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OCT 4 2010

October 4, 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA FEDERAL EXPRESS

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

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 Motion on behalf of West Penn Power Company, Trans-Allegheny Interstate Line Company, and FirstEnergy Corp. to Strike the Testimony of The Pennsylvania Department of Environmental Protection. Pursuant to 52 Pa. Code § 1.11(a)(2), the enclosed Motion shall be deemed filed on October 4, 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 Motion are being served on the Administrative Law Judges and all parties of record. Also enclosed is an additional copy of this letter and of the Answer, which we request be date-stamped as evidence of filing and returned to us in the stamped, pre-addressed envelope provided.

Sincerely,



Thomas P. Gadsden

TPG/tp

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

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

MOTION ON BEHALF OF WEST PENN POWER COMPANY,
TRANS-ALLEGHENY INTERSTATE LINE COMPANY, AND FIRSTENERGY CORP.
TO STRIKE TESTIMONY OF
THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

I. INTRODUCTION

Pursuant to 52 Pa. Code §5.103, West Penn Power Company (“West Penn”), Trans-Allegheny Interstate Line Company (“TrAILCo”), and FirstEnergy Corp. (“FirstEnergy”) (collectively, the “Companies” or “Joint Applicants”) move to strike Pennsylvania Department of Environmental Protection (“DEP”) Statement Nos. 1 and 2, which focus exclusively on the Joint Applicants’ compliance with State and Federal environmental laws. These Statements should be stricken because, through that testimony, DEP is attempting to improperly expand the scope of this proceeding to matters outside the jurisdiction of the Pennsylvania Public Utility Commission (the “Commission”). Indeed, presiding Administrative Law Judges (“ALJs”) Long and Weisman recently confirmed that such matters are outside the Commission’s jurisdiction, as well as irrelevant to the subject matter of this case, in ruling upon the Joint Applicants’

objections to certain discovery promulgated by the DEP. *See* Order Granting In Part And Denying In Part Motion To Compel (dated August 25, 2010) (“DEP Discovery Order”).

II. DEP STATEMENT NOS. 1 AND 2 SHOULD NOT BE ADMITTED

A. The Administrative Law Judges Have The Authority To Deny Admission Of Testimony That Is Outside The Scope Of This Proceeding

The Commission’s regulations at 52 Pa. Code § 5.403(a) grant presiding officers “all necessary authority to control the receipt of evidence,” including “[r]uling on the admissibility of evidence” and “[c]onfining the evidence to the issues in the proceeding.” Administrative Law Judges have employed this power, with the Commission’s approval and affirmation, to exclude evidence that is outside the permissible scope of a proceeding and, in that way, to focus the evidence on the matters properly at issue. *See, e.g., Re Gas Cost Rate No. 5*, 57 Pa. P.U.C. 158 (1983) (“The testimony stricken by the ALJ addresses, in part, matters broader than the scope of the instant proceeding.”); *Pa. P.U.C. v. Pennsylvania-American Water Co.*, 1994 Pa. PUC LEXIS 120 (July 26, 1994) at *158 (“The ALJ concluded as follows: ‘I agree with OTS that the issues raised by OCA are outside the scope of this investigation. . . .’ We conclude that the ALJ properly found the matters raised by the OCA to be better placed in the pending rulemaking proceeding.”) *See also Re Structural Separation Of Bell Atlantic-Pennsylvania, Inc. Retail And Wholesale Operations*, 2000 Pa. PUC LEXIS 59 (September 28, 2000) at *7-9 (affirming the Administrative Law Judge’s decision in that case to exclude certain evidence as “beyond the scope of the proceeding.”)

