

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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IRWINA. POPOWSKY  
Consumer Advocate

June 15, 2010

Rosemary Chiavetta  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

RE: Joint Application of West Penn Power Company doing business as Allegheny Power Company, Trans-Allegheny Interstate Line Company and FirstEnergy Corporation 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 is the Prehearing Memorandum of the Office of Consumer Advocate, in the above-referenced proceeding.

Copies have been served as indicated on the Certificate of Service.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Darryl Lawrence'.

Darryl Lawrence  
Assistant Consumer Advocate  
PA Attorney I.D. # 93682

Enclosures

cc: Honorable Wayne L. Weismandel

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of West Penn Power	:	
Company doing business as Allegheny	:	
Power Company, Trans-Allegheny	:	
Interstate Line Company and FirstEnergy	:	Docket Nos. A-2010-2176520
Corporation for a Certificate of Public	:	A-2010-2176732
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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PREHEARING MEMORANDUM OF THE  
OFFICE OF CONSUMER ADVOCATE

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Pursuant to Section 333 of the Public Utility Code, 66 Pa.C.S. Section 333, and in response to the prehearing conference notice issued in the above-captioned matter, the Office of Consumer Advocate (OCA) provides the following information:

I. INTRODUCTION

On May 14, 2010, West Penn Power Company doing business as Allegheny Power (West Penn), Trans-Allegheny Interstate Line Company (TrAILCo) (collectively, Allegheny) and FirstEnergy Corporation (FirstEnergy) (Joint Applicants) filed an Application seeking to obtain the approval of the Pennsylvania Public Utility Commission (Commission) under Chapters 11 and 28 of the Public Utility Code for a change of control of West Penn and TrAILCo. This change of control would be accomplished by the merger of Allegheny Energy, Inc., the parent company of West Penn and TrAILCo, with Element Merger Sub, Inc., a wholly-owned subsidiary of FirstEnergy. The Joint Applicants also request Commission approval of

certain revisions to affiliated interest arrangements that are designed to facilitate the sharing of services between the Allegheny and FirstEnergy systems. In brief, FirstEnergy will acquire all of the outstanding stock of Allegheny. FirstEnergy shareholders will own approximately 73% and Allegheny's former shareholders will own approximately 27% of the combined company.

On May 24, 2010, the Office of Trial Staff filed a Notice of Appearance in this matter. On June 14, 2010, the OCA filed its Protest and Public Statement in this matter. On June 14, 2010 the Office of Small Business Advocate filed its Protest, Notice of Appearance, and Notice of Intervention. Other parties also filed Petitions to Intervene and Protests in this matter, including the International Brotherhood of Electrical Workers (filed on June 2, 2010); the York County Solid Waste and Refuse Authority (filed on June 9, 2010); Duquesne Light Company (filed on June 11, 2010) Pennsylvania Rural Electric Association (filed on June 14, 2010); West Penn Power Sustainable Energy Fund (filed on June 14, 2010); ARIPPA (filed on June 14, 2010); Citizen Power (filed on June 14, 2010); Department of Environmental Protection (filed on June 14, 2010); Direct Energy Services (filed on June 14, 2010); Met-Ed Industrial Users Group and the Penelec Industrial Customer Alliance (filed on June 14, 2010); Pennsylvania Mountains Healthcare Alliance (filed on June 14, 2010); PennFuture (filed on June 14, 2010); Pennsylvania State University (filed on June 14, 2010); Retail Energy Supply Association (filed on June 14, 2010); Union Of America, AFL-CIO And UWUA System Local No. 102 (filed on June 14, 2010); and West Penn Power Industrial Intervenors (filed on June 14, 2010).

Administrative Law Judge Wayne L. Weisman del was assigned to this proceeding. ALJ Weisman del scheduled a prehearing conference for June 22, 2010.

## II. ISSUES AND SUB-ISSUES

Based on the OCA's preliminary review of the Application, the OCA has identified a number of issues, which it anticipates will be included in its investigation of this merger. It is likely that other issues may arise and may be pursued once the discovery process starts. As soon as the OCA has engaged in a sufficient level of formal discovery, it is anticipated that informal discovery meetings can be scheduled. At those meetings, the OCA will be able to narrow the scope of additional information requests. Once the discovery process has been completed, the OCA will file direct testimony, which will set forth the specific issues to be addressed in this proceeding. At that time, the OCA will also be able to make its specific recommendations.

