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October 29, 2010

**BY HAND DELIVERY**

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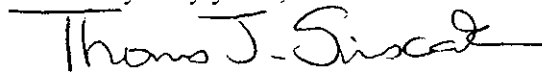
RE: Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company; Docket Nos. A-2010-2176520 and A-2010-2176732; **STATEMENT IN SUPPORT OF JOINT PETITION FOR PARTIAL SETTLEMENT**

Dear Secretary Chiavetta:

Enclosed please find The Pennsylvania State University's Statement in Support of Joint Petition for Partial Settlement and Responses to Questions posed in the June 3, 2010 Secretarial Letter in the above-captioned case.

If you have any questions regarding the enclosed, please do not hesitate to contact me.

Very truly yours,



Thomas J. Sniscak  
Todd S. Stewart  
William E. Lehman  
Counsel for  
The Pennsylvania State University

TJS/das  
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cc: Honorable Wayne L. Weismandel  
Honorable Mary D. Long  
Per Certificate of Service (by email)

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MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**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**

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**STATEMENT OF  
THE PENNSYLVANIA STATE UNIVERSITY  
IN SUPPORT OF THE JOINT PETITION FOR PARTIAL SETTLEMENT AND  
RESPONSES TO QUESTIONS POSED IN JUNE 3, 2010 SECRETARIAL LETTER**

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The Pennsylvania State University (“PSU”) hereby submits this Statement in Support of the Joint Petition for Partial Settlement (“Joint Petition”) filed October 25, 2010 by FirstEnergy Corp. (“FirstEnergy”), West Penn Power Company (“West Penn”), doing business as Allegheny Power, Trans-Allegheny Interstate Line Company (“TrAILCo”), (collectively the “Joint Applicants”) and the following Signatory Parties hereto (collectively, the “Joint Petitioners”): Pennsylvania Public Utility Commission Office of Trial Staff (“OTS”), the Office of Consumer Advocate (“OCA”), the Pennsylvania Department of Environmental Protection (“DEP”), the International Brotherhood of Electrical Workers (“IBEW”), the Utility Workers Union of America, AFL-CIO (“UWUA”) and UWUA System Local No. 102 (“Local 102”) (collectively, “UWUA Intervenors”), The Pennsylvania State University (“PSU”), the Met-Ed Industrial Users Group (“MEIUG”) and the Penelec Industrial Customer Alliance (“PICA”) (collectively,

“MEIUG/PICA”), the West Penn Power Industrial Intervenors (“WPPII”), the Pennsylvania Rural Electric Association (“PREA”), the Pennsylvania Mountains Healthcare Alliance (“PMHA”), the West Penn Power Sustainable Energy Fund (“WPPSEF”), the York County Solid Waste and Refuse Authority (“YCSWA”), ARIPPA, the Clean Air Council (“CAC”) , Citizens for Pennsylvania’s Future (“PennFuture”), and Constellation New Energy, Inc. and Constellation Energy Commodities Group, Inc. (“Constellation”) and (collectively referred to as the “Settling Parties”) in the above-captioned proceeding. PSU also submits its responses to the questions posed by the Commission in its June 3, 2010 Secretarial letter in this matter.

In addition and in furtherance of the reasons specified in the Joint Petition, PSU offers the following support for approving the settlement.

## **I. INTRODUCTION**

As a matter of background, the Joint Applicants filed a Joint Application to obtain the approval of the Commission under Chapters 11 and 28 of the Public Utility Code for change of control of West Penn and TrAILCo to be effected by the merger of Allegheny Power with Element Merger Sub., a wholly-owned subsidiary of FirstEnergy (the “Merger”). Petitions to Intervene, Protest or Notices of Appearance in this proceeding were filed by numerous parties and all were granted party status to this proceeding either by operation of law or by ruling of Presiding Officers. Consistent with the Commission’s policy to encourage settlements, 52 Pa. Code § 5.231(a), the parties on September 7, 2010, held the first of a series of settlement conferences which continued between and among the parties thereafter. The Parties engaged in extensive discovery throughout the proceeding. Prior to and after the circulation or submission of pre-filed written testimony and hearings, the parties engaged in discussions to try to achieve a

settlement of some or all of the issues in this case. As a result of those negotiations, the Joint Petitioners were able to reach a settlement.

