁶¹ Secretarial Letter of June 3, 2010 and Attachment A at Docket Nos. A-2010-2176520 and A-2010-2176732.

West Penn Power and the FirstEnergy Pennsylvania utilities ability to respond to outages and other emergencies?

Based upon ¶ 49 of the Joint Petition, it appears that the Joint Applicants have committed to meeting certain following customer service and system reliability benchmarks. At this point Citizen Power cannot predict the success of those commitments.

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?

Citizen Power takes no position with respect to 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?

Based upon ¶ 35 of the Joint Petition, it appears that the Joint Petitioners have instituted several ring-fencing mechanisms including: 1) maintaining separate money pools for the regulated and unregulated operates; 2) ensuring that each FirstEnergy Pennsylvania utility operating company issues its own debt after obtaining appropriate regulatory authorization; 3) ensuring that each FirstEnergy Pennsylvania utility operating company maintains its own credit rating so long as it has debt outstanding and credit rating agencies are willing to provide such rating; 4) ensuring that no individual FirstEnergy Pennsylvania utility operating company will

assume debt issued by the holding company without Commission approval; 5) maintenance of separate financial statements reflecting each FirstEnergy Pennsylvania utility operating company has its own capital structure, which is a function of its own debt and equity.

Citizen Power believes that the public interest would be better served by adding a cost allocation policy that would require “the utility to pay the lesser of cost or market pricing for services they receive from the holding company or affiliates, and to receive the greater of cost or market pricing for services they provide to the holding company or affiliates” as recommended by Richard S. Hahn in his testimony on behalf of OCA.⁶²

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

Citizen Power takes no position with respect to this issue.

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?

The announcement of the merger resulted in Standard & Poor’s announcing a downgrade of the credit rating of FirstEnergy.⁶³ Citizen Power takes no further position on this issue.

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?

⁶² OCA St. 1 Public at 25.

⁶³ OCA St. 1 Public at 9.

Pursuant to ¶ 35 of the Joint Petition, it appears that West Penn Power and Allegheny Energy will maintain their own external borrowing authority and separate bond rating.

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

Pursuant to ¶ 35 of the Joint Petition, it appears that West Penn Power will be allowed to participate in the merged entity's regulated money pool.

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

Based upon ¶¶ 16-17, it appears that the main benefits to ratepayers is a credit to residential customers' distribution rates in West Penn totaling \$3.57 million per year for three years and a stay-out period for Met-Ed, Penelec and Penn Power until October 1, 2012 subject to certain conditions. Citizen Power believes these benefits are lower than the costs that ratepayers ultimately will incur because of the impact consolidation will have upon competition.

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?

Citizen Power believes that the Amended and Restated Mutual Assistance Agreement should be revised to provide that goods and services provided by a regulated operating company

to other operating companies are provided at the higher of cost (including book value for assets) or market value as recommended by Richard S. Hahn in his testimony on behalf of OCA.⁶⁴

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?

Please see Section B, *supra*.

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

Citizen Power takes no position with respect to this issue.

VII. CONCLUSION

Citizen Power respectfully requests that the Administrative Law Judges issue a Recommended Decision and the Commission issue a decision, consistent with the recommendations set forth in this Brief, the Proposed Findings of Fact (Appendix A), the Proposed Conclusions of Law (Appendix B), and the Proposed Ordering Paragraph (Appendix C).

⁶⁴ OCA St. 1 Public at 40.