Preliminarily, the OCA has identified the following areas that require further consideration:

- a. Affirmative Ratepayer Benefits: The OCA will examine whether this acquisition will provide substantial, affirmative ratepayer benefits in accordance with Pennsylvania law.
- b. Savings/Synergies: The OCA will examine the proposed transaction to determine if there are any synergies or savings that will provide benefits to ratepayers.
- c. Costs to Achieve: The OCA will examine the costs to achieve this acquisition and whether those costs are recoverable from ratepayers.
- d. Quality of Service: The OCA will examine West Penn's quality of service, including reliability, customer service, and billing service, and will examine whether such service will be enhanced as a result of the acquisition.

e. Impact on Rates: The OCA will examine the impact the proposed acquisition will have on the eventual capital structure of the Allegheny utilities to determine any adverse effect on rates.

f. Market Power and Effects on Competitive Markets: The OCA will examine the effect of this acquisition on the competitive retail electric market.

g. Corporate Structure: The OCA will examine several issues raised by the proposed corporate structure, including: appropriate accounting protocols; appropriate Codes of Conduct; any adverse tax effects; and, reporting requirements and transparencies.

h. Universal Service: The OCA will examine West Penn's universal service programs to ensure that these programs receive appropriate funding and local management attention and to assure that the programs continue to improve to meet the needs of low-income and payment troubled customers in West Penn's service territories. The OCA will also examine the participation of local community-based organizations in the development and implementation of these programs.

i. Continuation of PUC Jurisdiction: Post corporate-restructuring, the OCA will seek to ensure that the Commission retains sufficient jurisdiction, as well as access to appropriate books and records of all subsidiaries, to ensure the continued provision of safe, adequate and reliable service in Pennsylvania, and to ensure against inappropriate cross subsidies at the expense of Pennsylvania consumers.

j. Items Identified in June 3, Secretarial Letter: In addition, the OCA recently became aware that the Commission issued a Secretarial Letter in this matter on June 3, 2010 (June 3 Order), which specifically requested the parties to address the following issues:

Items to be investigated in detail before the Administrative Law Judge:

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?
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?
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?
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?
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?
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?
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?
8. Will West Penn Power participate in the FirstEnergy Utility money pool? If, yes, please provide an updated agreement.
9. How will the proposed merger savings benefit Pennsylvania ratepayers? Will cost savings benefit ratepayers or only 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?
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?
12. How will transmission projects in the western part of the state be affected by the merger?

The OCA will endeavor to include these issues as part of its investigation and analysis of this matter. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Company.

### III. WITNESSES

The OCA intends to present the direct, rebuttal and surrebuttal testimony, as may be necessary, of expert witnesses in this proceeding. At this time, the OCA has identified the following witnesses in the identified areas:

#### Market Power and Merger Synergies:

Richard Hahn  
LaCapra Associates  
9th Floor  
One Washington Mall  
Boston, MA 02108  
Telephone: 617-778-2467  
E-mail: rhahn@lacapra.com

#### Quality of Service and Universal Services Issues:

Barbara R. Alexander  
83 Wedgewood Drive  
Winthrop, ME 04364  
Telephone: 207-395-4143  
E-mail: barbalex@ctel.net

The OCA's witnesses will present testimony in written form and will also attach various exhibits, documents and explanatory information which will assist in the presentation of the OCA's case. In order to expedite the resolution of this proceeding, the OCA requests that copies of all interrogatories, testimony and answers to interrogatories be provided directly to the expert witnesses listed above as well as counsel for the OCA.

If the OCA determines that an additional witness or witnesses will be necessary for any portion of its case, the OCA will notify Your Honor and all parties of record promptly.

#### IV. PUBLIC INPUT HEARINGS

The OCA has not yet received any requests for public input hearings. If the OCA receives any requests, the OCA will notify your Honor and the parties promptly.