In this proceeding, the ALJs have already determined that issues concerning compliance with federal and state environmental laws are outside the proper scope of discovery. In several of its Set I Interrogatories, DEP sought a variety of environmental compliance information,

including plans for managing low-level radioactive waste, corrective action plans and existing or planned analysis of compliance status. The Joint Applicants objected to those requests, among others, as outside the Commission's jurisdiction and irrelevant to the approvals sought by the Joint Applicants. In the DEP Discovery Order, a copy of which is appended hereto as Attachment A, the ALJs denied DEP's Motion to Compel responses to those interrogatories, reasoning as follows:

These interrogatories seek information about compliance with Federal and Commonwealth environmental laws and corrective action plans. We agree with the Joint Applicants that any information obtained in response to these Interrogatories would be irrelevant to the subject matter of this case: that the Commission's issuance of a certificate of public convenience approving the merger is in the public interest because it will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. *The Commission does not have jurisdiction over compliance with either Federal or Commonwealth environmental laws. Whether or not any of the Joint Applicants' facilities are in compliance with laws over which the Commission does not have jurisdiction is not relevant to the subject matter of this case.*

DEP Discovery Order, p. 8 (internal citations omitted) (emphasis added).

B. The ALJs Should Exercise The Authority Granted By The Commission's Regulations To Exclude DEP Statement Nos. 1 and 2

DEP Statement Nos. 1 and 2 focus **exclusively** on environmental compliance issues related to the Joint Applicants' facilities. Thus, DEP witness Kevin A. Halloran (DEP Statement No. 1) describes the purpose of his testimony as follows:

The purpose of my testimony is to identify and examine the water quality considerations or concerns that arise as a consequence of the Joint Applicants' proposed merger. The Department is concerned that the proposed merger may adversely affect compliance with Clean Streams Law requirements thereby adversely affecting the health, safety and welfare of the citizens of the Commonwealth.

DEP St. No. 1, p. 2. Mr. Halloran then proceeds to identify alleged “known potential water quality issues” at the Joint Applicants’ facilities, such as permitted discharges in excess of effluent limitations, unpermitted discharges and groundwater contamination. *See* DEP St. No. 1, pp. 2-7. He concludes that conditions should be imposed to “require the new company to comply with state law,” including particular permit effluent limitations. *Id.* at 7.

Similarly, DEP witness Dan M. Haney (DEP Statement No. 2) describes the purpose of his testimony as follows:

The purpose of my testimony is to identify and examine the air quality environmental considerations or concerns that arise as a consequence of the Joint Applicants’ proposed merger with regard to three power stations The federal Clean Air Act, the Pennsylvania Air Pollution Act and the regulations promulgated thereunder establish various requirements to prevent or reduce the emission of air contaminants from air contamination sources including facilities that generate electricity. DEP is concerned that design and emission issues for the Joint Applicants’ electric generating units in Southwestern Pennsylvania are currently and will continue to affect the health, safety and welfare of the citizens of the Commonwealth, and that the proposed merger will allow these concerns to continue unless actions are taken to address them.

DEP St. No. 2, p. 2 (internal citations omitted). Mr. Haney proceeds to describe the alleged compliance history and design flaws of particular electric generating units owned by the Joint Applicants, including the absence of certain Nitrogen Oxide control equipment, improper use of scrubbers, and an ongoing federal court proceeding related to alleged air permit violations. *See* DEP St. No. 2, pp. 2-7.

As recognized in the DEP Discovery Order, “[t]he Commission does not have jurisdiction over compliance with either Federal or Commonwealth environmental laws,” and “[w]hether or not any of the Joint Applicants’ facilities are in compliance with laws over which the Commission does not have jurisdiction is not relevant to the subject matter of this case.”

DEP Discovery Order, p. 8. The sole purpose of DEP Statement Nos. 1 and 2 is to raise concerns and advocate for merger conditions related to the Joint Applicants' compliance with Federal and State environmental laws. Environmental compliance issues and conditions simply have no place in this proceeding, and as DEP Statement Nos. 1 and 2 address no other issue, each statement should be excluded from this proceeding in its entirety.

III. CONCLUSION

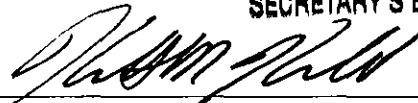
For the reasons set forth above, the Administrative Law Judges should issue an Order striking DEP Statement Nos. 1 and 2 from the record in this case.

