

Daniel Clearfield
717.237.7173
dclearfield@eckertseamans.com

October 5, 2010

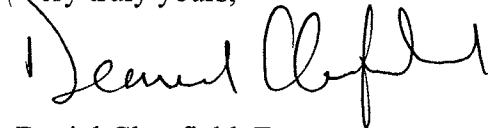
Via Electronic FilingRosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy 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

Dear Secretary Chiavetta:

On behalf of Direct Energy Services, LLC enclosed please find the original Motion for Leave to Submit Supplemental Surrebuttal testimony along with the electronic filing confirmation page. Please note the Supplemental Surrebuttal testimony contains **HIGHLY CONFIDENTIAL** information. Copies to be served in accordance with the attached Certificate of Service.

Very truly yours,



Daniel Clearfield, Esq.

DC/lww
Enclosure

cc: Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Direct Energy's Motion to Submit Supplemental Surrebuttal Testimony – PUBLIC VERSION – upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

Randall B. Palmer, Esq.
Jennifer L. Petrisek, Esq.
Allegheny Energy, Inc.
800 Cabin Hill Dr.
Greensburg, PA 15601
rpalmer@alleghenyenergy.com
jpetrisek@alleghenyenergy.com

Wendy E. Stark, Esq.
Bradley A. Bingaman, Esq.
FirstEnergy Service Company
2800 Pottsville Pike
PO Box 16001
Reading, PA 19612-6001
starkw@firstenergycorp.com

Alan Michael Seltzer, Esq.
W. Edwin Ogden, Esq.
Ryan, Russell, Ogden & Seltzer, PC
1150 Berkshire Blvd., Suite 210
Wyomissing, PA 19610-1208
aseltzer@ryanrussell.com
wogden@ryanrussell.com

Thomas P. Gadsden, Esq.
Kenneth M. Kulak, Esq.
Morgan, Lewis & Bockius
1701 Market St.
Philadelphia, PA 19103-2921
tgadsden@morganlewis.com
kkulak@morganlewis.com

Scott Rubin, Esq.
333 Oak Lane
Bloomsburg, PA 17815
Scott.j.rubin@gmail.com

Darryl Lawrence, Esq.
Tanya J. McCloskey, Esq.
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101-1923
Dlawrence@paoca.org
tmccloskey@paoca.org

Daniel Asmus, Esq.
Office of Small Business Advocate
1102 Commerce Building
300 N. Second St.
Harrisburg, PA 17101
dasmus@state.pa.us

Allison C. Kaster, Esq.
Carrie B. Wright, Esq.
Office of Trial Staff
PO Box 3265
Harrisburg, PA 17101-3265
akaster@state.pa.us
carwright@state.pa.us

Charis Mincavage, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
cmincavage@mwn.com

Derrick Price Williamson, Esq.
Barry Naum, Esq. Spilman Thomas & Battle
1100 Bent Creek Blvd., Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com
bnaum@spilmanlaw.com

Vasiliki Karandrikas, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
vkandrikas@mwn.com

Thomas J. Sniscak, Esq.
Hawke McKeon & Sniscak LLP
100 N. Tenth St.
PO Box 1778
Harrisburg, PA 17105
tjsniscak@hmslegal.com

Benjamin L. Willey, Esq.
7272 Wisconsin Ave., Suite 300
Bethesda, MD 20814
blw@bwilleylaw.com

Kurt E. Klapkowski, Esq.
Jason E. Oyler, Esq.
Department of Environmental Protection
RCSOB, 9th Floor
400 Market St.
Harrisburg, PA 17101-2301
kklapkowski@state.pa.us
joyler@state.pa.us

Stephen H. Jordan, Esq.
Rothman Gordon, P.C.
Third Floor, Grant Building
310 Grant St.
Pittsburgh, PA 15219

Theodore Robinson, Esq.
Staff Attorney
Citizen Power
2121 Murray Ave.
Pittsburgh, PA 15217
robinson@citizenpower.com

Divesh Gupta, Esq.
Constellation Energy
111 Market Place, Suite 500
Baltimore, MD 21202
Divesh.gupta@constellation.com

