

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265**

**Joint Application of West Penn Power,
TRAILCo and FirstEnergy**

**Public Meeting held February 24, 2011
2176520-OSA**

**Docket No. A-2010-2176520
A-2010-2176732**

MOTION OF COMMISSIONER WAYNE E. GARDNER

Before the Commission today is a Settlement in response to the Joint Application of FirstEnergy and Allegheny Power which seeks approval for a change of control to be effected by the merger of Allegheny Power and FirstEnergy. After the merger is complete, FirstEnergy will be the parent of four Pennsylvania electric distribution companies (EDCs) and will be the largest utility in Pennsylvania with over two million customers. This represents 36% of total electric customers in the state with a service territory which includes 55 of the state's 67 counties. The Partial Settlement includes many provisions which will protect the Pennsylvania companies and enhance the ability of the utilities to provide safe and reliable service. However, the Settlement does not adequately address the financial relationship between the four regulated utilities and the unregulated parent and subsidiaries.

It is vital that our regulated utilities maintain financial stability and enjoy high credit ratings. A high credit rating equates into lower borrowing costs which in turn helps to keep rates for utility customers low and stable. Ring-fencing measures are crucial in order to insulate our regulated companies from the potentially riskier activities of their unregulated parents and affiliates. A properly financially separated company will be able to be independent from the parent during a bankruptcy proceeding, maintain its own credit rating, and maintain operating reliability.

The Partial Settlement does address financial separation and includes the following provisions meant to protect the regulated entities. FirstEnergy will:

- To the extent there are money pools, maintain separate money pools for its regulated and unregulated operations;
- Ensure that each Pennsylvania operating company issues its own debt after obtaining regulatory approval;
- Ensure that each FirstEnergy Pennsylvania utility maintains its own credit rating as long as it has debt outstanding and credit rating agencies are willing to provide such a rating;
- Ensure that no FirstEnergy utility will assume debt issued by the holding company without Commission approval;
- Maintain separate financial statements that reflect each utility's own assets and liabilities;
- Ensure that each utility has its own capital structure that is comprised of its own debt and equity;
- Not issue debt secured by utility assets for purposes other than as approved by the Commission.
- For a period of five years, if any post merger FirstEnergy Pennsylvania utility's equity-to-cap ratio falls below 40%, that company will provide the Commission with a 12-month plan to bring its equity-to-cap ratio to 40%. If the ratio remains below 40% after the 12-month period, the company will not pay a dividend to its parent until the ratio is 40% or greater.

While these provisions represent a solid foundation, they are not adequate to fully protect FirstEnergy's regulated Pennsylvania utilities. Recently, in response to this merger, S&P downgraded the credit rating of FirstEnergy and all of its subsidiaries. If ring-fencing controls had been in place, the credit ratings of the regulated entities would likely not have been affected. Furthermore, of all of Pennsylvania's large EDCs, FirstEnergy is the only company that lacks a ring-fencing policy. In order to protect the financial stability of the four FirstEnergy Pennsylvania EDCs, approval of the merger is predicated on the conditions which follow.

- Regulated and unregulated functions must remain organized as separate corporate structures.
- The EDC's must maintain separate debt ratings and separate financial records from those of the parent company. Additionally, employees of the regulated entities cannot also be direct employees of FirstEnergy. Although the Partial Settlement requires that the regulated utilities maintain their own credit ratings, this is qualified by a willingness of rating agencies to provide separate ratings. Separate credit ratings are often provided when subsidiaries are effectively insulated from their parent companies. FirstEnergy is directed to ensure effective separation so that credit rating agencies are in the best possible position to provide separate ratings.
- Metropolitan Edison, Pennsylvania Electric, West Penn Power, and Pennsylvania Power are to provide the Commission all written information provided to credit rating agencies upon request. FirstEnergy is also to provide this information upon request when it directly or indirectly pertains to any of the four regulated Pennsylvania companies. Such information includes, but is not limited to, reports provided to and presentations made to common stock analysts and bond rating analysts. Written information includes electronically transmitted or stored information as well as printed materials.
- The utilities may not pay any dividend or cash distribution to the unregulated parent that will cause the utilities common equity ratio to decline below 40% of the total capital. The Partial Settlement does provide that if, for a period of five years, any utility's equity-to-cap ratio falls below 40%, that company will provide the Commission with a 12-month plan to bring its equity-to-cap ratio to 40%. If the ratio remains below 40% after the 12-month period, the company will not pay a dividend to its parent until the ratio is 40% or greater. This provision is to be strengthened by eliminating the five-year condition as well as the initial 12-month period.

These conditions will further protect the regulated utilities and ensure financial and operational stability, which will benefit both the Companies and the ratepayers.

THEREFORE, I MOVE THAT:

1. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

February 24, 2011
Date

Wayne E. Gardner, Commissioner

