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June 11, 2010

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

In re: Dockets Nos. A-2010-2176520 and A-2010-2176732
Joint Application of West Penn Power Company, d/b/a Allegheny Power, Trans
Allegheny Interstate Line Company and FirstEnergy Corporation

Dear Secretary Chiavetta:

Enclosed for filing on behalf of the West Penn Power Sustainable Energy Fund are an original and three (3) copies of its Petition to Intervene in the above matter. Copies of the Petition to Intervene are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By

Thomas T. Niesen

Encl.

cc: Certificate of Service (w/encl.)
Joel Morrison (w/encl.)

100611-Chiavetta (Intervention).wpd

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**PETITION TO INTERVENE OF
THE WEST PENN POWER SUSTAINABLE ENERGY FUND**

AND NOW, comes the West Penn Power Sustainable Energy Fund ("WPPSEF"), by its attorneys, and, pursuant to 52 Pa. Code §5.71, *et seq.*, files this Petition to Intervene in the above captioned Joint Application proceeding. In support thereof, WPPSEF represents as follows:

I. INTRODUCTION

1. This proceeding concerns the Joint Application of West Penn Power Company ("West Penn"), Trans-Allegheny Interstate Line Company ("TrAILCo") and FirstEnergy Corp. ("FirstEnergy") (collectively "Joint Applicants") for a certificate of public convenience approving a change in control of West Penn and TrAILCo. The change in control would be accomplished through an Agreement and Plan of Merger whereby Allegheny Energy, Inc. ("Allegheny") and its subsidiaries, including West Penn and TrAILCo, would be merged into FirstEnergy with Allegheny becoming a first tier subsidiary of FirstEnergy.

2. Notice of the filing of the Joint Application was published in the *Pennsylvania Bulletin* on May 29, 2010. The published Notice advises that formal protests to and petitions to intervene in the joint application proceeding should be filed on or before June 14, 2010.

3. WPPSEF's address for the purpose of this proceeding is:

West Penn Power Sustainable Energy Fund
40 N. Pennsylvania Avenue
Suite 510
Greensburg, PA 15601

4. The names, postal addresses, voice and fax numbers and email addresses of WPPSEF's attorneys are:

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Thomas T. Niesen, Esquire
PA ID 31379
Thomas, Long, Niesen & Kennard
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tniesen@thomaslonglaw.com

STATEMENT OF FACTUAL BACKGROUND OF WPPSEF

5. WPPSEF is a Pennsylvania non-stock, non-profit corporation organized and operated in connection with the Economic Growth Connection of Westmoreland. WPPSEF grew out of the West Penn restructuring proceeding and was approved by the Public Utility Commission ("Commission") in its Order entered November 3, 1998 at Docket No. R-00973981.

6. The mission of the WPPSEF is:

A. To promote the use of renewable energy and clean energy among commercial, industrial, institutional and residential customers in

the West Penn service territory. *Renewable* energy includes energy produced from solar, wind, low-impact hydro, sustainable biomass, ocean power and geothermal. *Clean energy* refers to advanced technologies (such as fuel cells) which use fossil fuels but which have significantly lower emissions and wastes than currently commercialized technologies and fuels that are derived from waste.

- B. To promote *energy conservation and energy efficiency* among commercial, industrial, institutional and residential customers in the West Penn service territory.
- C. To promote the start-up, attraction, expansion and retention of *sustainable energy businesses in the West Penn service territory*. Job creation and other local economic development impacts are an important component of this element of the mission. A sustainable energy business is a business which designs, develops, manufactures, sells, installs or otherwise derives income from energy conservation, energy efficiency, renewable energy or clean energy.

7. WPPSEF received initial funding of \$11,425,721 as part of the West Penn restructuring settlement. The initial funding payment provided funding for the WPPSEF through December 31, 2005, which, at that time, was the end of the West Penn transmission and distribution rate cap period as provided in the West Penn Restructuring Settlement. The Restructuring Settlement further provided that, beginning January 1, 2006, the WPPSEF would be funded from West Penn's 1.73 cents per kWh transmission and distribution rate at .01 cents per kWh (less applicable gross receipts tax) on all power sold after that date, unless the Commission established new distribution rates for West Penn.

