



Pennsylvania Department of Environmental Protection

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June 15, 2010

**Bureau of Regulatory Counsel**

Telephone 717-787-7060

Honorable Rosemary Chiavetta, Secretary  
Public Utility Commission  
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 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  
PUC Docket No. A-2010-2176520  
A-2010-2176732

Dear Secretary Chiavetta:

In accordance with the Public Utility Commission's Rules of Practice and Procedure at 52 Pa. Code § 1.59, please find for filing an original copy of the Commonwealth of Pennsylvania, Department of Environmental Protection's Prehearing Memorandum in the above referenced matter. The Department's Memorandum was filed electronically on this date and served on the parties of record per the Certificate of Service.

Thank you for your assistance.

Sincerely,

Kurt E. Klapkowski  
Assistant Counsel

cc: Certificate of Service  
Honorable Wayne Weismandel, PUC ALJ  
Honorable Mary D. Long, PUC ALJ

enclosure



**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PUBLIC UTILITY COMMISSION**

<b>JOINT APPLICATION OF WEST</b>	:	
<b>PENN POWER COMPANY, D/B/A</b>	:	
<b>ALLEGHENY POWER, TRANS-</b>	:	
<b>ALLEGHENY INTERSTATE LINE</b>	:	
<b>COMPANY AND FIRSTENERGY</b>	:	
<b>CORPORATION FOR A</b>	:	
<b>CERTIFICATE OF PUBLIC</b>	:	<b>Docket No. A-2010-2176520</b>
<b>CONVENIENCE UNDER SECTION</b>	:	<b>A-2010-2176732</b>
<b>1102(A)(3) OF THE PUBLIC UTILITY</b>	:	
<b>CODE APPROVING A CHANGE</b>	:	
<b>OF CONTROL OF WEST PENN</b>	:	
<b>POWER COMPANY AND TRANS-</b>	:	
<b>ALLEGHENY INTERSTATE</b>	:	
<b>LINE COMPANY</b>	:	

**PREHEARING MEMORANDUM OF THE DEPARTMENT  
OF ENVIRONMENTAL PROTECTION**

Pursuant to Section 333 of the Public Utility Code, 66 Pa.C.S. § 333, 52 Pa.Code §§ 5.221-5.223 and in response to the prehearing conference notice and prehearing conference order dated May 24, 2010 issued in the above-captioned matter, the Commonwealth of Pennsylvania, Department of Environmental Protection (the "Department") provides the following information:

**I. INTRODUCTION**

On or about May 14, 2010, the Joint Application of West Penn Power Company, d/b/a Allegheny Power ("West Penn"), Trans-Allegheny Interstate Line Company ("Trans-Allegheny") and FirstEnergy Corporation (collectively, the "Utility Applicants") for a certificate of public convenience under section 1102(a)(3) of the Public Utility Code approving a change of

control of West Penn and Trans-Allegheny ("Joint Application") was filed with the Pennsylvania Public Utility Commission (the "Commission").

The Utility Applicants filed their Joint Application to obtain the approval of the Commission, under Chapters 11 and 28 of the Public Utility Code for a change of control of West Penn and Trans-Allegheny to be effected by the merger of Allegheny Energy, Inc. with Element Merger Sub., Inc., a wholly owned subsidiary of FirstEnergy Corporation. In addition, the Joint Applicants request approval of the Commission, under Chapter 21 of the Public Utility Code, for certain revisions to affiliated interest arrangements that are designed to facilitate the sharing of services between the Allegheny Energy, Inc., and FirstEnergy Corporation systems.

On June 14, 2010, the Department filed a Petition to Intervene in order to ensure that the Department's interests are adequately represented in this proceeding.

## **II. ISSUES AND SUB-ISSUES**

Based upon a preliminary review of the Joint Application, the Department has identified a number of concerns which it anticipates will be included in its evaluation and analysis of the impact of the proposal and claims associated with this merger. It is anticipated that other issues may arise and may be pursued as a result of discovery conducted by the Department and other parties. Once the Department has received and reviewed all necessary information relevant to the Department's interests, the Department will set forth the specific issues to be addressed in this proceeding and will make specific recommendations through its direct and rebuttal testimony of its witnesses, through cross examination of other parties' witnesses and through legal briefs.

Preliminarily, the Department has identified the following areas of inquiry that require further investigation and respectfully reserves the right to supplement this list:

a. Economic Impacts: The Joint Application includes a discussion of the economic savings resulting from the merger and the impacts of the merger on service, rates, jobs and local communities. The Department will examine the reasonableness of these economic calculations to ensure that the appropriate amount of savings attributed to the merger accrues to the benefit of the public in the form of rate relief or low-income assistance. In addition, the Department will examine the impact of the merger on the employees of the Utility Applicants to ensure that this workforce is not adversely impacted as a result of the merger.

b. Reliability: Executive Order Number 2002-8 of July 18, 2002 declares that ensuring affordable energy supply is critical to the welfare of Pennsylvania's citizens and to the continued economic prosperity of the Commonwealth. It further declares that maintaining a diverse and reliable energy portfolio will be critical to minimizing the effects of any single energy source on Pennsylvania's consumers and maintaining a sustainable supply of energy. In addition, providing a reliable supply of energy for local emergency infrastructure is an important consideration in overall efforts to maintain reliable sources of energy. As the executive agency with the powers and duties of the Pennsylvania Energy Office, the Department is concerned whether the proposed merger will affect its efforts to promote reliable sources of energy. The Department is also interested in ensuring that the proposed merger does not diminish the reliability of service to Pennsylvania customers and in fact serves to improve reliability and efficiency.