## II. SUPPORT FOR THE SETTLEMENT

In lieu of full litigation of contested proceedings, the Commission encourages parties to settle all or as many issues as possible in order to preserve the time and resources of all involved. 52 Pa. Code §§ 5.231(a) and 69.391(a). To say that there were differences among the settling parties and their litigation positions is an understatement. The parties were able to resolve their differences via the settlement terms that represent a reasonable compromise of the various parties' positions in a manner which is in the public interest.

In addition to streamlining the litigation process and comporting with the Commission's policy of encouraging settlements, the Settlement promotes the "service, accommodation, convenience, or safety of the public in some substantial way" as required by the Public Utility Code and the *City of York v. Pa. Pub. Util. Comm'n.*, 295 A.2d 825 (Pa. 1972) ("*City of York*").

FirstEnergy has by its commitments in this settlement demonstrated an intent and business emphasis of being much more responsive and customer-oriented than the status quo, including to customers of PSU's size and needs. That is a welcome improvement and PSU is hopeful that FirstEnergy will continue to do so in the future.

The settlement, taken as a whole, is in the public interest and should be approved without modification. The following addresses certain facets<sup>1</sup> of the settlement that specifically benefit or are of particular interest to PSU, and which in and of themselves would meet the *City of York* standard.

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<sup>1</sup> PSU's addressing certain terms of the settlement should not be construed as suggesting the other terms of the Settlement are contrary to the public interest. PSU believes the entire settlement is in the public interest.

**A. Rate Stay-Outs and Credits**

The Settlement provides for synergy-generated credits to be shared with West Penn residential customers and the Tariff 37 customers over three years beginning sixty (60) days after consummation of the merger. These savings will be shared by West Penn through a credit to residential customer's distribution rates totaling \$3.57 million per year for three (3) years and by West Penn providing a credit to the Tariff 37 customer's distribution rates of \$15,000 per year for three (3) years. Additionally, West Penn will provide a credit equal to the increase in Energy Efficiency & Conservation ("EE&C") costs to Rate Schedules 20, 22, 30 Small and 30 Large and Rate Tariff 37 resulting from West Penn's revised EE&C Plan. For purposes of the settlement, the increase in EE&C costs is deemed to be \$6.19 million and is to be allocated to each rate schedule based on the percentage of such rate schedule's share of the total increase in EE&C costs by the rate schedules listed herein. This constitutes a requisite benefit under the *City of York* and is in the public interest.

**B. Distribution Rates and Tariff Issues**

Any consolidation of the distribution rates of the post-merger FirstEnergy EDCs may occur only after the issuance of a certificate of public convenience permitting the merger/consolidation of any of those corporations into a single EDC. This constitutes a requisite benefit under the *City of York* and is in the public interest.

**C. Financial Governance**

The Settlement provides for affirmative commitments by FirstEnergy to provide financial protections to FirstEnergy's regulated utilities within Pennsylvania and to provide additional commitments to financial protections for a period of five (5) years after the merger. These protections help to assure that the customers of the regulated utilities will not be burdened by any

financial missteps of the parent corporation. This is an affirmative benefit to FirstEnergy's customers in Pennsylvania.

**D. Retail Market Enhancements**

The Settlement promotes and enhances retail competition by making substantial enhancements to the company's retail market programs, including enhancements to customer education regarding offers for generation service by EGS's to the customers of West Penn through mailings introducing offers from EGS's and welcome packets promoting the Commission's PAPowerSwitch.com website, the OCA's residential Electric Shopping Guide and flexible billing options. The Settlement also provides for significant enhancements to the availability of information to competitive suppliers operating in West Penn's service territory through updated lists of shopping and non-shopping customers (with appropriate customer protections in place), shopping data, appointment of a retail choice ombudsman, and flexible rate options.. This also constitutes a requisite affirmative benefit.

