

**COMMONWEALTH OF PENNSYLVANIA
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	:	Docket Nos. A-2010-2176520 and
Public Convenience Under Section	:	A-2010-2176732
1102(a)(3) of the Public Utility Code	:	
Approving a Change of Control of West	:	
Penn Power Company And Trans-	:	
Allegheny Interstate Line Company	:	
	:	

**STATEMENT OF CONSTELLATION NEW ENERGY, INC. AND
CONSTELLATION ENERGY COMMODITIES GROUP, INC.
IN SUPPORT OF JOINT PETITION FOR PARTIAL SETTLEMENT**

NOW COME Constellation New Energy, Inc. and Constellation Energy Commodities Group, Inc. (“Constellation”) in the above-captioned matter, and hereby offer this statement in support (“Statement in Support”) of the *Joint Petition for Partial Settlement* (“Partial Settlement”) executed by parties (“Joint Petitioners”)¹ to this proceeding and filed with the Pennsylvania Public Utility Commission (“Commission”) on October 25, 2010.

In support of the Partial Settlement, Constellation states as follows:

¹ The Joint Petitioners are: FirstEnergy Corp. (“FirstEnergy”), West Penn Power Company doing business as Allegheny Power (“Allegheny-West Penn”), Trans-Allegheny Interstate Line Company (“TrAILCo”) (collectively the “Joint Applicants”), as well as the Pennsylvania Public Utility Commission Office of Trial Staff (“OTS”), the Office of Consumer Advocate (“OCA”), the Pennsylvania Department of Environmental Protection (“DEP”), the International Brotherhood of Electrical Workers (“IBEW”), the Utility Workers Union of America, AFL-CIO (“UWUA”) and UWUA System Local No. 102 (“Local 102”) (collectively, “UWUA Intervenors”), The Pennsylvania State University (“PSU”), the Met-Ed Industrial Users Group (“MEIUG”) and the Penelec Industrial Customer Alliance (“PICA”) (collectively, “MEIUG/PICA”), the West Penn Power Industrial Intervenors (“WPPII”), the Pennsylvania Rural Electric Association (“PREA”), the Pennsylvania Mountains Healthcare Alliance (“PMHA”), the West Penn Power Sustainable Energy Fund (“WPPSEF”), the York County Solid Waste and Refuse Authority (“YCSWA”), ARIPPA, the Clean Air Council (“CAC”) , Citizens for Pennsylvania’s Future (“PennFuture”), and Constellation.

I. BACKGROUND

1. The Joint Applicants filed their *Joint Application* (“Application”) on May 14, 2010² (with supporting testimony from the Joint Applicants filed on that same date³), in Docket Nos. A-2010-2176520 and A-2010-2176732.
2. On June 3, 2010, the Commission issued a letter⁴ to all parties identifying twelve issues⁵ (“June 3 Issues”) and areas of concern to be addressed by the parties and investigated in detail in the instant proceeding.
3. On June 22, 2010, a Prehearing Conference was held, with Administrative Law Judges Wayne L. Weisman and Mary D. Long (the “ALJs”) presiding. At the Prehearing Conference, the ALJs adopted the procedural schedule (“Procedural Schedule”) agreed to by the parties.
4. Timely Petitions to Intervene, Appearances, Answers or Protests were filed by OTS, the OCA, the Office of Small Business Advocate, IBEW, YCSWA, the Duquesne Light Company, PREA, WPPSEF, PSU, Citizen Power, Inc., ARIPPA, WPPII, MEIUG/PICA, DEP, Direct Energy Services, LLC, the Retail Energy Supply Association, PMHA, the UWUA Intervenors, CAC, Constellation, and PennFuture.

² *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*, Commission Docket Nos. A-2010-2176520 and A-2010-2176732 (May 10, 2010) (“Application” or “Joint Application”).

³ Joint Application at Volume III, *Direct Testimony and Exhibits* (“FirstEnergy-Allegheny Direct Testimony”).

⁴ *Commission Letter to All Parties*, Commission Docket Nos. A-2010-2176520 and A-2010-2176732 (June 3, 2010) (“June 3 Letter”).