Respectfully submitted,

/s/ Theodore S. Robinson
Theodore S. Robinson, Esquire
PA Attorney ID No. 203852

Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217

Phone: 412-421-7029
Fax: 412-421-6162
Email: robinson@citizenpower.com

Date: November 3, 2010

Counsel for Citizen Power

Appendix A

Proposed Findings of Fact

1. On May 14, 2010, West Penn Power Company, Trans-Allegheny Interstate Line Company, and FirstEnergy filed a Joint Application to obtain the approval of the Commission under Chapters 11 and 28 of the Public Utility Code for a change of control of West Penn and TrAILCo to be effected by the merger of Allegheny Energy, Inc. with Element Merger Sub., Inc., a wholly-owned subsidiary of FirstEnergy. Joint Applicant's Ex. 1, at ¶¶ 1, 10 to 15.
2. The Joint Applicants also requested that the Commission approve certain revisions to affiliated interest arrangements under Chapter 21 of the Public Utility Code, which they believe will facilitate the sharing of services between the Allegheny and FirstEnergy systems. Joint Applicant's Ex. 1, at ¶¶ 1, 23 to 26.
3. The proposed merger, if approved, will create the nation's largest utility holding company with six million customers, two million in Pennsylvania alone, combining ten electric utilities spanning seven states and covering 67,000 square miles. Joint Applicants' St. 1 at 3, 13.
4. The combined company, if approved, will have 24,000 megawatts of domestic capacity and 20,000 miles of high voltage transmission lines. Joint Applicants' St. 1 at 3.
5. The proposed merger would eliminate Allegheny Energy Supply Company, a wholesale and retail competitor in the Commonwealth. Joint Applicants' St. 4 at 13.

6. June 3, 2010, a Secretarial Letter was issued directing the parties to address certain identified areas of concern related to the proposed merger. Secretarial Letter of June 3, 2010 and Attachment A at Docket Nos. A-2010-2176520 and A-2010-2176732.
7. On June 22, 2010 a Prehearing Conference was held before Administrative Law Judges Wayne L. Weisman and Mary D. Long (collectively, the “ALJs”). *Scheduling and Briefing Order* (June 23, 2010).
8. On June 23, 2010, a Scheduling and Briefing Order was issued by the ALJs. *Scheduling and Briefing Order* (June 23, 2010).
9. On July 7, 2010, the ALJs issued an order scheduling two public input hearing sessions, which were held on August 3, 2010. *Order Scheduling Public Input Hearing* (July 7, 2010).
10. A hearing was held in accordance with the *Scheduling and Briefing Order* in Harrisburg, between the dates of October 12, 2010 and October 15, 2010 before the ALJs. *Scheduling and Briefing Order* (June 23, 2010), ¶ 12.
11. A Joint Petition for Partial Settlement was filed on October 25, 2010 by the Joint Applicants and several of the parties to the proceeding. *Joint Petition for Partial Settlement* (October 25, 2010).
12. On November 15, 2010, the record will be closed at 4:30 p.m. *Scheduling and Briefing Order* (June 23, 2010), ¶ 15.
13. The Joint Applicants have determined that the proposed merger would result in FirstEnergy holding a “new controlling interest” in West Penn and TrAILCo as defined at 52 Pa. Code § 69.901. *Joint Applicant’s Ex. 1*, at ¶ 18.

14. As a result of the merger there would be an increase in concentration in PJM wholesale electric energy markets. Joint Applicants' St. 4 at 8; Joint Applicants' St. 4-R at 20.
15. This increase in concentration would lead, in Dr. Hieronymus' analysis, to a failure of the market screen in three different time periods using a methodology employed by the Federal Energy Regulatory Commission ("FERC") in their Merger Policy Guidelines. Joint Applicants' St. 4 at 9, Table 1.
16. In three other time periods analyzed by Dr. Hieronymus, there were near failures of the market screen. Joint Applicants' St. 4 at 9, Table 1.
17. Under FERC's merger policy guidelines, a failure of the screen, such as an increase of more than 100 points in a market that becomes moderately concentrated, triggers a further consideration of whether the merger is competitively benign. Joint Applicants' St. 4 at 9.
18. An EDC has a privileged competitive position because most customers are not motivated to switch to an EGS. Direct Energy St. 1 at 12; Direct Energy St. 2 at 12.
19. Many customers may be reluctant to switch to an EGS because of a misunderstanding that the service provided by an EDC is more reliable. Direct Energy St. 2 at 12-13.
20. Because of the EDC's dominant market position, other EGSs may anticipate having trouble attaining the level of scale necessary to provide competitive generation service and may decline to enter that EDC's service territory. Direct Energy St. 2 at 21.
21. The Joint Applicants guarantees that the average number of employees that have a primary reporting location in Greensburg, Pennsylvania, and any new jobs that are created in or moved to Westmoreland County will be no less than 800, less any employees who leave due

to voluntary attrition, in the 12-month period following consummation of the Merger. Joint Petition at ¶ 14.