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OCT 4 2010

Respectfully submitted,

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**



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Dated: October 4, 2010

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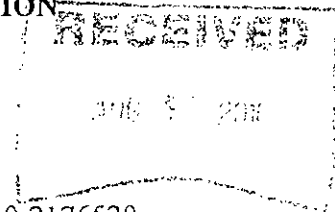
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OCT 4 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ATTACHMENT A

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 :

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO COMPEL

On May 14, 2010, West Penn Power Company, doing business as Allegheny Power (West Penn), Trans-Allegheny Interstate Line Company (TrAILCo) and FirstEnergy Corp. (FirstEnergy), (collectively, Joint Applicants), filed a joint application to obtain the approval of the Pennsylvania Public Utility Commission (Commission) under Chapters 11 and 28 of the Public Utility Code (Code), 66 Pa.C.S.A. §§ 101 et seq., for a change of control of West Penn and TrAILCo to be accomplished by the merger of Allegheny Energy, Inc., the parent corporation of both West Penn and TrAILCo, with Element Merger Sub, Inc., a wholly-owned subsidiary of FirstEnergy. Allegheny Energy, Inc. would then become a wholly-owned subsidiary of FirstEnergy. The Joint Applicants also requested that the Commission approve certain revisions to affiliated interest agreements that are designed to facilitate the sharing of services between the Allegheny and FirstEnergy systems.

An Initial Prehearing Conference (Prehearing Conference) was held on June 22, 2010. Among other things, the Commission's Rules regarding discovery were modified to expedite the filing and disposition of Motions to Compel discovery. The modifications were included in our Scheduling and Briefing Order (Scheduling and Briefing Order) dated June 23, 2010.

On July 30, 2010, the Pennsylvania Department of Environmental Protection (DEP) served the Joint Applicants with its Interrogatories, Set I, numbers 1 through 52.

On August 9, 2010, the Joint Applicants served objections to DEP Interrogatories, Set I, numbers 1 through 16 and 46 through 51.

On August 12, 2010, DEP filed and served a Motion To Dismiss Objections And Compel Answers To Interrogatories, Set I, Questions 1-16 And 46-51 (DEP Motion To Compel).

On August 16, 2010, Joint Applicants filed and served their Answer to the DEP Motion to Compel.

DEP's Interrogatories, Set I numbers 1-16 and 46-51 and Joint Applicants' objections thereto read, in their entirety, as follows:

DEP Set I, numbers 1-9:

1. Have the Companies prepared or directed to be prepared any studies, analyses, memos or other documents analyzing the current compliance status under the environmental acts at the Companies' facilities?
2. If the answer to Question 1 is yes, provide copies of any such studies, analyses, memos or other documents.
3. If the answer to question 1 is no, describe any plans the Companies have to conduct such studies, analyses, memos or other documents analyzing the current compliance status under the environmental acts at the Companies' facilities.
4. For units that are not currently in compliance with applicable state and federal environmental requirements, have the Companies developed remedial or corrective action proposals or plans?
5. If the answer to question 4 is yes, provide a copy of any such studies, analyses, memos or other documentation.
6. If the answer to question 4 is no, how does the Company plan to address the compliance issues at such units? Describe the

plans or arrangements that the Companies will develop to comply with the applicable environmental acts.

7. For units that are not currently in compliance with applicable state and federal environmental requirements, have the Companies developed any cost estimates for necessary remedial or corrective action?

8. If the answer to question 7 is yes, provide any studies, analyses, memos or other documentation analyzing or outlining such costs.

9. If the answer to question 7 is no, describe any plans the Companies have to develop such studies, analyses, memos or other documents analyzing any cost estimates for necessary remedial or corrective action.

OBJECTIONS TO DEP SET I INTERROGATORIES 1-9

The Companies object to Interrogatories 1-9 because they seek information that is not relevant and is outside the jurisdiction of the Pennsylvania Public Utility Commission (Commission). In particular, these interrogatories seek information about compliance with federal and state environmental laws, including corrective action plans and existing or planned analysis of compliance status and the cost of possible corrective action. These laws are not within the jurisdiction of the Commission or relevant to the approvals sought in this proceeding. In addition, to the extent the Interrogatories apply only to electric generation facilities, the Companies note that such facilities are not regulated by the Commission and the Companies' Pennsylvania-regulated utilities do not own any such facilities.

DEP Set I, number 10:

10. For the Companies' power stations that are coal-fired and located in the Commonwealth, proper management of coal ash is a critical issue. Describe the plans and arrangements that currently exist or are anticipated to manage the coal ash that is generated at such power stations.