⁵ See June 3 Letter at Attachment A (“June 3 Issues”).

5. Pursuant to the Procedural Schedule, direct testimony was submitted by the parties on August 17, 2010. Subsequently, rebuttal testimony was submitted by parties on September 13, 2010, and surrebuttal testimony was filed on October 1, 2010.
6. Constellation submitted and circulated to parties only direct and surrebuttal testimony for the Commission's consideration, in order to provide an analysis of the Application and the underlying transaction between Allegheny-West Penn, Trans-Allegheny and FirstEnergy.⁶
7. After the submission of direct testimony, the parties engaged in multiple settlement conferences to try to settle some or all of the issues in this case. As a result of those negotiations, the Joint Petitioners were able to reach the Partial Settlement.

II. CONSTELLATION'S SUPPORT FOR THE PARTIAL SETTLEMENT

8. Constellation's support of the Partial Settlement does not imply Constellation's agreement for each of the aspects of its terms, individually. Though not all of Constellation's substantive issues are addressed fully by the Partial Settlement, Constellation supports the Partial Settlement's terms taken together, and believes that the Commission should approve the Application, as revised by the Partial Settlement, as a reasonable settlement of the issues presented by the Joint Petitioners in this proceeding.
9. The Partial Settlement appropriately reflects that any credits provided to customers as merger savings will be provided to all such customers, regardless of whether they take

⁶ See *Direct Testimony of David I. Fein on Behalf of Intervenors Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.*, Commission Docket Nos. A-2010-2176520 and A-2010-2176732 (Aug. 17, 2010) ("Constellation St. 1") and *Surrebuttal Testimony of David I. Fein on Behalf of Intervenors Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.*, Commission Docket Nos. A-2010-2176520 and A-2010-2176732 (Oct. 1, 2010) ("Constellation St. 1-SR") (collectively, the "Constellation Testimony").

Default Service or receive service from a competitive electric generation supplier (“EGS”).⁷

10. Under the Partial Settlement, the Joint Applicants agree to not oppose in subsequent Default Service plan proceedings any proposal to provide to large commercial and industrial customers only an hourly-priced Default Service structure.⁸
11. Pursuant to the Partial Settlement’s terms, the Joint Applicants appropriately agree to harmonize their Price-to-Compare (“PTC”) structures as a part of their Default Service plan filings for the period beginning June 1, 2013.⁹
12. The Partial Settlement also importantly includes a provision by which the Joint Applicants agree to hold EGS training sessions to address (a) the conditions under which customers may be “dropped” from EGS service, (b) the process by which EGSs can obtain specific settlement load information reported to PJM Interconnection, L.L.C. (“PJM”), and (c) the process for after-the-fact adjustments with PJM.¹⁰
13. While the Partial Settlement includes only the PTC and EGS training session provisions as future retail market enhancements affecting all of the Joint Applicants’ territories, the Partial Settlement represents a reasonable settlement to encourage further retail market development in the Allegheny-West Penn service territory, in particular, through the Joint Applicants’ commitment to (a) file a purchase-of-receivables plan, (b) engage in certain

⁷ See Partial Settlement at ¶ 17; see Constellation St. 1 at pp.11-15 (arguing that the Merger should not have adverse effects on competitive markets in the Commonwealth).

⁸ See Partial Settlement at ¶ 34; see Constellation St. 1 at p.18 (lines 15-19) (explaining that the “prudent mix” for Default Service for large commercial and industrial customers may include only an hourly-priced service).

⁹ See Partial Settlement at ¶ 38; see Constellation St. 1 at p.21 (lines 20-22) (recommending that the Joint Applicants commit to a process to develop a uniform structure for their PTC).

¹⁰ See Partial Settlement at ¶ 46; see Constellation St. 1 at pp.19-22 (arguing that the Merger should not stand in the way of the ability to encourage additional retail market enhancements at the earliest opportunity).

customer education programs, (c) offer a variety of customer billing options, and (d) provide necessary retail supplier access to important customer information and other data.¹¹

14. While the Partial Settlement does not address all of the issues and concerns raised by Constellation and other Joint Petitioners in the context of this proceeding – e.g., the issue of municipal opt-out aggregation – its terms appropriately acknowledge that the Partial Settlement shall not prohibit any of the Joint Petitioners from pursuing those issues and concerns in the context of any other proceeding before the Commission.¹²
15. In addition to the above reasons for Constellation’s support of the Partial Settlement, pursuant to the ALJs’ directions in the instant proceeding, Constellation includes as Attachment A to this Statement in Support its answers in response to the Commission’s June 3 Issues.

