

Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Tel: 215.963.5000
Fax: 215.963.5001
www.morganlewis.com

Morgan Lewis
C O U N S E L O R S A T L A W

Thomas P. Gadsden
Partner
215.963.5234
tgadsden@MorganLewis.com

RECEIVED

SEP 10 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

September 10, 2010

VIA FEDERAL EXPRESS

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Joint Application of West Penn Power Company doing business as 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, A-2010-2176732

Dear Secretary Chiavetta:

Enclosed for filing are an original and three copies of a Motion *In Limine* on behalf of West Penn Power Company, Trans-Allegheny Interstate Line Company, and FirstEnergy Corp. with respect to the testimony of Direct Energy Services, LLC.

As evidenced by the attached Certificate of Service, the Motion has been served on all parties of record as well as the Administrative Law Judges.

Sincerely,



Thomas P. Gadsden

TPG/ap

Enclosures

c: Per Certificate of Service (w/encls.)

Philadelphia Washington New York Los Angeles San Francisco Miami Pittsburgh Princeton Chicago Minneapolis
Palo Alto Dallas Houston Harrisburg Irvine Boston Wilmington London Paris Brussels Frankfurt Beijing Tokyo

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

SEP 10 2010

JOINT APPLICATION OF WEST PENN :
POWER COMPANY doing business as :
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 :

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCKET NOS. A-2010-2176520
A-2010-2176732

MOTION *IN LIMINE*
ON BEHALF OF
WEST PENN POWER COMPANY, TRANS-ALLEGHENY INTERSTATE LINE
COMPANY, AND FIRSTENERGY CORP.
WITH RESPECT TO
THE TESTIMONY OF DIRECT ENERGY SERVICES, LLC.

I. INTRODUCTION

West Penn Power Company (“West Penn”), Trans-Allegheny Interstate Line Company (“TrAILCo”), and FirstEnergy Corp. (“FirstEnergy”) (collectively, the “Companies” or “Joint Applicants”) move for entry of an Order *in Limine* that denies admission into evidence of the portions of Direct Energy Services, LLC’s (“Direct Energy”) direct testimony identified in Exhibit “A” to this Motion, which set forth Direct Energy’s proposals: (1) to strip West Penn and the Pennsylvania electric utility subsidiaries of FirstEnergy of their status as “default service providers” (“DSPs”); (2) to assign an “alternative” DSP for “the entire FE/AP [FirstEnergy/Allegheny] footprint;” (3) to require the alternative DSP to “auction off” all default service customers to “retail providers;” and (4) to “unbundle” all billing services and mandate

the creation of a separate “BillCo” to furnish billing services to all retail providers including the DSP.

The portions of Direct Energy’s written testimony described above and identified in Exhibit “A” should not be admitted into evidence because, through that testimony, Direct Energy is attempting to improperly expand the permissible scope of this proceeding.

II. OVERVIEW

Direct Energy seeks to interject into this case proposals designed to address what Direct Energy’s own witnesses describe as generic flaws in the structure of the competitive retail market in Pennsylvania arising from the way the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) has implemented the Electricity Generation Customer Choice and Competition Act (“Electric Competition Act”) for **all** Pennsylvania electric distribution companies (“EDCs”), not just West Penn and FirstEnergy’s Pennsylvania electric utility subsidiaries. For example, Direct Energy witness Mathew J. Morey states:

I am not suggesting that the utility is behaving in a discriminatory or anticompetitive manner. What I am saying is that *the model for DSP [default service provider] service itself, which is the product of well-intentioned public policies, results in an anticompetitive and discriminatory market structure.* The existing DSP model has far-outlived those good intentions, however, and this proposed merger requires the Commission to deal with the fact that *the DSP model that “defaults” the overwhelming majority of customers to bundled utility service is by its nature, a discriminatory mechanism that undermines the development of a robust competitive retail market.*

Direct Energy St. 1, p. 12 (Emphasis added.).