OBJECTIONS TO DEP SET I INTERROGATORY 10

The Companies object to Interrogatory 10 because it seeks information that is not relevant and is outside the Commission's jurisdiction. In particular, this interrogatory seeks information

about current or anticipated plans of the Companies to manage coal ash generated by coal-fired power stations located in Pennsylvania. The management of coal ash under federal and state laws is not within the jurisdiction of the Commission or relevant to the approvals sought in this proceeding. In addition, the Companies note that any such generation facilities are not regulated by the Commission and the Companies' Pennsylvania-regulated utilities do not own any such facilities.

DEP Set I, number 11:

11. Will the proposed merger affect in any way the plans or arrangements described in response to question 10? If so, describe the effects of the merger on the plans or arrangements.

OBJECTIONS TO DEP SET I INTERROGATORY 11

Interrogatory 11 seeks information concerning whether the proposed merger will affect any plans described in response to Interrogatory 10. Consistent with the objections raised to Interrogatory 10, the Companies also object to Interrogatory 11 because it seeks information that is not relevant to the approvals sought in this proceeding and is outside the Commission's jurisdiction.

DEP Set I, numbers 12-14:

12. Identify the Companies' nuclear power stations that are located within the area covered by the Appalachian States Low-Level Radioactive Waste Compact.

13. Describe the plans and arrangements that currently exist or are anticipated to manage the low-level radioactive waste that is generated at the nuclear power stations identified in response to question 12.

14. Describe the current schedules and plans for decontaminating and decommissioning the nuclear power plants identified in question 12, the funds currently available and those projected to be needed to safely dispose for low-level radioactive waste generated during decontaminating and decommissioning.

OBJECTIONS TO DEP SET I INTERROGATORIES 12-14

The Companies object to Interrogatories 12-14 because they seek information that is not relevant and is outside the Commission's

jurisdiction. In particular, these interrogatories seek information about nuclear power stations subject to the Appalachian States Low-Level Radioactive Waste Compact and plans for managing low-level radioactive waste and funding for nuclear decontamination and decommissioning. The Compact and the laws governing radioactive waste and nuclear decontamination and decommissioning are not within the jurisdiction of the Commission or relevant to the approvals sought in this proceeding. In addition, the Companies note that such nuclear generation facilities are not regulated by the Commission and the Companies' Pennsylvania-regulated utilities do not own any such facilities.

DEP Set I, numbers 15-16:

15. Will the proposed merger affect in any way the plans or arrangements described in response to questions 12-14?

16. If the response to question 15 is yes, describe the effects of the merger on the plans or arrangements.

OBJECTIONS TO DEP SET I INTERROGATORIES 15-16

Interrogatories 15-16 seek information concerning whether the proposed merger will affect any plans described in response to Interrogatories 12-14. Consistent with the objections raised to Interrogatories 12-14, the Companies also object to Interrogatories 15-16 because they seek information that is not relevant to the approvals sought in this proceeding and is outside the Commission's jurisdiction.

DEP Set I, numbers 46-49:

46. Have the Companies conducted or directed to be conducted any studies, memos, analyses and recommendations related to the "price suppression" impact of new generation entering the electricity market?

47. If the answer to question 46 is yes, provide copies of any such studies, memos, analyses and recommendations prepared by or for the Companies related to the "price suppression" impact of new generation entering the electricity market.

48. Have the Companies conducted or directed to be conducted any studies, memos, analyses and recommendations related to the "price suppression" impact of only new renewable generation entering the electricity market?

49. If the answer to question 48 is yes, provide copies of any such studies, memos, analyses and recommendations related to the “price suppression” impact of only new renewable generation entering the electricity market.

OBJECTIONS TO DEP SET I INTERROGATORIES 46-49

The Companies object to Interrogatories 46-49 because they seek information that is not relevant and is outside the Commission’s jurisdiction. In particular, these interrogatories seek information about existing or planned analysis of an undefined “price suppression” impact of new generation and/or new renewable generation entering the electricity market. Because such generation facilities are not regulated by the Commission (and the Companies’ Pennsylvania-regulated utilities do not own any such facilities), such information is irrelevant to the approvals sought in is proceeding and outside the Commission’s jurisdiction.

