

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

Morgan Lewis
C O U N S E L O R S A T L A W

Thomas P. Gadsden
Partner
215.963.5234
tgadsden@MorganLewis.com

September 23, 2010

VIA FEDERAL EXPRESS

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

RECEIVED

SEP 23 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Joint Application of West Penn Power Company doing business as Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience Under Section 1102(A)(3) of the Public Utility Code Approving a Change of Control of West Penn Power Company and Trans-Allegheny Interstate Line Company, Docket Nos. A-2010-2176520, A-2010-2176732

Dear Secretary Chiavetta:

Enclosed for filing are an original and three copies of the Answer on behalf of West Penn Power Company, Trans-Allegheny Interstate Line Company, and FirstEnergy Corp. to Direct Energy Services, LLC's Motion to Suspend Schedule.

As evidenced by the attached Certificate of Service, the Answer has been served on all parties of record as well as the Administrative Law Judges.

Sincerely,



Thomas P. Gadsden

TPG/ap

Enclosures

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

Philadelphia Washington New York Los Angeles San Francisco Miami Pittsburgh Princeton Chicago Minneapolis
Palo Alto Dallas Houston Harrisburg Irvine Boston Wilmington London Paris Brussels Frankfurt Beijing Tokyo

Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Tel: 215.963.5000
Fax: 215.963.5001
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA FEDERAL EXPRESS

Honorable Wayne L. Weismandel
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

Honorable Mary D. Long
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Piatt Place, Room 220
301 Fifth Avenue
Pittsburgh, PA 15222

Re: Joint Application of West Penn Power Company doing business as Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience Under Section 1102(A)(3) of the Public Utility Code Approving a Change of Control of West Penn Power Company and Trans-Allegheny Interstate Line Company, Docket Nos. A-2010-2176520, A-2010-2176732

Dear Judge Weismandel and Judge Long:

Pursuant to your Order Establishing Response Time, enclosed are two copies of the Answer of West Penn Power Company, Trans-Allegheny Interstate Line Company, and FirstEnergy Corp. ("Joint Applicants") to Direct Energy Services, LLC's Motion to Suspend Schedule. As indicated on the transmittal letter to Secretary Chiavetta and accompanying Certificate of Service, which are also enclosed, the Joint Applicants' Answer has been filed with the Pennsylvania Public Utility Commission and served on all parties.

Sincerely,



Thomas P. Gadsden

TPG/tp

Enclosures

cc: All parties of record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

SEP 23 2010

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

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

ANSWER OF
WEST PENN POWER COMPANY, TRANS-ALLEGHENY INTERSTATE LINE
COMPANY, AND FIRSTENERGY CORP.
TO DIRECT ENERGY SERVICES, LLC'S
MOTION TO SUSPEND SCHEDULE

I. INTRODUCTION AND OVERVIEW

West Penn Power Company ("West Penn"), Trans-Allegheny Interstate Line Company ("TrAILCo"), and FirstEnergy Corp. ("FirstEnergy") (collectively, the "Companies" or "Joint Applicants") submit this Answer to Direct Energy Services, LLC's ("Direct Energy") Motion to Suspend Schedule ("Motion to Suspend") pursuant to the Order Establishing Response Time issued on September 15, 2010 by Administrative Law Judges Wayne L. Weisman and Mary D. Long (the "ALJs").

The Joint Applicants oppose Direct Energy's Motion, which is yet another attempt to hold this proceeding hostage unless the Commission agrees to consider Direct Energy's proposal to dramatically restructure the way default service is furnished in Pennsylvania. This case marks the second time in which a restructuring of the Commission's approach to default service was

proposed as part of an unrelated proceeding, rather than through a separate petition as is required by the Commission's regulations. In West Penn's last default service proceeding, only two years ago, Direct Energy, on behalf of the Retail Energy Supply Association ("RESA"), requested that the Commission open a new proceeding to develop a process by which entities other than an electric distribution company ("EDC") could serve as the default service provider ("DSP") and, as an alternative, develop a process for an auction of default service customers via a stakeholder collaborative. The ALJ and Commission rejected that proposal.¹ Direct Energy's proposal in this merger proceeding to restructure the provision of default service should similarly be rejected. In the West Penn case, as in this one, Direct Energy tried to proceed in a manner that conflicts with the Commission's default service regulations, and its proposals were summarily dismissed on that basis.

