

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

A-2010-2176520
A-2010-2176732

**PREHEARING CONFERENCE MEMORANDUM OF
UTILITY WORKERS UNION OF AMERICA,
AFL-CIO AND UWUA SYSTEM LOCAL NO. 102**

Pursuant to the Commission's May 24, 2010 Order and 52 Pa. Code § 5.222,
UWUA submits the following Prehearing Conference Memorandum.

A. Background

On May 14, 2010, West Penn Power Company ("West Penn"), Trans-Allegheny Interstate Line Company ("TrAILCo") and FirstEnergy Corporation ("FirstEnergy") filed a Joint Application seeking Pennsylvania Public Utility Commission ("PUC" or the "Commission") approval for a proposed merger of Allegheny Energy, Inc. ("Allegheny") with Element Merger Sub., Inc. ("Merger Sub"), a wholly-owned subsidiary of FirstEnergy. In response to this filing, and pursuant to the May 24, 2010 Prehearing Conference Order issued by Administrative Law Judge Wayne L. Weismandel, Utility Workers Union of America, AFL-CIO ("UWUA"), and UWUA System Local No. 102

(collectively, “UWUA Intervenors”) hereby submit a Prehearing Conference Memorandum as set forth in Section 3 of the Prehearing Conference Order.¹

B. Service List

We ask that the Commission include the following individual on the service list:

Stephen H. Jordan
Rothman Gordon P.C.
Third Floor, Grant Building
310 Grant Street
Pittsburgh, PA 15219
(412) 338-1100

We note that a separate motion is being filed concurrently requesting that out-of-state counsel be permitted to participate *pro hac vice* in these proceedings. Assuming that motion is granted, UWUA Intervenors will ask to have such counsel substituted for service list purposes.

C. Possibility of Settlement

The UWUA Intervenors are ready and willing to engage with other parties in discussions aimed at exploring settlement possibilities. After substantive discussions have taken place, they can more fully assess the realistic possibilities of settlement.

D. Plan/Schedule for Discovery

The UWUA Intervenors are working with other parties in this proceeding to develop an appropriate plan and schedule for discovery in this proceeding. UWUA Intervenors plan to seek discovery on staffing and other workforce-related concerns, as indicated above.

¹ UWUA Intervenors have already filed a Petition to Intervene in these proceedings, *available at* <http://www.puc.state.pa.us/pcdocs/1082480.pdf>.

E. Other Proposed Discovery Orders

The UWUA Intervenors propose that the parties be required to adhere to the Commission's regulations regarding discovery but are amenable to working with other parties regarding modifications of specific procedural regulations as may be appropriate.

The UWUA Intervenors consent to receive service of all documents electronically.

F. Other Proposed Scheduling

The UWUA Intervenors are working with other parties to this proceeding to develop an appropriate schedule.

G. Identification of Witnesses

The UWUA Intervenors tentatively plan to call the following witnesses, who will testify on staffing and other employee-related issues facing West Penn Power and the post-merger company. Each will assess the manner in which the proposed acquisition may impact these issues, and what actions or conditions might ensure that the proposed merger will affirmatively promote the public interest. The witnesses are:

- William Sterner, Region II Representative, UWUA, AFL-CIO
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- Robert Whalen, President, UWUA System
Local 102
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The UWUA Intervenors reserve the right to identify and present the testimony of additional witnesses as necessary, and will promptly notify all parties and the Commission of any such addition.

H. Identification of Issues

The UWUA Intervenors will address whether the proposed merger will affirmatively promote the “service, accommodation, convenience, or safety of the public,” 66 Pa. Cons. Stat. § 1103(a), by promoting staffing and working conditions that facilitate public safety and reliability of service for the affected UWUA members, and by extension all employees of the merging companies. These issues go to the heart of the Commission’s legal obligation in this proceeding: Pennsylvania law “makes it clear that a certificate of public convenience approving a merger is not to be granted unless the Commission is able to find affirmatively that public benefit will result from the merger.” *City of York v. Pa. Pub. Util. Comm’n*, 449 Pa. 136, 141 (1972); 66 Pa. Cons. Stat. § 1102(a)(3); *see also* 52 Pa. Code § 69.901. Further, in fulfilling this obligation, “the Commission may impose such conditions in connection with [its] approval as it deems to be just and reasonable.” *Popowsky v. Pa. Pub. Util. Comm’n*, 594 Pa. 583, 588 (2007).

The UWUA Intervenors will present evidence demonstrating that staffing and labor issues are of significant concern that should be taken into account when considering whether the merger is in the public interest.² The public safety is compromised, for instance, by chronically low staffing levels, a problem which has already led to a situation in which UWUA members work excessive amounts of overtime. The

² These issues are responsive to the questions identified by the Commission in its June 3 issuance in this proceeding.

implications of this for the public safety are clear. As discussed above, a 2008 PUC audit showed that West Penn has a shortage of lineworkers, for instance, and that the excessive overtime resulting from this shortage “could potentially cause safety issues, decreased reliability and decreased cost effectiveness.” It added that “an elevated potential for accidents exists when excessive overtime is required.” Audit at 62, *see id.* at 60-62. There are also appear to be issues with respect to the diversity of the West Penn Power workforce, as explained in the PUC Audit report.

In the years following the merger, the merging companies will have to contend with the challenges of maintaining and developing a diverse, qualified workforce despite ongoing shortages of trained personnel and a flood of upcoming retirements. Failure to do so could have significant and adverse consequences on service reliability and the public safety. The extent to which the merging companies can demonstrate that they will sufficiently address these issues is central to whether it can be concluded that the proposed merger will promote the “service, accommodation, convenience, or safety of the public” as it is required to do by Pennsylvania law. 66 Pa. Cons. Stat. § 1103(a). To the extent necessary or appropriate, UWUA Intervenors will propose conditions to address perceived concerns, while allowing the merger to move forward.

I. Evidence

UWUA Intervenors intend to present their case through the introduction into the evidentiary record of the written testimony of its witness or witnesses, and to make its witness or witnesses available for cross-examination at hearing. In preparing this testimony, UWUA Intervenors intend to serve discovery requests upon the Applicants, and to introduce such documents and other information as may be obtained through these efforts as part of its testimony. The testimony and exhibits will be aimed at assessing the

extent to which there may be adverse impact as a result of the merger (through examination of the issues identified in Section H, *supra*) and, if so, how those impacts can be addressed. Additionally, the UWUA Intervenors anticipate developing an evidentiary record through the cross-examination of witnesses presented by other parties in this proceeding.

CONCLUSION

WHEREFORE, for the foregoing reasons, UWUA Intervenors ask that (1) they be permitted to intervene in these proceedings with full rights as parties; and (2) the issues raised herein be included as part of the list of issues to be addressed in these proceedings.

Respectfully submitted,

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June 15, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon all parties listed on the attached list, as well as Administrative Law Judges Wayne L. Weisman and Mary D. Long.

Dated on this 15th day of June, 2010.

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