Throughout his testimony, Dr. Morey repeats this premise, namely, that Direct Energy’s proposals to “unbundle” both default service and certain billing functions should be adopted not

because anything inherently “discriminatory” or “anticompetitive” will arise from the proposed merger but, instead, because of alleged structural flaws that, in his opinion: (a) already plague the retail market in Pennsylvania; and (b) will remain even if the proposed merger is **not** approved:

- “The DSP model in use in Pennsylvania . . . is not consistent with the concept of a competitive retail electricity sector.” (Direct Energy St. 1, p. 11)
- “Default service is an anachronism that inhibits market efficiency” (Direct Energy St. 1, p. 32)
- “[T]he notion of default service can be interpreted as a vestige of history under the traditional cost of service monopoly.” (Direct Energy St. 1, p. 33)

Direct Energy’s testimony pays little more than lip service to the transaction for which the Joint Petitioners seek Commission approval. Rather, Direct Energy is using this proceeding as a platform to level broad-based criticisms against the entire, state-wide DSP model and to force fundamental changes in that model. This is not the forum in which to consider those kinds of changes.

While Direct Energy purports to rely upon the Commission’s default service regulations as the basis for its proposals (Direct Energy St. 2, p. 15), it has not adhered to those regulations. The Commission’s regulations prescribe specific procedures for changing a DSP (i.e., by the Petition of an EDC or an electric generation supplier (“EGS”) or upon the Commission’s own motion). However, Direct Energy has not filed a Petition nor has it complied with any of the procedural requirements that would attend the filing of such a Petition (e.g., service on all potentially interested parties and publication in the *Pennsylvania Bulletin*). Additionally, the Commission’s regulations identify those factors that might justify changing a DSP (52 Pa. Code § 54.183(B)). Nonetheless, Direct Energy not only has failed to allege facts that would support the necessary findings, but, as recently as November 2009, endorsed Metropolitan Edison Company (“Met-Ed”) and Pennsylvania Electric Company (“Penelec”) as DSPs by executing a

Joint Petition for Settlement of their joint DSP proceeding, which committed those companies to serve as DSPs through May 31, 2013.¹ Moreover, Direct Energy submitted a Statement in Support of that Settlement representing that “[t]he Settlement contains several significant measures that will aid in the development of retail competition in the Companies’ service territory and addresses concerns raised by RESA and Direct Energy regarding the [Companies’] initial proposal.”²

As discussed further below, Direct Energy is using this proceeding to execute an end-run around the Commission’s default service regulations. If Direct Energy believes, as its witness alleges, that “the model for DSP service itself . . . results in an anticompetitive and discriminatory market structure” (Direct Energy St. 1, p. 12), then it should petition the Commission to re-examine that “model” in an appropriate proceeding of state-wide scope that encompasses all EDCs and all stakeholders in the EDCs’ respective service territories.

In summary, Direct Energy’s testimony in this case should be seen for what it is, namely, an improper collateral attack on the Commission’s prior DSP Orders. If presented in a separate Petition – as the default service regulations envision – Direct Energy’s request would be subject to summary dismissal and would be particularly difficult for Direct Energy to credibly maintain given that, as a member of the Retail Energy Supply Association (“RESA”), Direct submitted comments to the Independent Regulatory Review Commission vigorously supporting those same default service regulations:

¹ The Joint Petition for Settlement was approved by the Commission. *Joint Petition Of Metropolitan Edison Company And Pennsylvania Electric Company For Approval Of Their Default Service Plans*, Docket Nos. 2009-2093053 and 2009-2093054 (November 6, 2009).

² Retail Energy Supply Association And Direct Energy Services, LLC Joint Statement In Support Of The Joint Petition For Settlement (Statement F).

[O]n the whole, RESA supports the regulations because they conform to the directive of the General Assembly in the Electricity Generation Customer Choice and Competition Act (66 Pa. C.S. §§ 2801-2812 (“Electric Choice Act” or “Act”)) and provide the framework for the development of competitive retail electric markets and assure reasonable and reliable service for customers. Therefore, they should be approved by the IRRC.

Comments of RESA on behalf of, *inter alia*, Direct Energy, to the Independent Regulatory Review Commission (“IRRC”) dated July 16, 2007 at IRRC # 2463.

