

Clean Air Council



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VIA E-MAIL AND FIRST CLASS MAIL

October 28, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. 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 First Energy 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 please find the original and one copy of Clean Air Council's Statement in Support of the Joint Petition for Partial Settlement, which was filed on October 25, 2010. Parties have been served today in accordance with the attached Certificate of Service.

Please do not hesitate to call me at 215-567-4004 (x116) if you have any questions regarding this filing.

Sincerely,

Joseph Otis Minott, Esq.

Enclosure

cc: Wayne L. Weismandel, Administrative Law Judge
Mary D. Long, Administrative Law Judge
Service List

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Joint Application of West Penn Power :
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Trans-Allegheny Interstate Line Company : Docket No. A-2010-2176520
and FirstEnergy Corporation for approval : and
of a Change of Control of West Penn : A-2010-2176732
Power Company and Trans-Allegheny :
Interstate Line Company. :

**CLEAN AIR COUNCIL'S STATEMENT IN SUPPORT
OF THE JOINT PETITION FOR PARTIAL SETTLEMENT**

Clean Air Council ("CAC"), by and through its attorneys, submits the following Statement In Support of the Joint Petition for Partial Settlement of the proposed merger by the Joint Applicants filed on October 25, 2010.

1. On May 14, 2010, West Penn Power Company ("West Penn") d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company ("TrAILCo") and FirstEnergy Corp. ("FirstEnergy") (Collectively, the "Joint Applicants") filed a Joint Application to obtain approval of the Pennsylvania Public Utility Commission ("Commission") for their proposed merger. On June 14, 2010 CAC filed a Petition to Intervene in these proceedings, which was granted by the Commission on June 23, 2010. Since that time CAC has remained an active Intervenor in these proceedings. It submitted Direct Testimony and Surrebuttal Testimony of its witness Thurman Brendlinger, participated in the hearings on October 12 and 13, and participated in every settlement meeting set up by the Joint Applicants.

2. In its June 14, 2010 Petition to Intervene, CAC raised the Joint Applicant's Residential Low Income Usage Reduction (LIURP) Program, its adoption and development of alternative/clean energy sources, and its commitment to meeting Pennsylvania's Act 129 and Pennsylvania's Alternative Energy Portfolio Standard requirements as issues of preliminary concern when determining whether the proposed merger would result in affirmative public benefits.

3. In the Direct Testimony of Thurman Brendlinger on Behalf of Clean Air Council (Clean Air Council Statement No. 1) submitted August 17, 2010, CAC indicated its belief that the merger would not yield substantial, affirmative public benefits without providing some benefit to the public in the form of energy efficiency, conservation, or pollution reductions. (CAC Statement No. 1, p. 3 – 4). CAC proposed that part of the merger should include an expansion of the Joint Applicants' LIURP program. (*Id.*, p. 9 – 11). In particular, it noted that West Penn underfunded its LIURP program when compared to the other EDCs involved in the merger. (*Id.*, p. 5 – 7). CAC further specified its position in the Surrebuttal Testimony of Thurman Brendlinger on Behalf of Clean Air Council (CAC Statement No. 2-R), submitted October 1, 2010. There, CAC clarified that the Joint Applicants should increase LIURP spending by a quantity sufficient to eliminate West Penn's underfunding of the program and that this increase must be paid for out of merger savings, rather than from ratepayers. (CAC Statement No. 2-R, p. 3 -4). CAC believes that expanding the LIURP program will lead to a decrease in energy consumption, which will then lead to a reduction in air pollution from power generating facilities. (CAC Statement No. 1, p. 7).

4. CAC also recommended that Joint Applicants expand the development of alternative/clean energy by increasing their commitment to Tier I sources of renewable energy under the Pennsylvania Alternative Energy Portfolio Standard. (CAC Statement No. 1, p. 14 – 15). Doing so would lead to a decrease in carbon emissions and other air pollution, as more energy would be derived from cleaner sources. (*Id.*, p. 14). Again, CAC stressed that this expansion of the Joint Applicants' Tier I requirement was to be paid for out of merger savings, and not from ratepayers (CAC Statement No. 2-R, p. 5).