As explained in the Joint Applicants' Motion *In Limine* (pp. 8-10), the Commission's regulations require an electric generation supplier ("EGS") that wants to assume the role of DSP to file a Petition and demonstrate that the incumbent EDC lacks the "operational and financial fitness to serve retail customers" and no longer has "the ability to provide default service under reasonable rates and conditions." 52 Pa. Code § 54.183. Direct Energy's proposals were rejected in the West Penn DSP proceeding for failure to comply with those regulations. Consequently, Direct Energy was already on notice that repeating the same tactic would likely precipitate a

¹ *Petition Of West Penn Power Company d/b/a Allegheny Power For Approval Of Its Retail Electric Default Service Program And Competitive Procurement Plan For Service At The Conclusion Of The Restructuring Transition Period*, Docket No. P-00072342, (Rec'd Dec.) 2008 Pa. PUC LEXIS 44 *274-278. Copies of the pertinent portions of Mr. Lacey's testimony and the Recommended Decision are attached as Appendices A and B, respectively. The Commission's final Order did not specifically discuss this issue. However, the Commission adopted the Recommended Decision (except as expressly modified) and, therefore, adopted the Administrative Law Judge's ruling. 2008 Pa. PUC LEXIS 30 (July 25, 2008).

motion to exclude from this case a proposal that was previously rejected because of its procedural and substantive defects.

By the same token, the Commission's default service regulations, by permitting an EGS to proceed by Petition, belie Direct Energy's contention (Motion to Suspend, p. 5, n. 4) that it would be "out of court" if the Motion *In Limine* were granted. To the contrary, granting the Joint Applicants' Motion *In Limine* would simply require Direct Energy to adhere to the Commission's regulations and, thereby, make its proposal in the procedurally correct manner with appropriate notice to all potentially affected parties.

Finally, any decision to stay this proceeding would be premature at this point. Even if a disappointed party were to petition for interlocutory review of the ALJs' decision, the Commission would need to decide whether to entertain such a Petition. The Commission has the authority and discretion to stay the proceeding, as it deems necessary, if it decides to grant review. *See* 52 Pa. Code § 5.303(a)(1). Administrative Law Judges are frequently called upon to rule on the admissibility of evidence in the course of contested proceedings. Under Direct Energy's view, many – if not all – of such rulings would have to be accompanied by a "suspension" of the litigation schedule if, as here, even one party were to threaten to seek interlocutory review. Obviously, very few proceedings would adhere to their established litigation schedules if that view were to prevail.

II. RESPONSE TO SPECIFIC AVERMENTS OF THE MOTION TO SUSPEND

1. It is admitted that Direct Energy accurately reproduced the litigation schedule set forth in the ALJs' Scheduling and Briefing Order; that Direct Energy served its written direct testimony on August 17, 2010; and that the Joint Applicants' Motion *In Limine* was filed on September 10, 2010. The implication that filing the Motion *In Limine* on "the last business day

before the due date for rebuttal testimony” somehow makes that Motion untimely or otherwise improper is specifically denied. To the contrary, motions to strike testimony can be made up to the time such testimony is offered in evidence. In fact, a motion to strike would not be considered “ripe” unless made when evidence is offered for admission into the record. The Joint Applicants filed their Motion *In Limine* over a month before hearings will commence so that the ALJs would not have to rule on a motion to strike during the hearings and all parties would have sufficient time to offer their views on the Motion in writing before a ruling is made.

2. Denied. Direct Energy’s characterization of the proposal it seeks to advance as a “remedy . . . requested for the potential anticompetitive effects the proposed merger may have on the retail electric markets” is a serious mischaracterization of its own witnesses’ testimony. In stark contrast to the “spin” Direct Energy now hopes to impart to that testimony, Dr. Morey candidly admitted that Direct Energy was proposing to “unbundle” both default service and certain billing functions not because of anything inherently “discriminatory” or “anticompetitive” about the proposed merger, but as an attempt to re-shape the DSP model currently employed in Pennsylvania:

I am not suggesting that the utility is behaving in a discriminatory or anticompetitive manner. What I am saying is that *the model for DSP [default service provider] service itself, which is the product of well-intentioned public policies, results in an anticompetitive and discriminatory market structure.*

Direct Energy St. 1, p. 12 (emphasis added.)

Moreover, it strains credibility for Direct Energy to now claim that its proposal was carefully tailored to “remedy” alleged “potential anticompetitive effects” of the proposed merger in this case when it made a virtually identical proposal in West Penn’s DSP proceeding only two years ago. Direct Energy has re-cycled the same basic proposal, which is not focused on the

proposed transaction, but, as Dr. Morey conceded, is intended to displace the DSP model envisioned by the Electricity Generation Customer Choice and Competition Act (“Electric Competition Act”) and implemented by the Commission in its default service regulations and its prior orders approving DSP programs for West Penn and FirstEnergy’s Pennsylvania subsidiaries (*see Motion In Limine*, pp. 3-4 and 9-10).