Charles E. Thomas, Jr., Esq.
Thomas, Long, Niesen & Kennard
212 Locust St.
PO Box 9500
Harrisburg, PA 17108-9500
cthomas@thomaslonglaw.com

John K. Baillie, Esq.
Charles McPhedran, Esq.
Citizens for Pennsylvania's Future
425 Sixth Ave., Suite 2770
Pittsburgh, PA 15219
baillie@pennfuture.org
mcphebran@pennfuture.org

Gary A. Jack, Esq.
Kelly L. Geer, Esq.
Duquesne Light Company
411 Seventh Ave., 16-4
Pittsburgh, PA 15219
gjack@duqlight.com
kgeer@duqlight.com

Thomas T. Niesen, Esq.
Thomas, Long, Niesen & Kennard
212 Locust St.
PO Box 9500
Harrisburg, PA 17108-9500
tniesen@thomaslonglaw.com

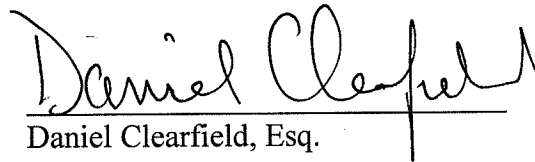
Regina L. Matz, Esq.
Thomas, Long, Niesen & Kennard
212 Locust St.
PO Box 9500
Harrisburg, PA 17108-9500
rmatz@thomaslonglaw.com

Susan E. Bruce, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
sbruce@mwn.com

Scott H. Strauss, Esq.
Spiegel & McDiarmid LLP
1333 New Hampshire Ave., NW
Washington, DC 20036

Eric P. Cheung, Esq.
Clean Air Council
135 S. 19th St., Suite 300
Philadelphia, PA 19103

Michael D. Fiorentino, Esq.
42 E. Second St., Suite 200
Media, PA 19063
mdfiorentino@gmail.com


Daniel Clearfield, Esq.

Dated: October 5, 2010

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

**DIRECT ENERGY SERVICES, LLC'S
MOTION FOR LEAVE TO SUBMIT
SUPPLEMENTAL SURREBUTTAL**

Direct Energy Services, LLC (“Direct Energy”), pursuant to 52 Pa. Code § 5.103, hereby requests that Your Honors to grant leave to Direct Energy to submit Supplemental Surrebuttal Testimony in response Supplemental Rebuttal Testimony submitted by the Joint Applicants in the above-captioned proceeding on October 1, 2010. The proposed Supplemental Surrebuttal Testimony, sponsored by Direct Energy witness Mathew Morey, is attached hereto as Appendix “A.” In support of its Motion for Leave, Direct Energy respectfully avers the following.

1. In accordance with the Scheduling and Briefing Order in this matter, all parties and interveners served rebuttal testimony on September 13, 2010.
2. On September 17, 2010, Direct Energy served the Supplemental Direct Testimony of Dr. Mathew J. Morey to address issues raised by Hart-Scott-Rodino (“HSR”) documents produced by the Joint Applicants after the deadline for submittal of rebuttal testimony had expired. (A few days before, Direct Energy had provided a copy of Dr. Morey’s testimony to counsel for Joint Applicants to give them an opportunity to assure that the highly confidential HSR material was properly identified.)

3. On October 1, 2010 (at 6:13 PM), two weeks after Dr. Morey's Supplemental Direct Testimony had been served, and after the deadline for submitting surrebuttal testimony had passed, the Joint Applicants filed a Motion to Strike Dr. Morey's Supplemental Direct Testimony.

4. As an alternative to striking Direct Energy's testimony, the Joint Applicants submitted the Supplemental Rebuttal Testimony of Anthony J. Alexander as an attachment to their Motion to Strike and asked that it be permitted.

5. By Order issued October 4, 2010, Your Honors denied the Joint Applicants' Motion to Strike Dr. Morey's Supplemental Direct Testimony and granted the Joint Applicants leave to serve the Supplemental Rebuttal Testimony of Anthony J. Alexander.