22. The Joint Applicants guarantees that the average number of employees that have a primary reporting location in Greensburg, Pennsylvania, and any new jobs that are created in or moved to Westmoreland County will be no less than 675, less any employees who leave due to voluntary attrition, in the subsequent 12-month period. Joint Petition at ¶ 14.

23. The Joint Applicants guarantees that the average number of employees that have a primary reporting location in Greensburg, Pennsylvania, and any new jobs that are created in or moved to Westmoreland County will be no less than 650, less any employees who leave due to voluntary attrition, in the following 12-month period. Joint Petition at ¶ 14.

24. The Joint Applicants guarantees that the average number of employees that have a primary reporting location in Greensburg, Pennsylvania, and any new jobs that are created in or moved to Westmoreland County will be no less than 600, less any employees who leave due to voluntary attrition, in the next 24-month period. Joint Petition at ¶ 14.

25. The Joint Applicants make no guarantees regarding the average number of employees that have a primary reporting location in Greensburg, Pennsylvania, and any new jobs that are created in or moved to Westmoreland County five years after the consummation of the merger. Joint Petition at ¶ 14.

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

Appendix B

Proposed Conclusions of Law

1. The Commission has jurisdiction over the parties and subject matter in this proceeding.
2. An Application may be granted only if it is "necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. § 1103(a).
3. In order to obtain a certificate of public convenience, the Joint Applicants have the burden of demonstrating by a preponderance of the evidence that a transfer of control is in the public interest. The Courts have found that an applicant must show by a preponderance of the evidence that the transaction will "affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way." *City of York v. Pa. PUC*, 295 A.2d 825; *Popowsky v. Pa. PUC*, 937 A.2d 1040; *Middletown Twp. V. Pa. PUC*, 482 A.2d 674, 682 (Commw. Ct. 1984).
4. The determination of substantial benefit must take into account any harm caused by the proposed merger, in other words, the net impact must be substantially beneficial to the public interest. *Popowsky v. Pennsylvania Public Utility Commission*, 937 A.2d 1040, 1056 (Pa. 2007); *Middletown Township v. Pennsylvania Public Utility Commission*, 482 A.2d 674, 682 (Pa. Cmwlt. 1984).
5. In order to determine whether a merger is in the public interest, the competitive impact of the merger is a significant component of that determination. *Popowsky v. Pennsylvania Public Utility Commission*, 937 A.2d 1040, 1056 (2007); 66 Pa. C.S. § 2811(e)(1).

6. Under 66 Pa. C.S. § 2811(e)(2), in part, “if the commission finds, after hearing, that a proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market, the commission shall not approve such proposed merger”
7. The Public Utility Code, 66 Pa. C.S. § 332(a), places the burden of proof upon the Joint Applicants. This burden of proof is satisfied in a case before the Commission by the presentation of a preponderance of the evidence. *Samual J. Lansberry, Inc. v. Pa. Public Utility Commission*, 578 A.2d 600, 602, 1990 Pa. Commw LEXIS 402, alloc. den., 602 A.2d 863 (Pa. Cmwlt. 1992). A preponderance of the evidence requires that evidence be presented that is more convincing than that presented by the other party. *Se-Ling Hosiery v. Marquies*, 70 A.2d 854 (Pa. 1950).
8. Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. 2 Pa. C.S. § 704; *Mill v. Pa P.U.C.*, 447 A.2d 1100 (Pa. Cmwlt. 1982); *Edan Transportation Corp. v. Pa. P.U.C.*, 623 A.2d 6 (Pa. Cmwlt. 1993). A mere trace of evidence or the suspicion of a fact is not considered substantial. *Norfolk and Western Ry. v. Pa P.U.C.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployed Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlt. 1984).

9. The proposed Merger is likely to result in anticompetitive or discriminatory conduct which will prevent retail electricity customers from obtaining the benefits of a properly functioning and workable competitive retail electricity market under 66 Pa. C.S. § 2811(e)(2).
10. The Joint Applicants failed to present credible evidence that the contemplated transaction will affirmatively promote the service, accommodation, convenience or safety of the public in substantial ways under the *City of York* standard. *City of York v. Pa. PUC*, 295 A.2d 825.
11. The Joint Applicants failed to prove by a preponderance of the evidence that the contemplated transaction will affirmatively promote the service, accommodation, convenience, or safety of the public in substantial ways under the *City of York* standard. *City of York v. Pa. PUC*, 295 A.2d 825.