Additionally, Direct Energy’s alleged interest in “efficiency” and “due process” is certainly not promoted by its effort to burden this proceeding with a far-reaching proposal to redesign the DSP model currently employed in Pennsylvania. The more “efficient” alternative would have been for Direct Energy to file a Petition, at a separate docket, that conformed to the requirements of the Commission’s regulations. Only by adhering to the regulations could Direct Energy assure that “due process” is afforded to all potentially interested parties, who were not given notice that this proceeding might be transformed from one addressing the proposed merger to a generic re-appraisal of the state-wide DSP model.

3. Admitted in part and denied in part. It is admitted that a party “dissatisfied” with the ALJs’ ruling on the Joint Applicants’ Motion *In Limine* could seek interlocutory review by the Commission. However, that is true of any ruling on the admission of evidence in any proceeding. Taken at face value, Direct Energy’s position would dictate that a schedule suspension would be appropriate whenever a party threatens – as Direct Energy has done in this case – to seek interlocutory review of an Administrative Law Judge’s ruling to admit or exclude evidence. Moreover, the fact that a party can file a petition for interlocutory review does not mean that the Commission will grant it. Indeed, given the prior rejection of Direct Energy’s procedurally erroneous proposal in the West Penn DSP proceeding, Direct Energy needs to

overcome the strong presumption that a similar fate awaits a Petition for interlocutory review it might file to overturn an order excluding its testimony in this case.

Direct Energy also errs in alleging that it would be “ ‘out of court’ with respect to its proposal to revise the default service structure” if the Motion *In Limine* were granted (Motion to Suspend, p. 5, n. 4). Although granting the Joint Applicants’ Motion would remove Direct Energy’s proposal from this proceeding – where it clearly does not belong – such a ruling would be without prejudice to Direct Energy’s continuing opportunity to file a Petition to displace any or all EDCs as DSPs within their respective service territories, so long as it complies with the procedural and substantive requirements of the Commission’s default service regulations. 52 Pa. Code §54.183.

4. Denied. Direct Energy asserts that, absent a schedule suspension, “the parties to this proceeding will devote time and effort to issues that may ultimately be deemed to be excluded.” Of course, Direct Energy could have preempted needless effort by all parties and the ALJs if it had simply followed the procedural requirements of the Commission’s regulations and filed a Petition at a separate docket, just as it was instructed to do when its proposal was rejected in the West Penn DSP proceeding. *See* Appendix B to this Answer. In any event, because Direct Energy chose to ignore that directive and try to interject its proposal into this case, the Joint Applicants and other parties had no alternative but to submit rebuttal testimony opposing Direct Energy’s proposal on September 13, 2010. Direct Energy ignores the fact that its own improper conduct has already caused the Joint Applicants and others² to expend significant

² The Office of Consumer Advocate (“OCA”) and Office of Small Business Advocate (“OSBA”) also oppose Direct Energy’s proposal. *See* OSBA St. 3 and OCA Sts. 1-R and 2-R. The OCA agrees that Direct Energy’s proposal should not be part of this case. OCA St. 1-R, p. 3 (“Such dramatic changes in statewide policy should not be part of, or a condition to, the merger proposed in this proceeding.”)

resources to rebut a proposal that should not have been made in this case at all while, at the same time, the Joint Applicants had to respond to the direct testimony of all other parties.

5. Denied. Direct Energy's averments presume that every ruling by an Administrative Law Judge on an issue of admissibility must be accompanied by a "conclusive determination" of that issue by the Commission **before** the remainder of the litigation schedule can proceed. If that were the case, virtually no proceeding could adhere to its original schedule. Furthermore, and as previously explained, Direct Energy presumes that if it seeks interlocutory review of a ruling in this case that essentially parallels the prior ruling in the West Penn DSP proceeding rejecting a comparable proposal, the Commission would, nonetheless, entertain that Petition and might even grant it. There is no reason to accept that presumption. In any event, the Commission has the authority and discretion to stay this proceeding if, in its review of a Petition for interlocutory review, it finds that a stay is necessary.

6. Admitted in part and denied in part. It is admitted that presiding officers and the Commission may, in appropriate circumstances, modify a previously established litigation schedule. It is denied that a modification of the schedule is either necessary or appropriate in this proceeding at this time. Direct Energy's request for a "suspension" is based on various false premises, which were identified and addressed previously in this Answer. Additionally, none of the cases cited by Direct Energy are relevant to the kind of schedule suspension Direct Energy has requested here.

In *Office of Consumer Advocate v. Metropolitan Edison Co.*,³ the Commission granted the utility's request to increase its State Tax Adjustment Surcharge subject to outstanding complaints. Consequently, a subsequent decision to extend the litigation schedule to permit

³ 2002 Pa. PUC LEXIS 29 at *45-46 (2002).

interlocutory review of a ruling limiting the scope of complainants' discovery had no impact on the relief the utility sought and had already received.