III. THE TESTIMONY IDENTIFIED IN EXHIBIT “A” SHOULD NOT BE ADMITTED

A. The Administrative Law Judges (“ALJs”) Have The Authority To Deny Admission Of Testimony That Is Outside The Scope Of This Proceeding

The Commission’s regulations at 52 Pa. Code § 5.403(a) grant presiding officers “all necessary authority to control the receipt of evidence,” including “[r]uling on the admissibility of evidence” and “[c]onfining the evidence to the issues in the proceeding.” Administrative Law Judges have employed this power, with the Commission’s approval and affirmation, to exclude evidence that is outside the permissible scope of a proceeding and, in that way, to focus the evidence on the matters properly at issue. *Re Gas Cost Rate No. 5*, 57 Pa. P.U.C. 158(1983) (“The testimony stricken by the ALJ addresses, in part, matters broader than the scope of the instant proceeding.”); *Pa. P.U.C. v. Pennsylvania-American Water Co.*, 1994 Pa. PUC LEXIS 120 (July 26, 1994) at *158 (“The ALJ concluded as follows: ‘I agree with OTS that the issues raised by OCA are outside the scope of this investigation. . . .’ We conclude that the ALJ properly found the matters raised by the OCA to be better placed in the pending rulemaking proceeding.”) *See also Re Structural Separation Of Bell Atlantic-Pennsylvania, Inc. Retail And Wholesale Operations*, 2000 Pa. PUC LEXIS 59 (September 28, 2000) at *7-9 (Affirming the

Administrative Law Judge’s decision in that case to exclude certain evidence as “beyond the scope of the proceeding.”)

B. The ALJs Should Exercise The Authority Granted By The Commission’s Regulations To Exclude The Portions Of Direct Energy’s Testimony Identified In Exhibit “A”

Sections 2811(e)(1) and (2) of the Public Utility Code provide, in relevant part, as follows:

(1) In the exercise of authority the commission otherwise may have to approve the mergers or consolidations by electric utilities or electricity suppliers, or the acquisition or disposition of assets or securities of other public utilities or electricity suppliers, the commission shall consider whether the proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, *which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market.*

(2) Upon request for approval, the commission shall provide notice and an opportunity for open, public evidentiary hearings. If the commission finds, after hearing, that a proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market, the commission shall not approve such proposed merger, consolidation, acquisition or disposition, except upon such terms and conditions as it finds necessary *to preserve the benefits of a properly functioning and workable competitive retail electricity market.* (Emphasis added.)

Section 2811(e) therefore authorizes the Commission to condition its approval of a proposed merger or acquisition if it finds that the transaction “is likely to result in anticompetitive or discriminatory conduct” that would “*prevent* retail electricity customers . . . from obtaining the benefits of a properly functioning and workable competitive retail electricity

market.” In that event, the Commission may impose conditions on its approval that are “*necessary to preserve* the benefits of a properly functioning and workable competitive retail electricity market” (emphasis added). In short, Section 2811(e) authorizes the Commission to “prevent” a proposed transaction from improperly compromising the functioning of an existing “workable and competitive retail electricity market” and to “preserve” the benefits that customers already are able to obtain in that market. However, Direct Energy’s testimony repeatedly opines that a “properly functioning and workable competitive retail electricity market” does not exist now and would not exist even if the proposed transaction is denied and the status quo is maintained. For example, Dr. Morey offered the following “conclusion” as the alleged basis for Direct Energy’s proposal (Direct Energy St. 1, p. 53): “*The DSP model itself, a product of well-intentioned public policy, is highly discriminatory and thus lies at the heart of the problem of fostering robust competitive retail markets.*” (Emphasis added.)³

Direct Energy’s proposal is not aimed at “preserving” existing competitive market conditions but, instead, is designed to create an entirely new set of ground rules that Direct Energy believes is needed whether or not the Joint Application is granted. In other words, Direct Energy asks the Commission, in the context of this case, to go far beyond the scope of action authorized by Section 2811(e) by dramatically re-shaping the structure of the existing retail electricity market. Leaving aside the question of whether the Commission has the authority under any circumstances to undertake what Direct Energy proposes, it is clear that Section 2811(e) does not provide the authority for it to do so **in this case**. Accordingly, Direct Energy’s testimony should not be admitted.

³ See also Direct Energy St. 2, p. 12: “Direct Witness Morey explains from an economic standpoint why transferring the DSP role from the monopoly EDC is necessary . . . to address a *default service structure* that discriminates against competitive choices.” (Emphasis added.)