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

Appendix C

Proposed Ordering Paragraph

1. Applicants have not met their burden under Pennsylvania law to show that the proposed merger will affirmatively benefit the public interest in some substantial way. Accordingly, it is hereby ordered that the Joint Application of West Penn Power Company d/b/a Allegheny Power ("West Penn"), Trans-Allegheny Line Company ("TrAILCo"), and FirstEnergy Corporation ("FirstEnergy") 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 TrAILCo, filed with the Pennsylvania Public Utility Commission on May 14, 2010, is dismissed, and the record at Docket A-2010-2176520 and A-2010-2176732 shall be marked closed.
2. Applicants have not met their burden under 66 Pa. C.S. § 2811(e) to show that the merger is not “likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in this commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market.” Accordingly, it is hereby ordered that the Joint Application of West Penn Power Company d/b/a Allegheny Power ("West Penn"), Trans-Allegheny Line Company ("TrAILCo"), and FirstEnergy Corporation ("FirstEnergy") 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 TrAILCo, filed with the Pennsylvania Public Utility Commission on May 14, 2010, is dismissed, and the record at Docket A-2010-2176520 and A-2010-2176732 shall be marked closed.

**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 : A-2010-2176520
Certificate of Public Convenience under Section : A-2010-2176732
1102(a)(3) of the Public Utility Code approving :
A change of 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 Main Brief of Citizen Power, Inc. upon the participants listed below, in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

Honorable Wayne L. Weismandel
Pennsylvania Public Utility Commission
Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120
wweismande@state.pa.us
(via overnight delivery)

Honorable Mary D. Long
Pennsylvania Public Utility Commission
Piatt Place
301 Fifth Avenue
Room 220
Pittsburgh, PA 15222
malong@state.pa.us
(via overnight delivery)

Darryl A. Lawrence, Esq.
Tanya J. McCloskey, Esq.
Jessica J. Horner, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
dlawrence@paoca.org
tmccloskey@paoca.org
jhorner@paoca.org

Derrick Price Williamson, Esq.
Barry A. Naum, Esq.
Spilman Thomas & Battle, PLLC
1100 Bent Creek Blvd.
Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com
bnaum@spilmanlaw.com

Divesh Gupta, Esquire
Senior Council
Constellation Energy
111 Market Place, Suite 500
Baltimore, MD 21202
Divesh.gupta@constellation.com

Thomas P. Gadsden, Esquire
Kenneth M. Kulak, Esquire
Anthony C. DeCusatis, Esquire
Morgan, Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19102-2921
tgadsden@morganlewis.com
kkulak@morganlewis.com
adecusatis@morganlewis.com

Daniel G. Asmus, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101-1303
dasmus@state.pa.us

Thomas J. Sniscak, Esq.
Todd S. Stewart, Esq.
William E. Lehman, Esq.
Hawke, McKeon & Sniscak
P.O. Box 1778
Harrisburg, PA 17105
tjsniscak@hmslegal.com
tsstewart@hmslegal.com
welehman@hmslegal.com

Randall B. Palmer, Esquire
Jennifer L. Petrisek, Esquire
Allegheny Energy, Inc.
800 Cabin Hill Drive
Greensburg, PA 15601
rpalmer@alleghenyenergy.com
jpetrisek@alleghenyenergy.com

Scott H. Strauss, Esquire
Katherine M. Mapes, Esquire
Spiegel & McDiarmid LLP
1333 New Hampshire Ave., NW
Washington DC 20036
Scott.strauss@spiegelmc.com
Katherine.mapes@spiegelmc.com

Allison C. Kaster, Esquire
Carrie B. Wright, Esquire
Pennsylvania Public Utility Commission
Office of Trial Staff
Commonwealth Keystone Building
400 North Street – 2 West
PO Box 3265
Harrisburg, PA 17105-3265
akaster@state.pa.us
carwright@state.pa.us

Michael W. Gang, Esquire
Anthony D. Kanagy, Esquire
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
mgang@postschell.com
akanagy@postschell.com

Gary A. Jack, Esquire
Kelly L. Geer, Esquire
Duquesne Light Company
411 Seventh Avenue, 16-4
Pittsburgh, PA 15219
gjack@duqlight.com
kgeer@duqlight.com