DEP Set I, numbers 50-51:

50. For the years 2011 through 2015, and using currently operating, under construction and planned alternative energy projects within the PJM Interconnection area, calculate the impact of price suppression on the distribution revenues of each of the Companies’ Pennsylvania subsidiaries.

51. For the years 2011 through 2015, calculate the overall impact of the Pennsylvania Alternative Energy Portfolio Standards Act, including price suppression impacts, on the distribution revenues of each of the Companies’ Pennsylvania subsidiaries.

OBJECTIONS TO DEP SET I INTERROGATORIES 50-51

The Commission’s regulations at 52 Pa.Code § 5.361 provide that a party is permitted to seek discovery that requests another party to make a study or analysis “if the study or analysis cannot reasonably be conducted by the party making the request.” The Companies object to Interrogatories Nos. 50 and 51 because they request that the Companies conduct additional “price suppression” analyses related to alternative energy projects and state alternative energy requirements that could reasonably be conducted by DEP. In addition, demands that the Companies conduct analyses that can, and should, be prepared by the DEP’s own witness(es) represent an unreasonable burden and expense, which is a further grounds for objection, under 52 Pa.Code § 5.361(a)(2).

In addition, similar to Interrogatories 46-49, Interrogatory 50 seeks information concerning the "price suppression" impact of alternative energy projects within the PJM Interconnection area on distribution revenues of the Companies' Pennsylvania subsidiaries. Consistent with the objections raised to Interrogatories 46-49, the Companies object to Interrogatory 50 because it seeks information that is not relevant to the approvals sought in this proceeding and is outside the Commission's jurisdiction.

The Commission's Regulations regarding permissible discovery by way of interrogatories provide as follows:

§5.321. Scope.

(a) *Applicability.* This subchapter applies to a proceeding in which:

(1) A complaint, protest or other adverse pleading has been filed.

(c) *Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(f) *Purpose and methods.* A party may obtain discovery for the purpose of preparation of pleadings, or for preparation or trial of a case, or for use at a proceeding initiated by petition or motion, or for any combination of these purposes, by one or more of the following methods:

(2) Written interrogatories to a participant.

§5.361. Limitation of scope of discovery and deposition.

(a) No discovery or deposition is permitted which:

(1) Is sought in bad faith.

(2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.

(3) Relates to matter which is privileged.

(4) Would require the making of an unreasonable investigation by the deponent, a party or witness.

With respect to DEP Set I, Interrogatories numbers 1-9, Joint Applicants contend that they do not seek information that is relevant to the subject matter in the case. These Interrogatories seek information about compliance with Federal and Commonwealth environmental laws and corrective action plans. We agree with the Joint Applicants that any information obtained in response to these Interrogatories would be irrelevant to the subject matter of this case: that the Commission's issuance of a certificate of public convenience approving the merger is in the public interest because it will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. *City Of York v. Pa. Public Utility Comm'n*, 449 Pa. 136, 295 A.2d 825 (1972). The Commission does not have jurisdiction over compliance with either Federal or Commonwealth environmental laws. Cf., *Rovin v. Pa. Public Utility Comm'n*, 94 Pa.Cmwlt. 71, 502 A.2d. 785 (1986), *Country Place Waste Treatment Co. v. Pa. Public Utility Comm'n*, 654 A.2d 72 (Pa.Cmwlt. 1995), *ARIPPA v. Pa. Public Utility Comm'n*, 792 A.2d 636 (Pa.Cmwlt. 2002), app. denied, 572 Pa.736, 815 A.2d 634 (2003). Whether or not any of the Joint Applicants' facilities are in compliance with laws over which the Commission does not have jurisdiction is not relevant to the subject matter of this case.

As to DEP Set I, numbers 10 and 11, we find that Joint Applicants should answer these Interrogatories, even if the answers are "Joint Applicants have no coal-fired power stations in the Commonwealth of Pennsylvania" and "Not applicable – see answer to Interrogatory number 10." Including these averments in their Objections is improper and saves no time, money or effort on the part of the parties or the presiding officers. Interrogatories that can be truthfully answered either "Yes" or "No", such as DEP Interrogatory number 10 should almost

never be the subject of an objection. Consequently, we will order the Joint Applicants to fully and completely answer DEP Set I, Interrogatories numbers 10 and 11.