C. Direct Energy's Proposal Disregards The Procedural And Substantive Requirements Imposed By The Commission's Default Service Regulations

The Commission's default service regulations provide that: "[t]he DSP shall be the incumbent EDC in each certificated service territory except as provided for under subsection (b)" (52 Pa. Code § 54.183(a)). Subsection (b) authorizes only three "processes" by which a DSP may be changed: (1) upon petition by an EDC to be relieved of its DSP obligation; (2) upon petition of an EGS to be assigned the DSP role for a particular EDC service territory; and (3) upon the Commission's own motion to relieve an EDC of its DSP obligation. Additionally, subsection (c) specifies the findings the Commission must make as a condition precedent to relieving an EDC of its DSP obligations:

The Commission may reassign the default service obligation for the entire service territory, or for specific customer classes, to one or more alternative DSPs *when it finds it to be necessary for the accommodation, safety and convenience of the public*. A finding would include an evaluation of the incumbent EDC's *operational and financial fitness to serve retail customers, and its ability to provide default service under reasonable rates and conditions*. In these circumstances, the Commission will announce, through an order, a competitive process to determine the alternative DSP. (Emphasis added.)

At the outset, it is clear that Direct Energy has not complied with the procedural requirements of Section 54.183(b) because it has not filed a Petition. This is more than a technical omission because the filing of a Petition would trigger different notice requirements than those employed for the Joint Application that initiated this proceeding. Obviously, notices of the filing of the Joint Application did not – nor could they – have alerted interested parties and other stakeholders that the filing would prompt another intervenor to propose a comprehensive change in the structure of default service in Pennsylvania. Accordingly, the unorthodox manner Direct Energy chose to present its proposal raises serious due process issues.

Additionally, filing a Petition, as the default regulations prescribe, provides the Commission the opportunity – to which it is entitled – to decide the threshold question of whether it will entertain such a proposal at all. Direct Energy, by simply thrusting its proposal into this proceeding through the testimony of its witnesses, is trying to force the Commission’s hand to consider the substance of that proposal when the Commission, properly, could decide to dismiss it summarily if it were presented in a Petition. Direct Energy was free to file such a Petition at any time in the past – and will be free to do so hereafter if its testimony is stricken. In short, if this Motion is granted, Direct Energy will not be foreclosed from invoking the Commission’s jurisdiction based on a bona fide Petition that conforms to the requirements of the default service regulations. The Commission could then decide whether to consider the Petition on its merits and, if so, ensure that adequate and timely notice is provided to interested parties and other stakeholders.

Direct Energy’s proposal also contains substantive deficiencies that would be even more apparent if Direct Energy had filed a Petition that attempted to track the requirements of the default service regulations. For example, Direct Energy’s testimony does not even address the findings that Section 54.183(c) requires before the Commission can “reassign the default service obligation.” Such findings must include “an evaluation of the incumbent EDC’s *operational and financial fitness* to serve retail customers, and *its ability to provide default service under reasonable rates and conditions*.” (Emphasis added.) Notably, Direct Energy’s witnesses have not alleged that West Penn, Met-Ed, Penelec and Pennsylvania Power Company (“Penn Power”) lack the “operational and financial fitness” to continue to serve as DSPs in their respective service areas, nor have they claimed that those companies have lost the “ability to provide

default service under reasonable rates and conditions.” And, there would be no basis for such averments even if they had been made.

At the conclusion of DSP proceedings in which Direct participated fully, the Commission found that Met-Ed, Penelec, Penn Power and West Penn were fit to perform the duties of a DSP and that their respective DSP programs satisfied the requirements of 66 Pa. C.S. § 2807(e) for competitive procurement of generation supplies for default service customers. The DSP programs of Met-Ed and Penelec were approved in November 2009;⁴ Penn Power’s most recent DSP program was resolved by a Joint Petition for Settlement filed on July 23, 2010, to which Direct Energy was a signatory;⁵ and West Penn’s DSP program was approved by the Commission in a fully litigated 2008 proceeding.⁶ Direct Energy’s testimony in this case, which seeks to strip the Allegheny and FirstEnergy Pennsylvania electric utilities of their DSP status, is an improper collateral attack on the Commission’s final orders in those proceedings and an equally improper collateral attack on the Settlements that Direct Energy executed and endorsed in its Statements in Support. Accordingly, for that reason as well, Direct Energy’s testimony identified in Exhibit “A” should be stricken.

