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August 30, 2010

**Via Hand Delivery**

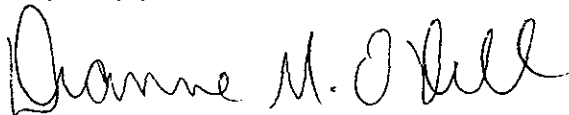
Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Re: Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 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 and A-2010-2176732

Dear Secretary Chiavetta:

Enclosed for filing please find an original and three copies of a corrected version of Direct Energy's Objections to the Interrogatories (Set I) Of West Penn Power Company, Trans-Allegheny Interstate Line Company, And FirstEnergy Corp. On page 1, the date of service was corrected. No other corrections or changes were made from the previously served document. Copies have been served in accordance with the attached Certificate of Service.

Very truly yours,



Deanne M. O'Dell, Esq.

DMO/lww  
Enclosure

cc: Cert. of Service w/enc.

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Joint Application of West Penn Power :  
Company d/b/a Allegheny Power, Trans- : Docket No. A-2010-2176520  
Allegheny Interstate Line Company and : Docket No. A-2010-2176732  
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 :

**OBJECTIONS OF DIRECT ENERGY SERVICES  
TO THE INTERROGATORIES (SET I) OF WEST PENN POWER COMPANY, TRANS-  
ALLEGHENY INTERSTATE LINE COMPANY, AND FIRSTENERGY CORP  
(CORRECTED)**

Pursuant to 66 Pa. C.S. § 333(d) and 52 Pa. Code §§ 5.342(c) and (e), Direct Energy Services (“Direct Energy”) object to Set I Interrogatory Nos. I-26, I-28 and I-29 propounded by West Penn Power Company, Trans-Allegheny Interstate Line Company, and FirstEnergy Corp. (collectively, “Joint Applicants”). Notwithstanding and without waiver of these objections, Direct Energy will provide responses to each of the questions to which an objection is being lodged.

**I. Introduction**

On August 20, 2010, Joint Applicants served Direct Energy with its first set of Interrogatories containing 46 questions, 12 subparts and two exhibits from presentations by Direct Energy’s parent company, Centrica.<sup>1</sup> Direct Energy is preparing responses to all of these questions and plans to serve them on August 30, 2010 in accordance with the discovery schedule set forth in this proceeding. There are, however, three questions I-26, I-28 and I-29 to which Direct Energy objects as set forth herein. Notwithstanding these objections and without waiver

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<sup>1</sup> The Interrogatories were received via electronic mail at 5:39 PM EST on August 19, 2010. Therefore, pursuant to 52 Pa. Code §1.56(a)(4), the interrogatories were served on August 20, 2010.

of them and in the interests of attempting to provide a full and complete record for the Commission, Direct Energy will provide responses to each of them.

## **II. Objections**

The Commission's regulations permit a party to seek discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. 52 Pa. Code § 5.321. However, the regulations prohibit discovery if it "would cause unreasonably annoyance, embarrassment, oppression, burden or expense to a party." 52 Pa. Code § 5.361(a)(2). As explained below, while questions I-26, I-28 and I-29 seek information that should not be required to be disclosed, Direct Energy will provide responses notwithstanding and without waiver of its objections.

### **A. Direct Energy's Objections to Question I-26**

Interrogatory I-26 states as follows:

**Request: -JA(DIRECT)-I-26** Please identify any generation assets in PJM targeted for acquisition as part of the corporate strategy to source 35% to 40% of Direct Energy's North American Market from assets owned by Direct Energy (Road Show, p. 41).

Direct Energy objects to this request on the basis that it is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. In addition, this questions seeks information related to a matter which is privileged because it seeks data that Direct Energy is prohibited from disclosing due to non-disclosure and confidentiality agreements with other entities.

First, the information sought is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence in this proceeding. 52 Pa. Code § 5.321(c). At its core, this proceeding is about whether Joint Applicants' request to merge should be approved by the Commission as consistent with the statutory requirements that it provide an affirmative public

benefit. In its testimony, Direct Energy has explained why the proposed merger fails to meet the statutory requirements and what measures must be implemented to the extent the Commission chooses not to deny the merger. Direct Energy's business strategy and business plans are not relevant to these issues which are rightly focused on the Joint Applicants. As this information is not relevant to any issue in this proceeding, Direct Energy submits that this request not only does not meet the relevancy test but also is being sought to cause unreasonably annoyance, embarrassment, oppression, burden or expense and should be prohibited. 52 Pa. Code § 5.361(a)(2).. Notwithstanding this objection and without waiver of it, Direct Energy will provide a response.