6. Mr. Alexander's Supplemental Rebuttal responds to issues raised by Dr. Morey's Supplemental Direct Testimony served two weeks earlier.

7. The fact that the Joint Applicants waited until October 1, 2010 to propose the submittal of Mr. Alexander's Supplemental Rebuttal deprived Direct Energy of the opportunity to address Mr. Alexander's contentions during the surrebuttal stage.

8. Your Honors have broad discretion and authority to regulate the submission of testimony and the presentation of evidence. 52 Pa. Code § 5.483. Further, Your Honors have an obligation to conduct a fair and impartial hearing. 52 Pa. Code § 5.485.

9. Granting leave to Direct Energy to submit the Supplemental Surrebuttal Testimony of Dr. Morey (attached as Appendix A) would restore to Direct Energy the opportunity to respond to the Supplemental Rebuttal Testimony of Mr. Alexander.

10. The submission of Supplemental Surrebuttal testimony by Direct Energy will not prejudice the Joint Applicants because Dr. Morey's testimony is being submitted with ample

time to allow the Joint Applicants to offer rejoinder or to prepare cross-examination questions for Dr. Morey in advance of the hearing in this matter. Direct Energy states that it will not oppose oral rejoinder by Mr. Alexander to respond to this testimony.

Based on the foregoing, Direct Energy respectfully requests that Your Honors grant this Motion for Leave and permit Direct Energy to submit the Supplemental Surrebuttal Testimony of Dr. Mathew Morey in the same form and substance as Appendix A, attached hereto.

Respectfully submitted,



Daniel Clearfield, Esq.
Deanne M. O'Dell, Esq.
Edward G. Lanza, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
717.237.7173

Dated: October 5, 2010

APPENDIX A

PUBLIC VERSION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of West Penn Power	:	
Company d/b/a Allegheny Power, Trans-	:	
Allegheny Interstate Line Company and First	:	Docket No. A-2010-2176520
Energy Corp. for a Certificate of Public	:	Docket No. 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	:	

SUPPLEMENTAL SURREBUTTAL TESTIMONY

OF

MATHEW J. MOREY

On Behalf of

Direct Energy Services, LLC

PUBLIC VERSION

October 5, 2010

1 **Q. PLEASE STATE YOUR NAME AND CURRENT POSITION.**

2 A. My name is Mathew J. Morey. I am a Senior Consultant with Christensen
3 Associates Energy Consulting, LLC.

4 **Q. HAVE YOU PREVIOUSLY PRESENTED TESTIMONY IN THIS**
5 **PROCEEDING AND ON WHOSE BEHALF?**

6 A. Yes, I presented direct testimony on behalf of Direct Energy Services, LLC
7 (“Direct Energy”) which has been labeled as Direct Energy St. No. 1.

8 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL SURREBUTTAL**
9 **TESTIMONY?**

10 A. To respond to the supplemental rebuttal testimony of Joint Applicants’ witness
11 Anthony Alexander.

12 **Q. MR. ALEXANDER’S SUPPLEMENTAL REBUTTAL TESTIMONY**
13 **ARGUES THAT YOUR INTERPRETATION OF HSR DOCUMENTS IS**
14 **WRONG AND THAT THERE IS NOTHING IN THOSE DOCUMENTS**
15 **TO SUGGEST THAT FIRSTENERGY AND FIRSTENERGY SOLUTIONS**
16 **(“FES”) WOULD ENGAGE IN ANY IMPROPER ACTIVITY. INDEED**
17 **HE CLAIMS THERE IS NOTHING THAT WOULD SUGGEST THAT FE**
18 **AND FES WOULD ENGAGE IN IMPROPER OR ANTICOMPETITIVE**
19 **ACTIVITY WITH REGARD TO THE POST-MERGER EDC RETAIL**
20 **MARKETS OR THAT THE MERGER WILL HAVE AN ADVERSE**
21 **EFFECT ON THE RETAIL MARKETS IN THEIR SERVICE**
22 **TERRITORY. (JOINT APPLICANTS’ ST. NO. 1-SR AT 3-4) CAN YOU**
23 **RESPOND?**