⁴ See *Joint Petition Of Metropolitan Edison Company And Pennsylvania Electric Company For Approval Of Their Default Service Plans*, Docket Nos. P-2009-2093053 and P-2009-2093054 (November 6, 2009).

⁵ Joint Petition for Settlement submitted July 23, 2010 at Docket No. P-2010-2157862.

⁶ *Petition of the West Penn Power Company d/b/a Allegheny Power for Approval of its retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period*, Docket No. P-00072342, 2008 Pa. PUC LEXIS 30 (July 25, 2008).

D. The Public Utility Code Does Not Authorize The Divestiture Of EDCs' Billing Function

Direct Energy's proposal would require the four EDCs to divest their billing function to a separate entity. It is not clear whether Direct Energy envisions the so-called "BillCo" to be a public utility. In any event, such a divestiture would necessarily entail EDC property currently used and useful in providing public utility service and, therefore, could not be done without the Commission's prior approval as evidenced by a certificate of public convenience issued under 66 Pa. C.S. §§1102 and 1103.

More significantly, billing is part of distribution service and, as such, remains subject to regulation as a public utility function under the Public Utility Code. 66 Pa. C.S. §2802(16). Accordingly, billing services are not part of the default service function, and the Commission's authority to re-assign DSP obligations does not extend to an involuntary re-assignment of EDCs' public service obligation to furnish bills for distribution service. Direct Energy's attempt to roll the "BillCo" concept into its proposal to restructure the prevailing DSP "model" overlooks this important distinction. In short, Direct Energy's testimony not only offers a far-reaching proposal to re-shape the way default service is provided in Pennsylvania, it advocates a fundamental change in the way **regulated** public utility service is furnished by EDCs. For all the reasons discussed in Sections III.B. and C., *supra*, this aspect of Direct Energy's proposal is both improper and outside the scope of this proceeding.

Furthermore, the BillCo concept cannot simply be imposed on an EDC, as Direct Energy assumes. The Electric Competition Act did not authorize the Commission to de-regulate functions, such as billing, that are inherent in distribution service and, therefore, retain their character as public utility service. *See* 66 Pa. C.S. §2802(16). Additionally, as previously explained, the divestiture of an EDC's billing function would require the EDC to transfer

property used and useful in providing public utility service and, therefore, could not be done without the prior issuance of certificate of public convenience evidencing the Commission's approval. 66 Pa. C.S. § 1102(a)(3). However, Section 1102(a) provides that a certificate may issue only "[u]pon the application of any public utility . . ." Nothing in the Electric Competition Act overrides the protection against involuntary transfers embodied in Section 1102. Consequently, the BillCo concept, even if it were permissible under the Public Utility Code – and there is no indication that it is – could not be implemented unless an EDC agreed to divest its billing function and voluntarily filed an application for a certificate of public convenience to obtain Commission approval of the divestiture.

IV. CONCLUSION

For the reasons set forth above, the Administrative Law Judges should issue an Order *In Limine* excluding from the record in this case the portions of the direct testimony submitted on behalf of Direct Energy that are identified in Exhibit "A" to this Motion.

RECEIVED

SEP 10 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

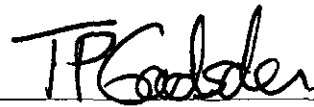
Randall B. Palmer (Pa. No. 94161)
Jennifer L. Petrisek (Pa. No. 83411)
Allegheny Energy, Inc.
800 Cabin Hill Drive
Greensburg, PA 15601
Phone: (724) 838-6894
Fax: (724) 853-4264
Email: rpalmer@alleghenyenergy.com

W. Edwin Ogden (Pa. No. 17644)
Alan Michael Seltzer (Pa. No. 27890)
Ryan, Russell, Ogden & Seltzer PC
Suite 210
1150 Berkshire Boulevard
Wyomissing, PA 19610-1208
Phone: (610) 372-4761
Fax: (610) 372-4177
Email: aseltzer@ryanrussell.com