c. Air Quality Issues: The federal Clean Air Act, 42 U.S.C. §§ 401-7671q, the Pennsylvania Air Pollution Control Act, 35 P.S. § 4000.1 *et seq.* and the regulations promulgated

thereunder establish various requirements to control the emissions of air contaminants that are or will be imposed on certain sources of air pollution such as electricity generating facilities. The Department is the agency with the duty and authority to administer and enforce these statutes and regulations in Pennsylvania. The Joint Applicants own or operate several electricity generating facilities that are or will be subject to these requirements to control the emissions of air contaminants. The Department is concerned whether the proposed merger will adversely affect compliance with current or anticipated air quality requirements at these electric generating facilities and the health, safety and welfare of the citizens of the Commonwealth.

d. Radiation Protection Issues: The Department has ongoing regulatory powers and duties pursuant to the Low-Level Radioactive Waste Disposal Act, 35 P.S. §§ 7130.101 *et seq.*, and the Appalachian States Low-Level Disposal Compact, 35 P.S. §§ 7125.1 *et seq.* The Joint Applicants are engaged in the business of producing electricity utilizing nuclear energy and are generators of low-level radioactive waste requiring disposal. The Joint Applicants have certain duties and obligations under these statutes that the Department administers. The Department is concerned whether the proposed merger will affect either the Department's implementation of its statutory duties or the Joint Applicants' compliance with their obligations under these state laws.

The Joint Applicants generate electricity using nuclear power in Pennsylvania and are subject to the Department's radiation protection and nuclear safety surveillance and oversight program established by the Radiation Protection Act, 35 P.S. §§ 7110.101 *et seq.* The Department is concerned whether and how the proposed merger will affect its current program and the related efforts of the Department and other Commonwealth agencies to respond to events at the Joint Applicants' nuclear power station in the future.

e. Other Environmental Compliance Issues: The Joint Applicants operate numerous facilities throughout the Commonwealth for the generation, distribution and transmission of electricity. Given the nature and scope of these operations, the potential for environmental impacts in addition to those outlined above means that the Joint Applicants' facilities are regulated under several additional environmental statutes, including the Clean Streams Law, 35 P.S. §§ 691.1, *et seq.*, the Storage Tank and Spill Prevention Act, 35 P.S. §§ 6021.101 *et seq.* and the Solid Waste Management Act, 35 P.S. §§ 6018.101 *et seq.* The Department is concerned whether and how the proposed merger will affect the Joint Applicants' current and future compliance with these environmental statutes.

f. Energy Issues:

Renewable Energy: As the primary state agency charged with ensuring Pennsylvania's air quality, the Department has identified the promotion of renewable energy as an important consideration in improving Pennsylvania's air quality. The Department promotes the deployment of renewable energy through financial assistance and regulatory measures including the Pennsylvania Energy Development Authority, the State Energy Plan and the small source NOx set-aside program. The Department is concerned whether the proposed merger will affect its efforts to promote greater use of renewable energy.

Energy Efficiency and Conservation: The Department administers several programs to promote energy conservation and efficiency and the Department is concerned whether the proposed merger will affect these efforts and other Commonwealth efforts to promote energy conservation and efficiency. Specifically, the Department is concerned about the impact the proposed merger may have on the Joint Applicants current and future compliance

with the energy efficiency and conservation requirements of Act 129 of 2008 (66 Pa.C.S. § 2806.1))

Smart Meters: The Department is concerned about the impact the proposed merger may have on the Joint Applicants current and future compliance with the smart meter technology procurement and installation requirements of Act 129 of 2008 (66 Pa.C.S. § 2807(f)).

Alternative Energy: The Department administers several provisions of the Alternative Energy Investment Act (“AEPS”) Act and is to work cooperatively with the Commission to monitor the performance of all aspects of AEPS. 73 P.S. § 1648.7(c). The Department is concerned about the impact the proposed merger may have on current and future compliance with the AEPS requirements by the Joint Applicants.

### **III. WITNESSES**

At the present time, the Department proposes to present the direct, rebuttal, and surrebuttal testimony, as may be necessary, on the following issues - Air Quality Issues, Radiation Protection Issues, Other Environmental Compliance Issues and Energy Issues, including Reliability. The Department has not determined the exact Department employees who will provide testimony on these issues at this time; however, the Department does not anticipate presenting testimony of more than one or two individuals on any individual topic. The Department specifically reserves the right to call additional witnesses as necessary and with the permission of the presiding officer. As soon as the Department has determined that specific or additional witnesses will be necessary for any portion of its case, all parties of record will be notified.

#### **IV. DISCOVERY**

The Department has not yet submitted any discovery requests in this proceeding and is still in the process of formulating such discovery requests. The Department is interested in the possibility of engaging in informal discovery with the Joint Applicants and is prepared to cooperate with the other parties to avoid duplicative discovery requests.

#### **V. SETTLEMENT**

The Department anticipates that the parties will engage in settlement discussions once the parties have an opportunity to review discovery and to develop positions raised by the Joint Application. The Department supports establishing a schedule of settlement conferences.

#### **VI. PROPOSED SCHEDULE**

Although the Department has not proposed a schedule, the Department is prepared to adopt a schedule that has been agreed upon by the parties and approved by the presiding officer. The Department is aware that several parties have circulated proposed schedules in an effort to develop an agreed-upon schedule.

#### **VII. SERVICE**

The Department requests that its entry on the service list should be for counsel:

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The Department consents to electronic service of all documents at the email address listed above.



Respectfully submitted,



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Dated: June 15, 2010

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BEFORE THE PUBLIC UTILITY COMMISSION**

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<b>LINE COMPANY</b>	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Department's Prehearing Memorandum in the above-captioned matter, was served both by electronic and pre-paid, First Class United States mail, upon the following:

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Dated: June 15, 2010