5. Following multiple settlement discussions with the Joint Applicants about these issues, the Council was able to review the Joint Petition for Partial Settlement, which was ultimately filed on October 25, 2010. CAC is satisfied that its concerns have been addressed and its recommendations have been incorporated into the Joint Petition. For example, in Paragraph 22 of the Joint Petition, the Joint Applicants commit to increase LIURP spending by \$4 million over five years and to ensure that LIURP spending levels for West Penn are commensurate with spending levels for Met-Ed, Penelec, and Penn Power by the end of that period. The Joint Petition specifies that this spending increase will not be recoverable from ratepayers, which is an assurance that merger savings will be the source of the funding. In addition, Paragraph 22 also commits the Joint Applicants to meet West Penn's Commission-approved Universal Service Plan obligations on LIURP, independent of the \$4 million increase from merger savings. Furthermore, Paragraphs 25 - 29 will lead to significant increased spending and other assistance for renewable energy development and energy conservation programs that can spread some of these benefits beyond low income ratepayers. While these proposed increases do not

precisely match CAC's recommendation that the Joint Applicants expand their Tier I requirements, they will spawn greater development of alternative/clean energy, which is the outcome that CAC sought when it offered its recommendation.

6. In addition to the essential public benefits in the areas of energy conservation, universal service and renewable energy, the Joint Petition contains proposed sharing of merger savings for rate reductions, job preservation, retail market enhancements, service quality improvements and other areas. These features of the Joint Petition vastly exceed the minimal benefits identified in the Joint Application itself.

7. CAC now concludes the proposed merger will result in significant, affirmative public benefits and is in the public interest, so long as it is done in accordance with the terms and conditions set out in the Joint Petition for Partial Settlement.

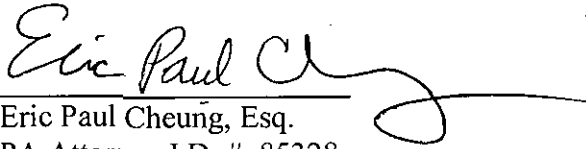
8. By Secretarial Letter dated June 3, 2010, the Commission directed Joint Applicants and parties to address twelve questions which were appended in Attachment A to the Secretarial Letter in each party's litigation of the matter. As so directed, and as further instructed by the Administrative Law Judges, Clean Air Council provides its responses to each question in Attachment A to this Statement in Support.

WHEREFORE, Clean Air Council respectfully requests presiding Administrative Law Judges Wayne L. Weismandel and Mary D. Long, and the Pennsylvania Public Utility Commission to approve the Joint Petition for Partial Settlement without

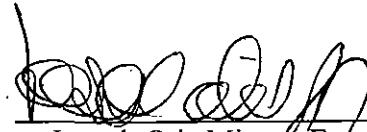
modification and issue a Certificate of Public Convenience for the Acquisition and Transfer of Control sought by the Joint Applicants conditioned upon the terms of the Joint Petition.

Dated: October 28, 2010

Respectfully submitted,



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ATTACHMENT "A"

Allegheny Energy, Inc. – FirstEnergy Corporation Merger

A-2010-2176520

A-2010-2176732

Employment Levels and Corporate Headquarters

1. How will the merger impact employment levels in Pennsylvania, particularly, but not limited to, those employees not covered by collective bargaining agreements? What will the impact be on Allegheny Energy's corporate headquarters in Greensburg, PA, as well as the operating companies' offices?

Employment levels and corporate headquarters are addressed in Section II.A., pages 7-9, of the Joint Petition. Clean Air Council believes that the Settlement provides significant protections for employees of the merged company, in particular those employees not covered by collective bargaining agreements. Paragraphs 14-15 of the Settlement outline the commitments made by the Joint Applicants to maintain electric company distribution headquarters in the Commonwealth and employment levels in Westmoreland County over the next five years.

Customer Service and System Reliability

2. How will the merger affect the customer service and system reliability of West Penn Power and the FirstEnergy Pennsylvania utilities? How will the merger affect West Penn Power and the FirstEnergy Pennsylvania utilities ability to respond to outages and other emergencies?

Clean Air Council did not adopt a specific position on this issue in litigation and offers no response except to note that customer service and system reliability are addressed in Section II.J., pages 21-27, of the Joint Petition.

Corporate Structure

3. Review the impact of the initially proposed corporate structure of the merger versus the alternately proposed corporate structure. Which corporate structure will better protect the public interest?

Clean Air Council did not adopt a specific position on this issue in litigation and offers no response.

Ring Fencing

4. What, if any, ring-fencing mechanisms are presently in place, or proposed as part of this transaction, to protect West Penn Power, Met-Ed, Penn Power, and Penelec

from the business and financial risk of the parent and other non-regulated affiliates? Are any changes or additions necessary to better protect the public interest and make the regulated electric distribution subsidiaries bankruptcy remote?

Clean Air Council did not adopt a specific position on this issue in litigation and offers no response except to note that provisions regarding financial governance are addressed in Section II.H., pages 15-16, of the Joint Petition.