*Counsel for West Penn Power
Company and Trans-Allegheny
Interstate Line Company*

Dated: September 10, 2010

Respectfully submitted,



Thomas P. Gadsden (Pa. No. 28478)
Kenneth M. Kulak (Pa. No. 75509)
Anthony C. DeCusatis (Pa. No. 25700)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: (215) 963-5234
Fax: (215) 963-5001
Email: tgadsden@morganlewis.com

Wendy E. Stark (Pa. No. 204753)
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
Phone: (330) 761-4307
Fax: (330) 384-3875
Email: starkw@firstenergycorp.com

Bradley A. Bingaman (Pa. No. 90443)
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
Phone: (610) 921-6203
Fax: (610) 939-8655
Email: bbingaman@firstenergycorp.com

Counsel for FirstEnergy Corp.

RECEIVED

SEP 10 2010

EXHIBIT "A"

**Portions Of The Direct Testimony Of PA PUBLIC UTILITY COMMISSION
Direct Energy Services, LLC (Direct Energy) SECRETARY'S BUREAU
That Should Be Excluded From The Evidentiary Record**

Direct Energy Statement No. 1 (Mathew J. Morey)

Page 2, line 14, beginning with "unless" through line 21
Page 3, lines 7, beginning with "Section V" through line 20
Page 4, lines 9, beginning with "The current retail" through 7
Page 5, line 3, through page 7, line 13
Page 8, line 19, beginning "I will first" through "and then" on line 20
Page 9, line 1, through page 20, line 2
Page 32, line 12, through page 54, line 2

Direct Energy Statement No. 2 (Nora M. Brownell)

Page 5, line 14, beginning with "and, (iii)" through page 7, line 2
Page 7, line 15, through page 8, line 2
Page 11, line 6, through page 13, line 19, ending with "to its EDC"
Page 14, line 4, through page 15, line 2
Page 16, line 1 through page 21, line 24

Direct Energy Statement No. 3 (Frank Lacey)

Page 3, line 11, through page 15, line 12
Page 19, line 17, through page 21, line 19

RECEIVED

SEP 10 2010

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

JOINT APPLICATION OF WEST PENN	:	
POWER COMPANY doing business as	:	
ALLEGHENY POWER, TRANS-	:	
ALLEGHENY INTERSTATE LINE	:	
COMPANY AND FIRSTENERGY CORP.	:	
FOR A CERTIFICATE OF PUBLIC	:	DOCKET NOS. A-2010-2176520
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	:	

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the *Motion In Limine* on behalf of West Penn Power Company, Trans-Allegheny Interstate Line Company, and FirstEnergy Corp. with respect to the testimony of Direct Energy Services, LLC on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Honorable Wayne L. Weismandel
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120
wweismande@state.pa.us

Honorable Mary D. Long
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Piatt Place, Room 220
301 Fifth Avenue
Pittsburgh, PA 15222
malong@state.pa.us

Daniel G. Asmus, Esquire
Lauren M. Lepkoski
Assistant Small Business Advocate
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
dasmus@state.pa.us
llepkoski@state.pa.us

Benjamin L. Willey
Law Offices of Benjamin L. Willey, LLC
7272 Wisconsin Avenue, Suite 300
Bethesda, MD 20814
blw@bwilleylaw.com
Counsel for York County Solid Waste Authority

Tanya J. McCloskey
Senior Assistant Consumer Advocate
Darryl Lawrence
Aron J. Beatty
Assistant Consumer Advocates
Pennsylvania Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101-1923
tmccloskey@paoca.org
dlawrence@paoca.org
abeatty@paoca.org
jhorner@paoca.org

Allison C. Kaster
Carrie B. Wright
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
akaster@state.pa.us
carwright@state.pa.us

Scott J. Rubin
333 Oak Lane
Bloomsburg, PA 17815-2036
scott.j.rubin@gmail.com
Counsel for IBEW

Regina L. Matz
Thomas, Long, Niesen & Kennard
P.O. Box 9500
212 Locust Street, Suite 500
Harrisburg, PA 17108-9500
rmatz@thomaslonglaw.com
Counsel for ARIPPA

Divesh Gupta
Senior Counsel
Constellation Energy
111 Market Place, Suite 500
Baltimore, MD 21202
divesh.gupta@constellation.com
Counsel for Constellation

Theodore S. Robinson
Staff Attorney
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
robinson@citizenpower.com
Counsel for Citizen Power, Inc.