24 A. I never claimed that the conduct of FirstEnergy and FES would be unlawful. The
25 conduct of FirstEnergy and FES, in regard to the Joint Applicants’ Pennsylvania
26 post-merger retail markets, does not have to be unlawful to raise concern about
27 outcomes of a competitive retail market in those EDC territories. The statute
28 targets “anti-competitive or discriminatory conduct” and focuses on the level of
29 competition after the merger. There does not seem to be a dispute from Mr.
30 Alexander that the competitive market after the merger will not be better off – and

1 will not be workably competitive. Indeed, just the obvious fact that in the post
2 merger market there will be one less competitor – Allegheny Energy Solutions –
3 means that there will certainly be less competition by definition. But the point I
4 made in my supplemental direct testimony is that **BEGIN HIGHLY**

5 **CONFIDENTIAL**

6

7

8

9

10

11

12

13

14

15

16

17

18

19

END HIGHLY CONFIDENTIAL When the retail market

20

in which the corporation owning the EDCs, the marketing affiliate, and

21

unregulated generation within the state is structured such that that corporation has

22

a dominant share of the retail load, that market structure is not consistent with that

23

of a workable competitive market. Such a market would not be expected to

1 deliver the long-term benefits that would be achieved under a market structure
2 consistent with a workable competitive market. The existing default service
3 market model, if not changed, will contribute to this post-merger retail market
4 structure that stifles the development of a workable competitive market that
5 would benefit residential and small business customers.

6 **Q. MR. ALEXANDER DISPUTES YOUR CLAIM THAT THE FE RETAIL**
7 **STRATEGY FOCUSES ON FE'S EDC SERVICE TERRITORIES AND**
8 **CLAIMS THAT THE HSR DOCUMENTS SHOW THAT FE IS**
9 **TARGETING AREAS WHICH ARE CLOSE TO THE GENERATION**
10 **THAT IT OWNS. (JOINT APPLICANTS' ST. NO. 1-SR AT 8) PLEASE**
11 **COMMENT.**

12 A. There is no question that FE focuses on areas close to its generation; that happens
13 to mean that a great majority of its marketing efforts and expected successes are
14 focused in its own service territories as I discussed above.

15 Moreover, there are other documents which support FE's interest in
16 focusing on sales within its affiliated service territory. For example, as I
17 discussed in my Initial Surrebuttal, FE's strategy post-merger is to promote its
18 "long term customer relationships" and "local brand."¹ These "advantages" only
19 exist within FE's EDC territory. Thus, while FE is not exclusively marketing
20 within its affiliated EDC territories (and I never said they were) the strong
21 emphasis is on those areas.

22 **Q. MR. ALEXANDER ALSO CLAIMS THAT THE STRUCTURE OF THE**
23 **DEFAULT SERVICE MARKET HAS NOTHING TO DO WITH FE'S**
24 **RETAIL STRATEGY. (JOINT APPLICANTS' ST. NO. 1-SR AT 5-6, 8-12)**
25 **DO YOU AGREE?**

¹ Direct Energy St. 1-SR at 18.

1 A. No. FE is taking full advantage of a procurement structure that has as a
2 consequence very little shopping by residential and small commercial customers.
3 I believe that such a market structure helps FE advance its retail strategy because
4 it would be harder (and more costly) to lure away commercial customers through
5 direct marketing; and a municipal aggregation plan that FE has supported in
6 statements to the legislature would be more difficult (and perhaps impossible) if
7 most customers were already shopping. While FE's advocacy for a default
8 service structure mandated in the last default service proceeding was not
9 unlawful, the fact remains that this structure, together with FE's aggressive retail
10 marketing plans makes it very unlikely that a workably competitive market will
11 exist in FE's merged service territories. Thus, in the context of the merger
12 standards that the Commission must apply it becomes problematic.

13 **Q. DOES THIS COMPLETE YOUR SUPPLEMENTAL SURREBUTTAL**
14 **TESTIMONY?**

15 A. Yes it does.