In *Investigation Regarding Interstate Access Charges*,⁴ there is no indication that the change in schedule was unilaterally imposed. To the contrary, the portion of the Recommended Decision cited by Direct Energy suggests that schedule modification was made with the agreement of all parties: "Accordingly, I convened another Telephonic Conference on July 23, 2009, with all parties in the AT&T Complaint proceeding in attendance. It was decided that the expedited procedural schedule set forth in the June 24 and 25, 2009 Orders was no longer appropriate and should be rescinded."

Finally, *In Re: Amended Petition Of Bethlehem Steel Corp. And Hadson Development Corp.*⁵ involved a proceeding on remand from a decision of the Commonwealth Court. There is no indication that the schedule modification was unilaterally imposed, and the Recommended Decision cited by Direct Energy suggests otherwise:

By Order dated July 3, 1995, I established a procedural schedule concerning the handling of this remand. Eventually, the parties agreed that oral hearings would not be necessary and that written submissions would suffice. Moreover, the parties saw no need for the filing of briefs. I agreed.

For various reasons, the procedural schedule was modified.

1996 Pa. PUC LEXIS 20 at *2-3.

7. Admitted in part and denied in part. It is admitted that litigation schedules have been suspended to permit the parties to pursue settlement. It is denied that the "rationale for suspending the schedule in this proceeding is similar" to those cases where settlement was being

⁴ 2010 Pa. PUC LEXIS 216 at *16-17 (2010).

⁵ 1996 Pa. PUC LEXIS 20 (1996)

actively pursued. Obviously, any schedule modification to accommodate settlement is, virtually by definition, with the agreement of the litigants.

8. Denied. A Motion *In Limine* is hardly an “unusual procedural device” and, in fact, is the **only** procedural vehicle available to obtain a decision on the admissibility of Direct Energy’s testimony before evidentiary hearings commence. Perhaps Direct Energy is suggesting that the Joint Applicants should have waited until Direct Energy offered its testimony in evidence and, only then, moved to strike. However, the Joint Applicants filed a Motion *In Limine* in advance of hearings to avoid a last minute confrontation and to provide sufficient time for the parties and the ALJs to consider the issue.

Contrary to Direct Energy’s assertions, no “delay” should be allowed to occur simply because the Joint Petitioners’ filed a Motion *In Limine* to avoid an unlawful and unnecessary expansion of the scope of this proceeding. Direct Energy’s claim that it may be “prejudiced” by having to respond to the Motion *In Limine* while also preparing surrebuttal simply underscores the fact that **all parties** in this case, as well as the ALJs, have already been needlessly burdened by Direct Energy’s decision to re-cycle a proposal to restructure the DSP market that is just as out of place here as it was in West Penn’s DSP proceeding.

Direct Energy also asserts that there is “no reason other than the Joint Applicants’ own desires – that the merger application must be reviewed in early 2011.” However, as the Commission – if not Direct Energy – is well aware, a business transaction like the proposed merger cannot be left open-ended. There are many approvals required to complete the merger, and all need to be obtained expeditiously. Moreover, the Agreement and Plan of Merger sets a deadline for consummation of the merger. *See* Joint Application, Exhibit D, p. 77. Additionally, there is “no reason” other than Direct Energy’s own “desires” for Direct Energy to try to force its

proposal to restructure the state-wide DSP model into this case. The Commission's regulations set forth the procedurally correct way for Direct Energy to proceed with a request to replace an incumbent DSP. It was Direct Energy that chose to ignore both those regulations and the prior directive given it in the West Penn DSP proceeding.

III. CONCLUSION

For the reasons set forth above, the Administrative Law Judges should: (1) deny Direct Energy's Motion to Suspend; and (2) issue an Order *In Limine* excluding from the record in this case the portions of the direct testimony submitted on behalf of Direct Energy that are identified in Exhibit "A" to the Joint Applicants' Motion *In Limine*.