8. Funding for WPPSEF was addressed, subsequently, in the Commission's Opinion and Order entered May 11, 2005, at R-00039022 and R-00973981 amending the 1998 Restructuring Settlement. There, the Commission adopted an Amended Joint Petition submitted by West Penn and others pursuant to which West Penn agreed to make lump sum payments to the WPPSEF at a level equal to the amount that the .01

cents per kWh charge otherwise would have accrued. To give effect to the 1998 Restructuring Settlement, West Penn also agreed to provide payments to the WPPSEF in subsequent years under an agreed upon formula until new distribution rates go into effect. WPPSEF has received additional funding of \$9,367,552 as a result of the foregoing and will receive approximately \$1,900,000 of funding every year until the funding issue is raised and concluded in a West Penn distribution rate proceeding.

9. WPPSEF employs a process for committing funding that is transparent, mission-focused, and reviewed annually by the Pennsylvania Sustainable Energy Board and the Commission. WPPSEF assesses the mission-fit of all funding requests, followed by an evaluation of the public benefit to the West Penn ratepayer. Significant past funding commitments include the following:

- ◆ \$2,000,000 to support the plant expansion of Solar Power Industries in Westmoreland County;
- ◆ \$1,000,000 to support the construction of the Bear Creek wind farm in Luzerne County;
- ◆ \$1,000,000 to support Agricultural Commodities/ Soy Energy biofuel production complex in Adams County;
- ◆ \$900,000 to develop and support the Keystone Home Energy Loan Program (Keystone HELP) which is now a statewide residential lending energy efficiency program,
- ◆ \$1,500,000 to develop and support PA Home Energy which is a whole-house residential energy efficiency program that promotes diagnostic energy audits using the ENERGY STAR Home Performance program and new home construction with the ENERGY STAR Qualified Home program. The WPPSEF has won ENERGY STAR's 2009 and 2010 Special Recognition – Excellence in Energy Efficiency Awards for its ENERGY STAR Home Performance program achievements. The WPPSEF serves as ENERGY STAR's sole- home performance program sponsor in Pennsylvania;
- ◆ \$1,400,000 to support the construction of commercial and institutional buildings which have been designed to LEED standards in Fayette, Franklin, and Westmoreland Counties;

- ◆ \$125,000 to support the organization and hosting of the 2004 and 2006 PA Clean Energy Expos in Centre County Pennsylvania. The Expos attracted over 25,000 attendees from throughout the Commonwealth and served as a model for many energy and environmental expos held today;
- ◆ \$75,000 to support Pennsylvania entries in the 2007 and 2009 U.S. Solar Decathlon in the solar village on the national mall in Washington D.C.;
- ◆ \$165,000 to support the development and distribution of the PA Energy and ENERGY@home television documentaries which have aired on public broadcasting in Pennsylvania and are available for public distribution in a DVD format.

WPPSEF'S INTEREST AND GROUNDS FOR INTERVENTION

10. WPPSEF has a direct interest in this proceeding.¹ WPPSEF presently is receiving annual funding from West Penn as part of a Commission approved West Penn Restructuring Settlement and amendments to the Restructuring Settlement. This funding benefits the public in the West Penn service territory by enabling the development of programs that did not exist prior to WPPSEF's efforts (e.g. Keystone HELP, PA Home Energy), by providing project financing that may be needed to fill funding shortfalls (e.g. Elk Region Health Center biomass plant expansion), by providing funding to expand clean energy manufacturing in the West Penn service region (e.g. Solar Power Industries), by providing limited grant support to deploy sustainable energy technologies that without support would not be deployed (e.g. Saint Vincent College PV, Wilson College Dedicated Outdoor Air System, McKeever Learning Center institutional wind and solar hot water systems), and by providing limited grants to highly visible, community revitalization housing projects in economically depressed regions (e.g. Jeannette South Sixth Street Project and Uniontown Family Homes). WPPSEF has an interest in maintaining the integrity of the continued funding presently occurring as part

¹ Commission regulations require that a petition to intervene demonstrate an "interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding." 52 Pa. Code §5.72(a)(2)

of the West Penn Restructuring Settlement, as amended, which will allow continued development of new and similarly worthwhile projects. This interest is not adequately represented by any other potential participant and WPPSEF may be bound by the action of the Commission in this proceeding.