Eric Paul Cheung
Joseph Otis Minott
Clean Air Council
135 South 19th Street, Suite 300
Philadelphia, PA 19103
echeung@cleanair.org
joe_minott@cleanair.org
Counsel for Clean Air Council

Charles McPhedran
John K. Baillie
Citizens for Pennsylvania's Future
1500 Walnut Street, Suite 502
Philadelphia, PA 19102
mcphedran@pennfuture.org
baillie@pennfuture.org
Counsel for PennFuture

Daniel Clearfield
Deanne M. O'Dell
Carl R. Schultz
Eckert Seamans Cherin & Mellott, LLC
P.O. Box 1248
213 Market Street, 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
dodell@eckertseamans.com
cshultz@eckertseamans.com
*Counsel for Direct Energy Services, Inc., &
RESA*

Kurt E. Klapkowski
Commonwealth of Pennsylvania
Department of Environmental Protection
RCSOB, 9th Floor
400 Market Street
Harrisburg, PA 17101-2301
kklapkowski@state.pa.us
*Counsel for the Pennsylvania Department
of Environmental Protection*

Scott H. Strauss
Katharine M. Mapes
Spiegel & McDiarmid, LLP
1333 New Hampshire Avenue, NW
Hampshire Avenue, NW
Washington, DC 20036
scott.strauss@spiegelmc.com
katharine.mapes@spiegelmc.com
*Counsel for Utility Workers Union of America,
AFL-CIO and UWUA System Local No. 102*

Susan E. Bruce
Vasiliki Karandrikas
Carl J. Zwick
McNees Wallace & Nurick LLC
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166
sbruce@mwn.com
vkandrikas@mwn.com
czwick@mwn.com
*Counsel for West Penn Power Industrial
Intervenors*

Stephen H. Jordan
Rothman Gordon P.C.
Third Floor, Grant Building
310 Grant Street
Pittsburgh, PA 15219
shjordan@rothmangordon.com
*Counsel for Utility Workers Union of America,
AFL-CIO and UWUA System Local No. 102*

Charis Mincavage
Vasiliki Karandrikas
Carl J. Zwick
McNees Wallace & Nurick LLC
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166
cmincavage@mwn.com
vkandrikas@mwn.com
czwick@mwn.com
*Counsel for MEIUG/PICA & West Penn
Power Industrial Intervenors*

Thomas J. Sniscak
Todd S. Stewart
William E. Lehman
Hawke McKeon & Sniscak LLP
P.O. Box 1778
100 North Tenth Street
Harrisburg, PA 17105
tjsniscak@hmslegal.com
tsstewart@hmslegal.com
welehman@hmslegal.com
Counsel for the Pennsylvania State University

David J. Dulick
General Counsel
Pennsylvania Rural Electric Association
212 Locust Street
P.O. Box 1266
Harrisburg, PA 17108-1266
david_dulick@prea.com
Counsel for Pennsylvania Rural Electric Association

Charles E. Thomas, Jr.
Thomas, Long, Niesen & Kennard
P.O. Box 9500
212 Locust Street, Suite 500
Harrisburg, PA 17108-9500
cthomasjr@thomaslonglaw.com
Counsel for Pennsylvania Rural Electric Association

Derrick Price Williamson
Barry A. Naum
Spilman, Thomas & Battle, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com
bnaum@spilmanlaw.com
Counsel for Pennsylvania Mountains Healthcare Alliance

Thomas T. Niesen
Thomas, Long, Niesen & Kennard
P.O. Box 9500, Suite 500
212 Locust Street
Harrisburg, PA 17108
tniesen@thomaslonglaw.com
Counsel for West Penn Power Sustainable Energy Fund

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

Robert M. Strickler
Griffith, Strickler, Lerman, Solymos
& Calkins
110 South Northern Way
York, PA 17402-3737
rstrickler@gslsc.com
Counsel for YCSWA