Smart Meter and Energy Efficiency Implementation

5. How will the merger impact the Act 129 smart meter and energy efficiency implementation plans of West Penn Power and First Energy's regulated utilities, Met-Ed, Penelec and Penn Power?

These issues are addressed by paragraphs 18, 22, 23 and 24 of the Joint Petition. Paragraph 18 obligates the Joint Applicants to offset the impact of changes to West Penn's energy efficiency implementation plan to certain customers who would otherwise incur additional expense. Paragraph 22 requires significant funding increases in the West Penn LIURP program from merger savings. Though LIURP is not an Act 129 program, it involves a similar public interest goal, namely energy efficiency improvements. Paragraphs 23-24 require proposals for significant deployment of smart meter technology no later than the end of 2018 in all 4 merged company EDC territories. This represents a substantial acceleration of the current approved plan for the FirstEnergy companies and is in accord with the recent settlement in the West Penn smart meter docket.

FirstEnergy Capital Structure and Credit Rating

6. How will the merger affect the capital structure of FirstEnergy Corporation? Will the merger create a more leveraged organization? How will the proposed merger impact the credit rating of FirstEnergy?

Clean Air Council did not adopt a specific position on this issue in litigation and offers no response except to note that provisions regarding each FirstEnergy Pennsylvania EDC's debt and credit provisions and capital structure are addressed in Section II.H., pages 15-16, of the Joint Petition.

Subsidiaries' External Borrowing and Bond Ratings

7. Will West Penn Power and the other Allegheny Energy subsidiaries that currently issue their own debt maintain their own external borrowing authority and separate bond rating?

Clean Air Council did not adopt a specific position on this issue in litigation and offers no response except to note that provisions regarding each FirstEnergy Pennsylvania utility operating company's debt and credit provisions are addressed in Section II.H., pages 15-16, of the Joint Petition.

Money Pools

8. Will West Penn Power participate in the FirstEnergy Utility money pool? If, yes, please provide an updated agreement.

Clean Air Council did not adopt a specific position on this issue in litigation and offers no response except to note that separate money pools for regulated and unregulated operations are addressed in Section II.H., pages 15-16, of the Joint Petition. An updated agreement will have to be provided by Joint Applicants.

Merger Savings

9. How will the proposed merger savings benefit Pennsylvania ratepayers? Will cost savings benefit ratepayers or only shareholders?

The Joint Petition demonstrates a sharing of merger savings with Pennsylvania ratepayers in multiple ways, including but not limited to rate reductions, rate case "stay out" provisions, employment commitments, Universal Service increases, and renewable and alternative energy funding commitments. At a minimum, merger savings are shared in the following paragraphs of the Joint Petition: 14-18, 20, 22, 25-29.

Affiliated Interest Agreements

10. Are the proposed affiliated interest agreements and cost allocation proposals reasonable and consistent with the public interest under Section 2102(b) of the Public Utility Code?

Clean Air Council did not adopt a specific position on this issue in litigation and offers no response except to note that affiliate relations are addressed in Section II.M., page 29, of the Joint Petition.

Impact on Competition

11. Investigate the impact the proposed merger may have on the potential for anticompetitive behavior per 66 Pa. C.S. § 2811(e)(1). How will the merger affect wholesale and retail competition for power/electric generation and transmission?

Clean Air Council did not adopt a specific position on this issue in litigation and offers no response except to note that competitive issues are addressed in Sections II.I., and K., pages 16-21, and 27-29, of the Joint Petition.

Transmission Projects

12. How will transmission projects in the western part of the state be affected by the merger?

Clean Air Council did not adopt a specific position on this issue in litigation and offers no response.

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Interstate Line Company. :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, Clean Air Council's Statement in Support of the Joint Petition for Partial Settlement, upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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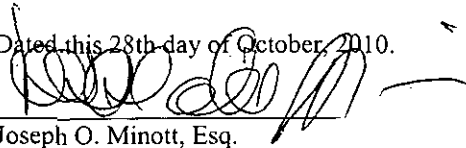
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Dated this 28th day of October, 2010.



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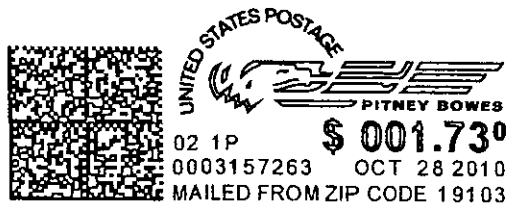
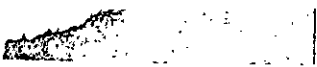


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