11. Pennsylvania law requires Joint Applicants to demonstrate that the proposed merger “will affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pa. P.U.C.*, 449 Pa. 136, 295 A.2d 825, 828 (1972). Maintaining existing funding levels (including, for example, continued annual funding through any extended distribution rate “stay-out” that may occur as a result of this proceeding) would protect the *status quo* but it would fall short of an affirmative public benefit as required by established Pennsylvania case law. Additional funding of WPPSEF, however, by West Penn arguably would provide a measure of an affirmative public benefit in support of the proposed transaction. There is a direct relationship between WPPSEF funding and affirmative public benefit. For example, with additional funding, WPPSEF could:

- ◆ Continue to develop and deploy advanced high performance building energy efficiency programs in market-rate housing and low-income developments (e.g ENERGY STAR Concept Home, Near-Zero Energy Homes);
- ◆ Continue and expand its efforts to attract community/ institutional-scale wind, solar, and biomass power projects within the West Penn service region;
- ◆ Continue to develop and expand innovative loan programs for the residential and small business sectors;
- ◆ Work to develop local community-driven carbon reduction programs that integrate the use of renewable energy production coupled with audit-driven energy efficiency and water reduction programs;
- ◆ Work with vocational technical schools and community colleges to support the integration of clean energy technologies into existing curricula;

- ◆ Work and expand WPPSEF commitment to the EGC to establish a “Clean Energy Business Fund” which will be used to support job development in existing and new businesses in Westmoreland County which are clean energy related;
- ◆ Work with industrial users to attract federal energy efficiency programs to the West Penn service region such as DOE’s Industrial Technologies Program emerging ISO50001 certification;
- ◆ Expand its support to Allegheny Energy/ First Energy to meet their AEPS and ACT 129 obligations.

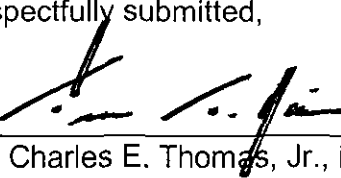
WPPSEF’S POSITION REGARDING ISSUES

12. Joint Applicants aver that their proposed merger and combination of FirstEnergy and Allegheny Energy will produce substantial affirmative benefits. WPPSEF seeks intervention in the proceeding to assure that the public will benefit through continued and further funding of WPPSEF and the application of WPPSEF’s funding metrics to advance mission objectives.

WHEREFORE, the West Penn Power Sustainable Energy Fund requests that the Pennsylvania Public Utility Commission (1) grant WPPSEF's petition to intervene; (2) grant WPPSEF full party status in this proceeding; and (3) impose such just and reasonable conditions including continued and additional funding for WPPSEF as are necessary to ensure that the transfer of control provides substantial affirmative public benefits.

Respectfully submitted,

By



Charles E. Thomas, Jr., Esquire
PA ID 07262

Thomas T. Niesen, Esquire
PA ID 31379


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Attorneys for
West Penn Power Sustainable Energy Fund

Dated: June 11, 2010
WPPSEF Petition to Intervene (Final).wpd

VERIFICATION

I, Michele Ponchione, President of the Board of Directors of the West Penn Power Sustainable Energy Fund, hereby state that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief and that I expect the West Penn Power Sustainable Energy Fund to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).


Michele Ponchione
President, Board of Directors

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CERTIFICATE OF SERVICE

I hereby certify that I have this 11th day of June, 2010, served a true and correct copy of the Petition to Intervene of the West Penn Power Sustainable Energy Fund, upon the persons listed below via first class mail, postage prepaid, as follows:

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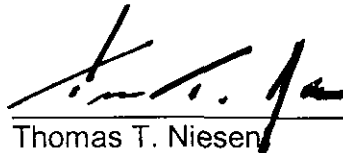
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