Regarding DEP Set I, Interrogatories numbers 12-16, for the same reasons as those set forth above with respect to DEP Set I, Interrogatories numbers 1-9, we find that the information sought is irrelevant to the subject matter of this case. Additionally, the interrogatories are much too broad and, therefore, would be unreasonably burdensome for the Joint Applicants to attempt to answer. The Appalachian States Low-Level Radioactive Waste Compact coverage area far exceeds the boundaries of the Commonwealth of Pennsylvania, and it is only this latter area with which this case is concerned.

The Joint Applicants' objections to DEP Set I, Interrogatories numbers 46-49 are misplaced. Interrogatories numbers 46 and 48 merely require a "Yes" or "No" answer. As stated above, such interrogatories should almost never be the subject of an objection. Interrogatories numbers 47 and 49 only require an answer if the answers to numbers 46 and 48 are "Yes." If the information sought by Interrogatories numbers 47 and 49 is available (because the answers to Interrogatories numbers 46 and 48 were "Yes"), that information is certainly relevant to the future state of a competitive electricity market in the Commonwealth of Pennsylvania. We will order the Joint Applicants to fully and completely answer these Interrogatories.

Finally, regarding DEP Set I, Interrogatories numbers 50 and 51, the Joint Applicants object that the calculations required would constitute an unreasonable burden and expense to perform. We agree. We note that the exception for discovery requiring the compilation of data or information which the Joint Applicants do not maintain found in 52 Pa.Code § 5.361(b) does not apply because this case is not a "rate proceeding[]." It would be unreasonably burdensome and unreasonably expensive to require the Joint Applicants to perform calculations which would have to be based on a myriad of assumptions about the future. Any information produced by such calculations would be mere surmise and conjecture. We decline to send the Joint Applicants on such a fool's errand.

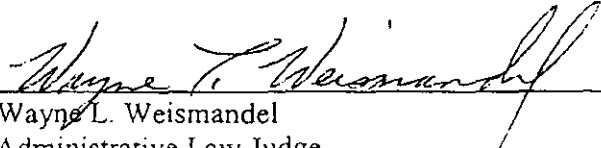
THEREFORE,

IT IS ORDERED:

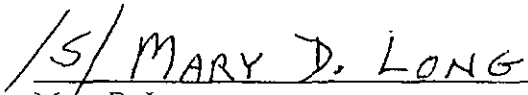
1. That the Motion To Dismiss Objections And Compel Answers To Interrogatories, Set I, Questions 1-16 And 46-51 filed by the Pennsylvania Department of Environmental Protection on August 12, 2010, in the above-captioned case is granted in part and denied in part.

2. That on or before Friday, September 10, 2010, West Penn Power Company, doing business as Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. shall provide to the Pennsylvania Department of Environmental Protection full and complete answers to the Pennsylvania Department of Environmental Protection's Set I Interrogatories numbers 10, 11, 46, 47, 48 and 49.

Date: August 25, 2010



Wayne L. Weismandel
Administrative Law Judge



Mary D. Long
Administrative Law Judge

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

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 :

OCT 4 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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 **Motion on behalf of West Penn Power Company, Trans-Allegheny Interstate Line Company, and FirstEnergy Corp. to Strike the Testimony of The Pennsylvania Department of Environmental Protection** 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

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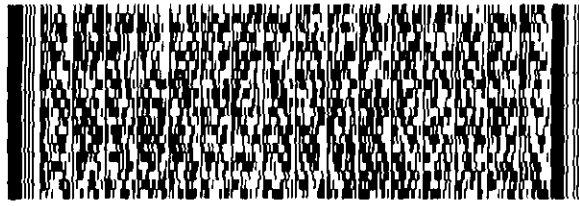
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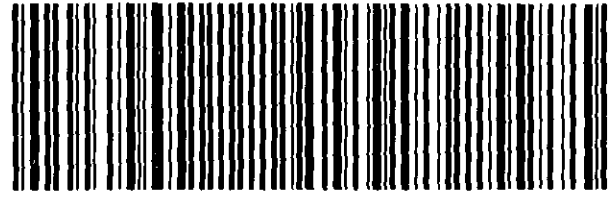
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