Second, and in the normal course of business, Direct Energy is bound by non-disclosure and confidentiality agreements with various entities with whom it is either considering or actively discussing potential acquisition and/or business arrangements. Pursuant to these agreements, therefore, the information is privileged and barred from discovery, even pursuant to the protective order entered in this case. 52 Pa. Code § 5.361(a)(3). To the extent Direct Energy is not bound by any non-disclosure or confidentiality agreements, it will provide a response notwithstanding and without waiver of its objections.

**B. Direct Energy's Objections to Question I-28**

Interrogatory I-28 states as follows:

**Request: -JA(DIRECT)-I-28** Per the March 12, 2010 Centrica plc-Capital Markets Presentation (attached as Exhibit B to these Interrogatories), p. 66, Direct Energy seeks to be "a strong retail energy business (no. 1 or 2) in our core retail markets (residential and C&I)."

1. Please describe how Direct Energy defines "no. 1 or no. 2" in its core retail markets.
2. Please describe the percentage market share that Direct Energy believes will result in Direct Energy being "no. 1 or no. 2" in its core retail markets.

3. Please provide the estimated MWh sales that Direct Energy will have in its US Northeast Core Market referenced in the Road Show over the next 5 years, assuming it attains the no. 1 or no. 2 market position.
4. How much generating capacity will Direct Energy need to acquire over the next 5 years to provide the estimated MWh sales provided in response to Interrogatory No. 30.3 to meet its strategy to source 35% to 40% of the projected MWh sales from assets owned by Direct Energy?

Direct Energy objects to subparts 2-4 of I-28 for two reasons. First, this question is not seeking relevant information nor is it reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). As discussed above, Direct Energy's business strategy and business plans are not relevant to the issues in this proceeding and is being sought to cause unreasonable annoyance, embarrassment, oppression, burden or expense and should be prohibited. 52 Pa. Code § 5.361(a)(2).

Second, Direct Energy objects to these questions to the extent they are seeking highly detailed information related to Direct Energy's business plans and marketing strategy. Such information is at the core of Direct Energy's business and is highly sensitive such that the release of it would be prejudicial and damaging to Direct Energy's business. 52 Pa. Code § 5.361. Direct Energy has not relied upon the information sought in this question to support its position in this case, it has not released such information to the other parties in this case, nor does it in the normal course of business release such information to other entities. While there is a Protective Order, the terms of the Protective Order would not mitigate potential damage to Direct Energy to releasing this information nor can the Protective Order be used as a tool to require Direct Energy to produce information that is not relevant to the issues of this proceeding and, if released, would substantially harm a party. Notwithstanding and without waiver of this objection, Direct Energy will provide a confidential response to these questions.

**C. Direct Energy's Objection to Interrogatory I-29**

Interrogatory states as follows:

**Request: -JA(DIRECT)-I-29** Please provide Direct Energy's estimate of the top 5 providers of competitive electricity services in the US Northeast Core Market referenced in the Road Show (p. 39).

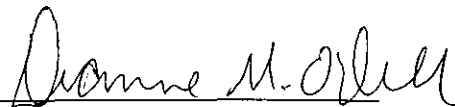
1. Is any affiliate of FirstEnergy Corp. or Allegheny Power considered a top 5 provider of competitive electricity services in the US Northeast Core Market as described by Centrica?

Consistent with its previously explained objections as to relevancy and to the extent this question is seeking highly detailed information related to Direct Energy's business plans and marketing strategy, Direct Energy objects to this question. Notwithstanding this objection and without waiver of it, Direct Energy will provide a response.

### **III. Conclusion**

For all the reasons set forth above, Direct Energy's objections to Joint Applicants' Interrogatories I-26, I-28 and I-29 should be granted.

Respectfully submitted,



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Dated: August 25, 2010

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy Direct Energy's CORRECTED Objections To The Interrogatories (Set I) Of West Penn Power Company, Trans-Allegheny Interstate Line Company, and FirstEnergy Corp upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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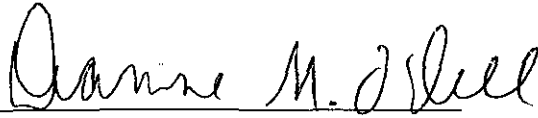
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