Respectfully submitted,

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TP Gadsden

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Randall B. Palmer (Pa. No. 94161)
Jennifer L. Petrisek (Pa. No. 83411)
Allegheny Energy, Inc.
800 Cabin Hill Drive
Greensburg, PA 15601
Phone: (724) 838-6894
Fax: (724) 853-4264
Email: rpalmer@alleghenyenergy.com

Thomas P. Gadsden (Pa. No. 28478)
Kenneth M. Kulak (Pa. No. 75509)
Anthony C. DeCusatis (Pa. No. 25700)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: (215) 963-5234
Fax: (215) 963-5001
Email: tgadsden@morganlewis.com

W. Edwin Ogden (Pa. No. 17644)
Alan Michael Seltzer (Pa. No. 27890)
Ryan, Russell, Ogden & Seltzer PC
Suite 210
1150 Berkshire Boulevard
Wyomissing, PA 19610-1208
Phone: (610) 372-4761
Fax: (610) 372-4177
Email: aseltzer@ryanrussell.com

Wendy E. Stark (Pa. No. 204753)
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
Phone: (330) 761-4307
Fax: (330) 384-3875
Email: starkw@firstenergycorp.com

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

Bradley A. Bingaman (Pa. No. 90443)
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
Phone: (610) 921-6203
Fax: (610) 939-8655
Email: bbingaman@firstenergycorp.com

Dated: September 23, 2010

Counsel for FirstEnergy Corp.

APPENDIX A

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of West Penn Power :
Company dba Allegheny Power for : **Docket No. P-00072342**
Approval of its Retail Electric :
Default Service Program and :
Competitive Procurement Plan for :
Service at the Conclusion of the :
Restructuring Transition Period :

**TESTIMONY
OF
FRANK LACEY**

**On Behalf of
Direct Energy Services, LLC
And the
Retail Energy Supply Association**

February 12, 2008

1 (iii) 20 to 25 percent of supply procured through shorter duration contracts (three
2 to six months); and (iv) 15 to 20 percent reliance on spot market purchases.⁷

3 For West Penn's first post-rate cap default service transition period, this
4 approach offers a reasonable transition to allow customers to gain a level of
5 comfort with a rates that are slightly more market reflective, and offer the
6 customer some opportunity to shop for alternative electricity products.

7 **IV. ALTERNATIVE POLR OPTION**

8 **Q. DO YOU HAVE ANY OTHER SUGGESTIONS THAT WOULD BENEFIT**
9 **WEST PENN'S CUSTOMERS?**

10 A. Yes. The Commission should open up a docket pursuant to § 54.183 to consider
11 the appointment of one or more alternative default service providers to serve the
12 customers in West Penn's service territory. That docket should hear proposals
13 and concepts that alternative suppliers could offer to those customers. There are
14 several potential solutions to serving default service customers and several
15 options for giving customers the benefit of competitive markets. In this
16 proceeding, we have heard one concept from West Penn (which deviates
17 significantly from the Commission's vision). Direct Energy, RESA and others
18 will offer modifications to that plan. A new docket, inviting fresh ideas will
19 likely draw several other new ideas and new companies to the table, from which
20 the Commission could choose the best option for customers.

21 **Q. HOW COULD THIS APPROACH PROVIDE BENEFITS TO THE**
22 **CUSTOMERS IN WEST PENN'S DISTRIBUTION TERRITORY?**

⁷ Petition of Pennsylvania Power Company for Approval of Interim Default Service Supply Plan, P-00072305, OCA Supplemental Comments and Affidavit of Dr. Steven L. Estomin (filed December 14, 2007), Comments at 5, Affidavit ¶9.

1 A. Different companies will offer different solutions. One company may be adept at
2 managing residential load risk. Another may be more skilled at managing a
3 segment of the business market. One company may have a higher tolerance for
4 managing risk and not seek reconciliation of costs on a routine basis, removing
5 that risk from the customers. One company may have a significantly higher credit
6 rating or larger balance sheet, offering security to a wholesale provider that may
7 not be available under the West Penn plan. Finally, one alternative default service
8 provider may be more interested in opening markets and generally providing the
9 benefits of competition to the customers than other default service suppliers. It is
10 impossible to predict what the proposals will be absent this type of proceeding.
11 But what is certain is that the Commission would have a menu of options to
12 choose from.

13 **Q. WHAT WOULD YOU SUGGEST IF THE COMMISSION IS NOT**
14 **WILLING TO OPEN A DOCKET TO CONSIDER ALTERNATIVE**
15 **DEFAULT SERVICE PROVIDERS?**

16 A. As has been clearly shown in this case and in several others, longer-term contracts
17 lead to higher prices for customers. There is too much uncertainty over the longer
18 horizons for long-term contracts to be less expensive than shorter-term contracts.
19 Because West Penn is basically attempting to contract for electricity in some
20 instances, more than five years before the delivery date, this commission should
21 act to protect the customers should that bet be wrong. This Commission should
22 establish a procedure to implement a competitive retail auction of customers as
23 we approach 2011. If West Penn has bet incorrectly, and West Penn continues to
24 ignore the Policy Statement initiatives that will provide customers with
25 competitive options, then the customers should have an option to protect

1 themselves against that bet and the high prices that would be associated with
2 those actions. If West Penn's strategy truly gives rise to the best prices for
3 customers, then all of the customers will stay on West Penn's default service.
4 Alternatively, if West Penn's plan gives rise to prices that are higher than the
5 prevailing market price when the default service period begins, customers could
6 save millions of dollars annually with a retail auction of customers.