#### V. PROPOSED SCHEDULE

The OCA is actively working with the Joint Applicants and the other parties to this proceeding to arrive at a mutually agreeable procedural schedule. Should the parties fail to reach an accord on that issue, then the OCA would submit the following as a reasonable schedule:

Filing of Application	May 14, 2010
Prehearing Conference	June 22, 2010
Non-Company Direct Testimony	August 18, 2010
Settlement Conference <sup>1</sup>	
Rebuttal Testimony	September 10, 2010
Surrebuttal Testimony	October 1, 2010
Evidentiary Hearings (including Oral Rejoinder, as needed)	October 12-15, 2010
Main Briefs	November 3, 2010
Reply Briefs	November 15, 2010
Recommended Decision	December 15, 2010

In addition to the dates proposed above, it is the OCA's understanding that the Joint Applicants may wish to file some form of supplemental testimony in order to address the questions set out in the Commission's June 3 Order. The OCA is willing to work with the other

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<sup>1</sup> The parties will endeavor to hold one or more settlement conferences between Aug. 18 and Sept. 10.



parties to arrive at reasonable times for the submission of such additional testimony and to ensure that a sufficient period of time is allotted for the responses of the other parties thereto.

## VI. DISCOVERY

In order to aid in the investigation of this matter, the OCA proposes the following modifications to the standard discovery rules:

1. When an interrogatory, request for production, request for admission or motion is served after 12:00 p.m. on a Friday or the day before a holiday, the appropriate response period is deemed to start on the next business day.
2. The response period for replying to written interrogatories, requests for production and requests for admissions is ten (10) calendar days from receipt. Responses may be served electronically but hard copies must follow by first-class mail, unless otherwise agreed to by the parties.
3. Objections to written interrogatories, requests for production and requests for admissions are to be communicated orally to the party serving the interrogatory within three (3) calendar days of receipt and in writing within five (5) calendar days of receipt.
4. Motions to dismiss objections and to compel responses shall be filed with the Commission and served on the Administrative Law Judge and the other parties within three (3) calendar days of receipt of the written objections. Answers to such motions shall be filed and served within three (3) calendar days after filing of the motion.
5. Rulings over such motions to be issued, if possible, within seven (7) calendar days of filing of the motion.
6. Interrogatories, requests for production and requests for admissions that are objected to but which are not made the subject of a motion to compel will be deemed withdrawn.
7. Requests for admission shall be deemed admitted unless objected to within five (5) calendar days of service or answered within ten (10) calendar days of service.
8. Pursuant to 52 Pa. Code §5.341(b), neither discovery requests nor responses thereto are to be served on the Commission or the Administrative Law Judge, although a certificate of service may be filed with the Commission's Secretary.
9. Discovery requests, motions to compel and responses are to be served electronically as well as on paper.

VII. SERVICE ON THE OCA

The OCA will be represented in this case by Senior Assistant Consumer Advocate Tanya J. McCloskey and Assistant Consumer Advocate Darryl Lawrence. Two copies of all documents should be served on the OCA as follows:

Darryl Lawrence  
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As a courtesy, the OCA requests that all electronic correspondence additionally be copied to:

Jessica J. Horner ([jhorner@paoca.org](mailto:jhorner@paoca.org));

Richard Hahn ([rhahn@lacapra.com](mailto:rhahn@lacapra.com)); and

Barbara R. Alexander ([barbalex@ctel.net](mailto:barbalex@ctel.net)).

VIII. SETTLEMENT

The OCA is willing to participate in settlement negotiations, at the appropriate time, concerning all issues raised by this case.

Respectfully Submitted,



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Dated: June 15, 2010

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CERTIFICATE OF SERVICE

Joint Application of West Penn Power :  
Company doing business as Allegheny :  
Power Company, Trans-Allegheny :  
Interstate Line Company and FirstEnergy : Docket Nos. A-2010-2176520  
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the Public Utility Code Approving a Change :  
of Control of West Penn Power Company :  
and Trans-Allegheny Interstate Line Company :

I hereby certify that I have this day served a true copy of the foregoing document, the Prehearing Memorandum of the Office of Consumer Advocate, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 15<sup>th</sup> day of June 2010.

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