David Vollero
Executive Director YCSWA
2700 Blackbridge Road
York, PA 17406
d.vollero@ycswa.com

Jeff A. McNelly
ARIPPA Executive Director
2015 Chestnut Street
Camp Hill, PA 17011
jamcnelly1@arippa.org

Richard Hahn
LaCapara Associates
One Washington Mall, 9th Floor
Boston, MA 02108
rhahn@lacapra.com

Sally Patton
Law Offices of Benjamin L. Willey, LLC
7272 Wisconsin Avenue, Suite 300
Bethesda, MD 20814
ssp@bwilleylaw.com

Barbara R. Alexander
83 Wedgewood Drive
Winthrop, ME 04364
barbalex@ctel.net

James L. Crist
The Lumen Group, Inc.
4226 Yarmouth Drive, Suite 101
Allison Park, PA 15101
jlcrist@aol.com

David I. Fein
Constellation Energy
Suite 300
550 West Washington Boulevard
Chicago, IL 60661
david.fein@constellation.com

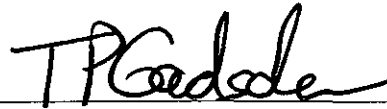
Michael D. Fiorentino
42 East 2nd Street, Suite 200
Media, PA 19063
mdfiorentino@gmail.com
Counsel for Clean Air Council

Randall B. Palmer (Pa. No. 94161)
Jennifer L. Petrisek (Pa. No. 83411)
Allegheny Energy, Inc.
800 Cabin Hill Drive
Greensburg, PA 15601
Phone: (724) 838-6894
Fax: (724) 853-4264
Email: rpalmer@alleghenyenergy.com

W. Edwin Ogden (Pa. No. 17644)
Alan Michael Seltzer (Pa. No. 27890)
Ryan, Russell, Ogden & Seltzer PC
Suite 210
1150 Berkshire Boulevard
Wyomissing, PA 19610-1208
Phone: (610) 372-4761
Fax: (610) 372-4177
Email: aseltzer@ryanrussell.com

*Counsel for West Penn Power Company and
Trans-Allegheny Interstate Line Company*

Date: September 10, 2010



Thomas P. Gadsden
(Pa. No. 28478)
Kenneth M. Kulak
(Pa. No. 75509)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: (215) 963-5234
Fax: (215) 963-5001
Email: tgadsden@morganlewis.com

Wendy E. Stark (Pa No. 204753)
FirstEnergy Corporation
76 South Main Street
Akron, OH 44308
Phone: (330) 761-4307
Fax: (303) 384-3875
Email: starkw@firstenergycorp.com

Bradley A. Bingaman, Esquire
(Pa. No. 90443)
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
Phone: (610) 921-6203
Fax: (610) 939-8655
Email: bbingaman@firstenergycorp.com

Counsel for FirstEnergy Corp.

KMK #13847 #001515-1263

1701 Market Street
Philadelphia, PA 19103-2921

Morgan Lewis
C O U N S E L O R S A T L A W

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

ORIGIN ID: REDA (215) 963-5317
MAILROOM
MORGAN LEWIS & BOCKIUS LLP
1701 MARKET STREET

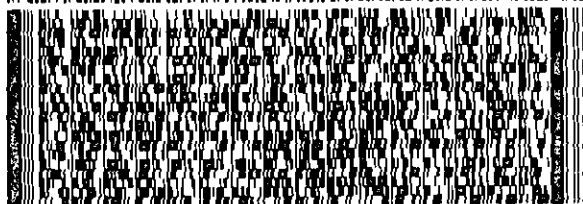
PHILADELPHIA, PA 19103
UNITED STATES US

SHIP DATE: 10SEP10
ACTWGT: 0.8 LB MAN
CAD: 0684922/CAFE2469

BILL SENDER

TO ROSEMARY CHIAVETTA, SECRETARY
PA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET
HARRISBURG PA 17120

REF: 13847 - 001515 - 1263



FedEx
Express



J10101007220124

TRK# 4222 5010 9050
0201

MON - 13 SEP A1
PRIORITY OVERNIGHT

SH MDTA

17120
PA-US
MDT

rt # 156148-434 RIT2 08/10