7 **Q. DO YOU HAVE A SPECIFIC OUTLINE FOR SUCH A PLAN?**

8 A. At this point, I do not have a specific recommendation. I have not detailed a plan
9 because the first preference would be to open a docket and consider alternative
10 default supply options. If the Commission does not open that investigation, and
11 chooses instead to host a retail auction to protect customers from West Penn's
12 plan, Direct Energy will undertake the effort to convene the stakeholders to
13 develop a consensus plan.

14 **Q. HAS DIRECT ENERGY UNDERTAKEN ANY SIMILAR TYPE OF**
15 **ENDEAVOR?**

16 A. Direct Energy currently has a proposal on file with the Maryland Commission
17 asking the Maryland Commission to allow an aggregation of all of the customers
18 in the state that are receiving Universal Service Fund assistance. The concept
19 behind that proposal is the same as the concepts outlined above. The long-term
20 contracts entered into by the utilities are typically more expensive than shorter
21 term contracts. Direct Energy (or alternative winning bidder) would manage the
22 group of customers so that they would be guaranteed to never pay more than the
23 default price and could be afforded significant savings over time.

24 **Q. HAS THE MARYLAND COMMISSION RULED ON YOUR REQUEST**
25 **YET?**

1 A. No, but I expect a ruling to be issued in that case before this case is fully litigated.

2 Q. **DOES THIS CONCLUDE YOUR TESTIMONY?**

3 A. Yes at this time.

APPENDIX B

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SECRETARY'S BUREAU**

9. Alternative POLR Supplier Options

a. Parties' Position

(1) Allegheny

The Company stated that the level of retail choice would be driven by the level of cost savings offered by suppliers and that the "retail enhancements," supplier-initiated billings, suppliers' policing of service requests and suppliers' ability to terminate electric service should not be considered at this stage of the transition. Allegheny M.B. at 70.

Allegheny noted that, as pointed out by Constellation at page 57 of its Main Brief, Section 54.183(b)(2) of the Commission's regulations require an EGS wanting to serve as a default service provider to petition the Commission for such statute. The Company[*275] argued that the issue was not properly raised as part of this proceeding. Allegheny also opined that *the proposal to auction off customers was equally problematic and that Direct/RESA's proposals should be rejected.*

(2) Public Advocates

The OCA recommended that the Commission reject Direct's proposal that the Commission open a docket to consider alternative Default Service providers or, alternatively, that the Commission initiate steps to auction off customers to EGSs at the end of the transition period. The OCA opined that there was no evidence to support the proposal to auction off customers to other retail suppliers at this time. OCA M.B. at 74-75.

The OCA stated that a review of the regulation relied upon by RESA, et. al demonstrated that the Commission could consider a petition by an EGS to the Commission requesting to be assigned the role as alternate default service provider (52 Pa. Code § 54.183(b)(2)) and that the Commission may then only reassign the obligation upon a finding that it was necessary for the accommodation, safety and convenience of the public. 52 Pa. Code § 54.183(c). [*276] The OCA opined that this provision did not support the type of retail auction proposed by RESA, et. al. OCA R.B. at 38.

The OSBA opined that because of Sections 54.183(a), 54.183(b) (2) (c) and (d) of the Commission's regulations and Section 2807(e) (3) of the Competition Act there were a number of procedural issues with RESA's proposition. Additionally, the OSBA submitted that the EGSs had no evidence that Allegheny's default service program would fail to result in significant shopping. Therefore, the OSBA opined that RESA's request was premature. OSBA R.B. at 38.

(3) Suppliers

Constellation noted that the Commission's Final Default Service Regulations specified that, if an EGS proposed to change the Default Service provider, it must proceed by way of petition to the Commission. Constellation recommended that the RESA proposal regarding alternative Default Service suppliers should not be taken up in the present proceeding and that to the extent that the Commission wanted to investigate such a proposal, the Commission should do so in a separate proceeding, the result of which should not slow down or otherwise affect the outcome of this proceeding. Constellation M.B. at 57.

RESA [*277] recommended that the Commission open a proceeding pursuant to Section 54.183 of its regulations to consider the appointment of one or more alternative default

service providers in the territory. RESA believed that by opening the proceeding the Commission would be inviting fresh ideas from a variety of interested parties regarding how to best fulfill the default service provider role for the benefit of customers and that with the input from the proceeding the Commission could pick and choose from a plate of options to carefully tailor the best default service product for the customers in Allegheny's territory.