**E. Service Quality and Reliability**

In addition to conducting a review of existing procedures and policies to determine "best practices" and ways to implement them ensuring that customer benefits appropriately outweigh the associated costs, within 180 days after the Merger is consummated, FirstEnergy will conduct a study to determine if there are any additional areas where reliability and service quality can be improved in a cost-effective manner at West Penn and will submit the study to the Commission's Bureau of Conservation, Economics and Energy Planning. Notice of submission of the study shall be provided to the Joint Petitioners and upon request any Joint Petitioner will be supplied with a copy of the study by FirstEnergy. This too is a requisite affirmative benefit.

## **F. Competitive Market Issues**

The Settlement enhances and promotes competitive market issues. FirstEnergy's EDCs will file with the Commission a report addressing wholesale market prices and price trends in the PGM markets in which it participates. Further, any Signatory Party may request that the Commission, acting within its authority, initiate an investigation of the impact of the proper function of a fully competitive retail electricity market in Pennsylvania. These procedures address and promote competitive market issues presented in this proceeding. Clearly, enhancing and promoting competition is an affirmative benefit.

## **III. PSU'S POSITION OR ANSWERS REGARDING QUESTIONS IDENTIFIED IN THE JUNE 3, 2010 SECRETARIAL LETTER.**

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?

A: Reference ¶¶ 14 and 15 of the Joint Petition for Partial Settlement addressing this issue.

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's and the FirstEnergy Pennsylvania utilities' ability to respond to outages and other emergencies?

A: Reference ¶¶ 49, 50, 51, and 52 of the Joint Petition for Partial Settlement addressing this issue.

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?

A: PSU takes no position on this question.

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?

A: PSU takes no position on this question other than agreeing with ¶¶ 35, 36 and 37 of the Joint Petition for Partial Settlement addressing this issue.

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?

A: PSU takes no position on this question other than agreeing with ¶¶ 18, 22, 23 and 24 of the Joint Petition for Partial Settlement addressing this issue.

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?

A: PSU takes no position on this question.

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?

A: PSU takes no position on this question other than agreeing with ¶¶ 35, 36 and 37 of the Joint Petition for Partial Settlement addressing this issue.

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

A: PSU takes no position on this question other than concurring with the statements contained in ¶¶ 35, 36 and 37 of the Joint Petition for Partial Settlement addressing this issue.

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

A: The settlement provides merger savings or synergy benefits to ratepayers pursuant to ¶¶ 16, 17, 18, and 19 of the Joint Petition for Partial Settlement. PSU takes no position at this time as to the total amount of any other merger or synergy savings and whether such savings will benefit ratepayers or shareholders.

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?

A: PSU takes no position on this question.



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?

A: PSU takes no position on this question other than agreeing with ¶¶ 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 53, 54, and 55 of the Joint Petition for Partial Settlement addressing this issue.

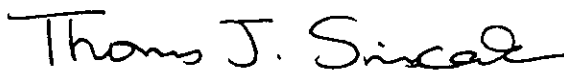
12. How will transmission projects in the western part of the state be affected by the merger?

A: PSU takes no position on this question.

#### **IV. Conclusion And Relief Requested**

The settlement contained in the Joint Petition meets or exceeds the requirements of the *City of York* as interpreted by Pennsylvania appellate courts. For all of the foregoing reasons in support, and for those in the record as well as in the Joint Petition itself, PSU requests that the settlement be approved without modification as soon as reasonably possible by the Commission.

Respectfully submitted,



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*Counsel for The Pennsylvania State University*

DATED: October 28, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Thomas J. Sniscak

Dated: October 29, 2010