III. CONCLUSION

16. WHEREFORE, Constellation supports the Partial Settlement and respectfully urges the ALJs and the Commission to expeditiously review and approve the Joint Applicants’ Application, as revised by the terms of the Partial Settlement.

¹¹ See Partial Settlement at ¶¶ 39-45 and 47-48; see Constellation St. 1 at pp.21 (line 1) – 22 (line 22) (arguing that the Joint Applicants should be required to, among other things and at a minimum, (a) adopt POR programs, (b) improve EGS access to data and information, (c) provide flexible billing options, (d) improve customer awareness and education, (e) appoint a sufficiently independent ombudsman for each of the Joint Applicants’ utilities, (f) adopt uniform PTCs, and (g) publish such uniform PTCs at least two months but preferably five months ahead of power flow); see also Constellation St. 1-SR at pp.3 (line 19) – 8 (line 3) (highlighting the need to, at a minimum, have the Joint Applicants adopt the “best practices” of retail market structures from each individual utility within the joint, post-Merger territory).

¹² See Partial Settlement at ¶ 67; see Constellation St. 1 at pp.13 (line 1) – 14 (line 2) (raising the issue of “Municipal Opt-Out Aggregation” and its potential harm to existing, Commission-approved Default Service Plans, and providing a solution involving delayed implementation of such programs); see also Constellation St. 1-SR at pp.8 (line 4) – 13 (line 2) (explaining in greater detail the need for concern regarding such programs given recent developments, and highlighting the detrimental and disparate effects that such programs may have on various communities in the same utility territory).

Respectfully Submitted,



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*On Behalf of Intervenors Constellation Energy
Commodities Group, Inc. and Constellation
NewEnergy, Inc.*

Dated: October 28, 2010

ATTACHMENT A:
CONSTELLATION ANSWERS TO
COMMISSION'S JUNE 3 ISSUES

ATTACHMENT A

CONSTELLATION ANSWERS TO COMMISSION'S JUNE 3 ISSUES

- 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?**

Constellation did not address Issue 1 in its testimony.

- 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?**

Constellation did not address Issue 2 in its testimony.

- 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?**

Constellation did not address Issue 3 in its testimony.

- 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?**

Constellation did not address Issue 4 in its testimony.

- 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?**

The Application, as revised by the Partial Settlement, appropriately refrains from affecting the Joint Applicants' smart meter and energy efficiency implementation plans, except to the extent that the Joint Applicants agree to provide additional analysis and certain services to customers with installed smart meters, as reflected in paragraphs 23 and 24 of the Partial Settlement.

- 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?**

Constellation did not address Issue 6 in its testimony.

- 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?**

Constellation did not address Issue 7 in its testimony.

- 8. Will West Penn Power participate in the FirstEnergy Utility money pool? If, yes, please provide an updated agreement.**

Constellation did not address Issue 8 in its testimony.

- 9. How will the proposed merger savings benefit Pennsylvania ratepayers? Will cost savings benefit ratepayers or only shareholders?**

Constellation did not address Issue 9 in its testimony.

- 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?**

Constellation did not address Issue 10 in its testimony.

- 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?**

As indicated in Constellation’s Statement in Support, at paragraphs 38 through 46, the Partial Settlement includes PTC and EGS training session provisions as future retail market enhancements affecting all of the Joint Applicants’ territories, encourages further retail market development in the Allegheny-West Penn service territory, in particular, through the Joint Applicants’ commitment to (a) file a purchase-of-receivables plan, (b) engage in certain customer education programs, (c) offer a variety of customer billing options, and (d) provide necessary retail supplier access to important customer information and other data.

- 12. How will transmission projects in the western part of the state be affected by the merger?**

Constellation did not address Issue 12 in its testimony.