If the Commission rejected the above proposal, RESA recommended that the Commission adopt RESA's alternative proposal that the Commission establish a procedure to implement a competitive retail auction of customers as 2011 gets closer. RESA M.B. at 75-77.

b. Recommendation

The Commission's regulations state that the default service provider may be changed by one of the following processes: (1) An EDC may petition the Commission to be relieved of the default service obligation; (2) an EGS may petition the Commission to be assigned the default service role for a particular [*278] EDC service territory; or (3) the Commission may propose through its own motion that an EDC be relieved of the default service obligation.

Allegheny had not petitioned the Commission to be relieved of the default service obligation in this proceeding. An EGS had not petitioned the Commission to be assigned the default service role for Allegheny in this proceeding. And there was no evidence that Allegheny *should be relieved of its default service obligation. Therefore, I reject RESA's* recommendation that the Commission open a proceeding to consider alternative default service providers. I also agree with the advocates that there was no evidence to support a retail auction of customers and therefore reject that proposal, too.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

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

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the **Answer on behalf of West Penn Power Company, Trans-Allegheny Interstate Line Company, and FirstEnergy Corp. to Direct Energy Services, LLC's Motion to Suspend Schedule** on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Honorable Wayne L. Weismandel
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120
wweismande@state.pa.us

Honorable Mary D. Long
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Piatt Place, Room 220
301 Fifth Avenue
Pittsburgh, PA 15222
malong@state.pa.us

Daniel G. Asmus, Esquire
Lauren M. Lepkoski
Assistant Small Business Advocate
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
dasmus@state.pa.us
llepkoski@state.pa.us

Benjamin L. Willey
Law Offices of Benjamin L. Willey, LLC
7272 Wisconsin Avenue, Suite 300
Bethesda, MD 20814
blw@bwilleylaw.com
Counsel for York County Solid Waste
Authority

Tanya J. McCloskey
Senior Assistant Consumer Advocate
Darryl Lawrence
Aron J. Beatty
Assistant Consumer Advocates
Pennsylvania Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101-1923
tmccloskey@paoca.org
dlawrence@paoca.org
abeatty@paoca.org
jhorner@paoca.org

Allison C. Kaster
Carrie B. Wright
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
akaster@state.pa.us
carwright@state.pa.us

Scott J. Rubin
333 Oak Lane
Bloomsburg, PA 17815-2036
scott.j.rubin@gmail.com
Counsel for IBEW

Regina L. Matz
Thomas, Long, Niesen & Kennard
P.O. Box 9500
212 Locust Street, Suite 500
Harrisburg, PA 17108-9500
rmatz@thomaslonglaw.com
Counsel for ARIPPA

Divesh Gupta
Senior Counsel
Constellation Energy
111 Market Place, Suite 500
Baltimore, MD 21202
divesh.gupta@constellation.com
Counsel for Constellation

Theodore S. Robinson
Staff Attorney
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
robinson@citizenpower.com
Counsel for Citizen Power, Inc.

Eric Paul Cheung
Joseph Otis Minott
Clean Air Council
135 South 19th Street, Suite 300
Philadelphia, PA 19103
echeung@cleanair.org
joe_minott@cleanair.org
Counsel for Clean Air Council

Charles McPhedran
John K. Baillie
Citizens for Pennsylvania's Future
1500 Walnut Street, Suite 502
Philadelphia, PA 19102
mcphehdran@pennfuture.org
baillie@pennfuture.org
Counsel for PennFuture

Daniel Clearfield
Deanne M. O'Dell
Carl R. Schultz
Eckert Seamans Cherin & Mellott, LLC
P.O. Box 1248
213 Market Street, 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
dodell@eckertseamans.com
cshultz@eckertseamans.com
*Counsel for Direct Energy Services, Inc., &
RESA*

Scott H. Strauss
Katharine M. Mapes
Spiegel & McDiarmid, LLP
1333 New Hampshire Avenue, NW
Hampshire Avenue, NW
Washington, DC 20036
scott.strauss@spiegelmcid.com
katharine.mapes@spiegelmcid.com
*Counsel for Utility Workers Union of America,
AFL-CIO and UWUA System Local No. 102*

Stephen H. Jordan
Rothman Gordon P.C.
Third Floor, Grant Building
310 Grant Street
Pittsburgh, PA 15219
shjordan@rothmangordon.com
*Counsel for Utility Workers Union of America,
AFL-CIO and UWUA System Local No. 102*

Kurt E. Klapkowski
Commonwealth of Pennsylvania
Department of Environmental Protection
RCSOB, 9th Floor
400 Market Street
Harrisburg, PA 17101-2301
kklapkowski@state.pa.us
*Counsel for the Pennsylvania Department
of Environmental Protection*

