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COUNSELORS AT LAW

October 8, 2010

VIA FEDERAL EXPRESS

PA PUBLIC UTILITY COMMISSION

OCT 8 2010

SECRETARY'S BUREAU

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

Joint Application of West Penn Power Company doing business as Allegheny Power, Trans-Re: 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 of West Penn Power Company, Trans-Allegheny Interstate Line Company, and FirstEnergy Corp. to Retail Energy Supply Association's Motion to Permit Access to Joint Applicants' Highly Sensitive Material in the above-captioned matter. Pursuant to 52 Pa. Code § 1.11(a)(2), the enclosed Answer shall be deemed filed on October 8, 2010, which is the date it was deposited with Federal Express as shown on the Federal Express delivery receipt.

As evidenced by the attached Certificate of Service, copies of the Answer are being served on the Administrative Law Judges and all parties of record. Also enclosed is an additional copy of this letter and the Answer, which we request be date-stamped as evidence of filing and returned to us in the stamped, pre-addressed envelope provided.

Verv truly yours.

Kennth M. Kulák

KMK/tp Enclosures

Per Certificate of Service c:

> 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

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSIOR ECEIVED

OCT 8 2010 JOINT APPLICATION OF WEST PENN **POWER COMPANY doing business as** PA PUBLIC UTILITY COMMISSION **ALLEGHENY POWER, TRANS-**SECRETARY'S BUREAU ALLEGHENY INTERSTATE LINE COMPANY AND FIRSTENERGY CORP. FOR A CERTIFICATE OF PUBLIC DOCKET NOS. A-2010-2176520 A-2010-2176732 **CONVENIENCE UNDER SECTION** 1102(A)(3) OF THE PUBLIC UTILITY CODE : APPROVING A CHANGE OF CONTROL OF WEST PENN POWER COMPANY AND TRANS-ALLEGHENY INTERSTATE LINE **COMPANY**

. ...

ANSWER OF

WEST PENN POWER COMPANY, TRANS-ALLEGHENY INTERSTATE LINE THE COMPANY, AND FIRSTENERGY CORP. TO THE RETAIL ENERGY SUPPLY ASSOCIATION'S MOTION TO PERMIT ACCESS TO JOINT APPLICANTS' HIGHLY SENSITIVE MATERIAL

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 the Retail Energy Supply Association's ("RESA's") Motion

to Permit Access to Joint Applicants' Highly Sensitive Material ("Motion").

- 1. Admitted.
- 2. Admitted. By way of further response, Paragraph 4 of the Protective Order

provides in its entirety:

Where specific Confidential Information is highly sensitive, it shall be provided solely to other parties' counsel. Such highly sensitive information may be copied only for the limited purpose of review by a party's expert or consultant. Such specific prohibition from copying such Confidential Information shall be clearly designated on the face of the information. In such cases, the producing party shall permit other parties' counsel to take custody of such Confidential Information, provided that it shall not be copied, except as provided for in this Ordering Paragraph, and shall be returned or destroyed as provided for in Ordering Paragraph No. 10, below. The producing party may designate certain highly sensitive Confidential Information that may not be viewed by the employees of an inspecting party who are involved in competitive activities absent agreement of the producing party.

3. Admitted that Mr. Hudson executed the Protective Order acknowledgment form; otherwise denied. By way of further response, Joint Applicants are without knowledge of the extent of the review of confidential materials by Mr. Hudson or his reliance on such materials in preparation of his direct testimony.

4. Admitted.

5. Admitted. By way of further response, Joint Applicants state that the limitation on review of their Hart-Scott-Rodino ("HSR") highly confidential and sensitive material is consistent with Paragraph 4 of the Protective Order, which clearly envisions that individuals with competitive interests may be precluded from reviewing highly sensitive material absent agreement of the producing party. No party to this proceeding objected to the Joint Applicants' limitation when it was proposed.

6. Admitted.

7. Denied. Joint Applicants are without knowledge of what Mr. Hudson sought to review in response to Joint Applicants' rebuttal testimony. By way of further response, Joint Applicants state that the testimony referenced by RESA in its Motion that refers to Mr. Hudson's review of discovery deals entirely with Mr. Hudson's recommendations on cost allocation issues and cites discovery responses that were not confidential. *See* Rebuttal Testimony of Richard D. D'Angelo, Joint Applicants Statement No. 7-R, pp. 24-25.

8. Admitted.

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9. Denied. The Protective Order, which was agreed to by all parties in this proceeding and which RESA correctly notes is "an enforceable Order of this Commission," states in clear and plain terms that a producing party has the ability to protect certain highly sensitive materials from review by individuals involved in competitive activities. *See* Protective Order, ¶ 4. The additional restrictions of Paragraph 4 of the Protective Order relating to competitive information are in no way inconsistent with other provisions of the Protective Order, and clearly contemplate that a producing party is under no obligation to provide its highly sensitive confidential competitive information to individuals involved in competitive activities.

10. Admitted that Mr. Hudson is appearing on behalf of RESA, whose membership includes his employer, ConEdison Solutions, a licensed electric generation supplier; otherwise denied.

11. Admitted that Mr. Hudson has testified on behalf of RESA and that he has signed the Protective Order; otherwise denied.

12. Admitted that Mr. Hudson is employed by ConEdison Solutions as Director of Regulatory and Legislative Affairs and that he has signed the Protective Order acknowledgment; otherwise denied. By way of further response, Joint Applicants are without knowledge of the scope of Mr. Hudson's duties as an employee of ConEdison Solutions but note that RESA expressly acknowledges that Mr. Hudson interacts with ConEdison Solutions' sales team. The Protective Order's limitations on restrictions to individuals involved in competitive activities are not limited to an "ultimate decision maker," as RESA implies.

13. Denied. Joint Applicants have not denied RESA access to these highly sensitive materials, but rather a single individual, Mr. Hudson, who is indisputably involved in competitive activities, including interaction with the sales team for ConEdison Solutions. *See*

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Motion, ¶ 12. Refusal of Joint Applicants to agree to permit the provision of highly sensitive competitive information to Mr. Hudson (or other individuals) involved in competitive activities is plainly contemplated and authorized by the Protective Order.

WHEREFORE, for the reasons set forth above, the Administrative Law Judges 14. and the Commission should deny RESA's Motion to Permit Access to Joint Applicants' Highly

Sensitive Material.

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Respectfully submitted,

OCT 8 2010

PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU

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

Dated: October 8, 2010

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Counsel for FirstEnergy Corp.

BEFORE THE RECEIVED PENNSYLVANIA PUBLIC UTILITY COMMISSION

OCT 8 2010

JOINT APPLICATION OF WEST PENN	:	
POWER COMPANY doing business as	:	PA PUBLIC UTILITY COMMISSIÓN Secretary's Bureau
ALLEGHENY POWER, TRANS-	:	
ALLEGHENY INTERSTATE LINE	:	
COMPANY AND FIRSTENERGY CORP.	:	
FOR A CERTIFICATE OF PUBLIC	:	DOCKET NOS. A-2010-2176520
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 and affirm that I have this day served a copy of the Answer of West Penn Power Company, Trans-Allegheny Interstate Line Company, and FirstEnergy Corp. to Retail Energy Supply Association's Motion to Permit Access to Joint Applicants' Highly Sensitive Material 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

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Date: October 8, 2010