Joseph Otis Minott, Esquire
Eric Paul Cheung, Esquire
Clean Air Council
135 S. 19th Street, Suite 300
Philadelphia, PA 19103
Joe_minott@cleanair.org
echeung@cleanair.org

Stephen H. Jordan, Esquire
Rothman Gordon PC
Third Floor, Grant Building
Pittsburgh, PA 15219
shjordan@rothmangordon.com

David Fein, Esquire
Vice President, Energy Policy
Constellation Energy
550 West Washington Blvd., Suite 300
Chicago, IL 60661
David.Fein@constellation.com

David J. Dulick, Esq.
General Counsel
Continental Cooperative Services
Pennsylvania Rural Electric Assoc.
Allegheny Electric Cooperative, Inc.
212 Locust Street
Harrisburg, PA 17101
david_dulick@prea.com

Regina L. Matz, Esquire
Thomas T. Niesen, Esquire
Charles E. Thomas, Esquire
Jennifer M. Sultzaberger, Esquire
Thomas, Long, Niesen & Kennard
P.O. Box 9500
Harrisburg, PA 17108-9500
rmatz@thomaslonglaw.com
tniesen@thomaslonglaw.com
jms@thomaslonglaw.com
cthomasjr@thomaslonglaw.com

Jeffrey A. McNelly
Executive Director, ARIPPA
2015 Chestnut Street
Camp Hill, PA 17011
jmcnelly1@arippa.org

Scott Rubin, Esquire
333 Oak Lane
Bloomsburg, PA 17815
scott.j.rubin@gmail.com

W. Edwin Ogden, Esquire
Alan Michael Seltzer, Esquire
Ryan, Russell, Ogden, and Seltzer, PC
Suite 210, 1150 Berkshire Boulevard
Wyomissing, PA 19610-1208
eogden@ryanrussell.com
aseltzer@ryanrussell.com

Wendy E. Stark, Esquire
Bradley E. Bingaman, Esquire
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
starkw@firstenergycorp.com
bbingaman@firstenergycorp.com

Susan E. Bruce, Esq.
Charis Mincavage, Esq.
Vasiliki Karandrikas, Esq.
Carl J. Zwick, Esq.
McNees Wallace & Nurick LLC
P.O. Box 1166
Harrisburg, PA 17108-1166
cmincavage@mwn.com
vkandrikas@mwn.com
czwick@mwn.com
sbruce@mwn.com

Daniel Clearfield, Esquire
Deanne M. O'Dell, Esquire
Carl R. Shultz, Esquire
Eckert Seamans Cherin & Mellot LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
dodell@eckertseamans.com
cshultz@eckertseamans.com

John K. Baillie, Esquire
Charles McPhedran, Esquire
Citizens for Pennsylvania's Future
425 Sixth Avenue, Suite 2770
Pittsburgh, PA 15219
baillie@pennfuture.org
mcphedran@pennfuture.org

Barbara Alexander
83 Wedgewood Drive
Winthrop, ME 04364
barbalex@ctel.net

Richard Hahn
LaCapra Associates
One Washington Mall, 9th Fl
Boston, MA 02108
rhahn@lacapra.com

James L. Crist
The Lumen Group, Inc.
4226 Yarmouth Drive, STE 101
Allison Park, PA 15101-1568
jcrist@aol.com

Matthew I. Kahal
Exeter Associates, Inc.
Suite 310
5565 Sterrett Place
Columbia, MD 21044
mkahal@exeterassociates.com

Robert M. Strickler
Griffith, Strickler, Lerman, Solymos & Calkins
110 S. Northern Way
York, PA 17402-3737
rstrickler@gslsc.com

Kurt E. Klapowski, Esquire
Department of Environmental Protection
RCSOB, 9th Floor
400 Market Street
Harrisburg, PA 17101-2301
kklapowski@state.pa.us

Benjamin L. Willey
Sally Patton
Law Offices of Benjamin L. Willey
7272 Wisconsin Avenue
Suite 300
Bethesda, MD 20814
blw@bwilleylaw.com

Dated this 3rd day of November, 2010.

By: /s/ Theodore S. Robinson
Theodore S. Robinson
(PA Bar #203852)
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
(412) 421-7029 (phone)
(412) 421-6162 (fax)