Susan E. Bruce
Vasiliki Karandrikas
Carl J. Zwick
McNees Wallace & Nurick LLC
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166
sbruce@mwn.com
vkandrikas@mwn.com
czwick@mwn.com
*Counsel for West Penn Power Industrial
Intervenors*

Charis Mincavage
Vasiliki Karandrikas
Carl J. Zwick
McNees Wallace & Nurick LLC
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166
cmincavage@mwn.com
vkandrikas@mwn.com
czwick@mwn.com
*Counsel for MEIUG/PICA & West Penn
Power Industrial Intervenors*

Thomas J. Sniscak
Todd S. Stewart
William E. Lehman
Hawke McKeon & Sniscak LLP
P.O. Box 1778
100 North Tenth Street
Harrisburg, PA 17105
tjsniscak@hmslegal.com
tsstewart@hmslegal.com
welehman@hmslegal.com
Counsel for the Pennsylvania State University

David J. Dulick
General Counsel
Pennsylvania Rural Electric Association
212 Locust Street
P.O. Box 1266
Harrisburg, PA 17108-1266
david_dulick@prea.com
Counsel for Pennsylvania Rural Electric Association

Charles E. Thomas, Jr.
Thomas, Long, Niesen & Kennard
P.O. Box 9500
212 Locust Street, Suite 500
Harrisburg, PA 17108-9500
cthomasjr@thomaslonglaw.com
Counsel for Pennsylvania Rural Electric Association

Derrick Price Williamson
Barry A. Naum
Spilman, Thomas & Battle, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com
bnaum@spilmanlaw.com
Counsel for Pennsylvania Mountains Healthcare Alliance

Thomas T. Niesen
Thomas, Long, Niesen & Kennard
P.O. Box 9500, Suite 500
212 Locust Street
Harrisburg, PA 17108
tniesen@thomaslonglaw.com
Counsel for West Penn Power Sustainable Energy Fund

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

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

David Vollero
Executive Director YCSWA
2700 Blackbridge Road
York, PA 17406
d.vollero@ycswa.com

Jeff A. McNelly
ARIPPA Executive Director
2015 Chestnut Street
Camp Hill, PA 17011
jamenelly1@arippa.org

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

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

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

James L. Crist
The Lumen Group, Inc.
4226 Yarmouth Drive, Suite 101
Allison Park, PA 15101
jlcrist@aol.com

David I. Fein
Constellation Energy
Suite 300
550 West Washington Boulevard
Chicago, IL 60661
david.fein@constellation.com

Michael D. Fiorentino
42 East 2nd Street, Suite 200
Media, PA 19063
mdfiorentino@gmail.com
Counsel for Clean Air Council

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Randall B. Palmer (Pa. No. 94161)
Jennifer L. Petrisek (Pa. No. 83411)
Allegheny Energy, Inc.
800 Cabin Hill Drive
Greensburg, PA 15601
Phone: (724) 838-6894
Fax: (724) 853-4264
Email: rpalmer@alleghenyenergy.com

W. Edwin Ogden (Pa. No. 17644)
Alan Michael Seltzer (Pa. No. 27890)
Ryan, Russell, Ogden & Seltzer PC
Suite 210
1150 Berkshire Boulevard
Wyomissing, PA 19610-1208
Phone: (610) 372-4761
Fax: (610) 372-4177
Email: aseltzer@ryanrussell.com

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

Date: September 23, 2010



Thomas P. Gadsden
(Pa. No. 28478)
Kenneth M. Kulak
(Pa. No. 75509)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: (215) 963-5234
Fax: (215) 963-5001
Email: tgadsden@morganlewis.com

Wendy E. Stark (Pa No. 204753)
FirstEnergy Corporation
76 South Main Street
Akron, OH 44308
Phone: (330) 761-4307
Fax: (303) 384-3875
Email: starkw@firstenergycorp.com

Bradley A. Bingaman, Esquire
(Pa. No. 90443)
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
Phone: (610) 921-6203
Fax: (610) 939-8655
Email: bbingaman@firstenergycorp.com

Counsel for FirstEnergy Corp.

KMK #13847 #042057-01-0006

Morgan Lewis
COUNSELORS AT LAW

1701 Market Street
Philadelphia, PA 19103-2921

TO: Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

ORIGIN ID: REDA (215)-963-5317
MAIL ROOM
MORGAN LEWIS & BOCKIUS LLP
1701 MARKET STREET
PHILADELPHIA, PA 19103
UNITED STATES US

SHIP DATE: 23SEP10
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BILL SENDER

TO ROSEMARY CHIAVETTA, SECRETARY
PA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET
HARRISBURG PA 17120

REF: 13847 - 042057 - 0006



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