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September 23, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA HAND DELIVERY

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 and A-2010-2176732

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") are the original and three (3) copies of the Answer of the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), and the West Penn Power Industrial Intervenors ("WPPII") to the Joint Applicants' motion *in limine* in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp an extra copy of this transmittal letter and Answer, and kindly return them for our filing purposes. Thank you.

Very truly yours,

McNEESE WALLACE & NURICK LLC

By

Carl J. Zwick

Counsel to the Met-Ed Industrial Users Group,
the Penelec Industrial Customer Alliance, and
the West Penn Power Industrial Intervenors

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PA PUC
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Enclosure

- c: Administrative Law Judge Wayne L. Weismandel (via Hand Delivery and E-mail)
- Administrative Law Judge Mary D. Long (via First-Class Mail and E-mail)
- Certificate of Service

www.mwn.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

SECRETARY OF PENNSYLVANIA PUBLIC UTILITY COMMISSION
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**ANSWER OF THE MET-ED INDUSTRIAL USERS GROUP,
PENELEC INDUSTRIAL CUSTOMER ALLIANCE AND
WEST PENN POWER INDUSTRIAL INTERVENORS**

Pursuant to the provisions of Section 5.61 of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Regulations,¹ the Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA") and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups")² submit this Answer to the Commission to: (1) support the motion *in limine* filed by West Penn Power Company d/b/a Allegheny Power ("West Penn"), Trans-Allegheny Interstate Line Company ("TrAILCo"), and FirstEnergy Corp. ("FirstEnergy") (collectively, "Joint Applicants") to exclude certain portions of direct testimony submitted by Direct Energy Services, LLC ("Direct Energy"); and (2) oppose Direct Energy's motion to suspend the procedural schedule to allow the PUC additional time to consider issues raised in the Joint Applicants' motion *in limine*.

¹ 52 Pa. Code § 5.61.

² The Industrial Customer Groups' respective Petitions to Intervene were granted by Administrative Law Judges ("ALJs") Weismandel and Long on June 23, 2010.

I. INTRODUCTION AND BACKGROUND

On May 14, 2010, the Joint Applicants commenced the instant proceeding with the submission of an application to the PUC for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code,³ requesting, among other things, that the Commission approve a "change in control" of West Penn and TrAILCo ("Merger Proceeding"). Parties to the Merger Proceeding submitted direct testimony on August 17, 2010. Direct Energy's testimony proposes, among other things, that the Commission: (1) remove West Penn and the Pennsylvania electric distribution companies ("EDCs") affiliated with FirstEnergy from the default service provider ("DSP") function; (2) assign an alternative DSP to these EDCs' service territories; (3) require the alternative DSP to auction off all default service customers in these service territories to retail providers; and (4) unbundle all billing services and establish a separate "BillCo" to furnish billing services to all retail providers including the alternative DSP.⁴

On September 10, 2010, the Joint Applicants filed a motion *in limine* seeking to exclude from admission into the record these portions of Direct Energy's direct testimony. As a principal basis for excluding Direct Energy's testimony from the record, the Joint Applicants assert that the Merger Proceeding is an improper setting for the PUC to consider such fundamental changes to the landscape of Pennsylvania's retail electricity market. On September 14, 2010, Direct Energy submitted a motion to suspend the Merger Proceeding's procedural schedule to give the Commission additional time to consider the merits of the Joint Applicants' motion *in limine*.

For the reasons set forth herein, the Industrial Customer Groups share the concerns set forth in the Joint Applicants' motion *in limine* that the instant proceeding is not the appropriate venue to explore these more universal issues. The Industrial Customer Groups submit that, while

³ 66 Pa. C.S. § 1102(a)(3).

⁴ See generally Direct Energy Statement No. 1, Direct Testimony of Mathew J. Morey ("Direct Energy St. 1").

Direct Energy or any other interested party may petition the PUC in the future to request changes to the Commission's default service regulations, the Merger Proceeding is not the appropriate forum – neither substantively nor procedurally – to consider these types of changes.

II. ANSWER

The Commission should grant the Joint Applicants' motion *in limine* to exclude portions of Direct Energy's testimony that improperly request the Commission to consider broad-based and fundamental changes to Pennsylvania's default service model within the confines of the Merger Proceeding. Through its direct testimony, Direct Energy asks that the PUC make significant modifications not only to the Commission's default service regulations but also to Pennsylvania's retail electricity market. Specifically, Direct Energy requests that the Commission, among other things, remove the post-merger FirstEnergy EDCs located in Pennsylvania from the DSP function and replace them with an alternative DSP. After identifying an alternative DSP, Direct Energy proposes that the PUC require the alternative DSP to auction off all default service customers to retail suppliers.

Direct Energy's proposal, which, by its own witness' admission, is designed to address purported structural flaws embedded within the default service model adopted for all service territories in Pennsylvania,⁵ raises issues that are not appropriate for consideration in the instant proceeding, which has a more limited focus. By requesting that the PUC consider this proposal as part of the Joint Applicants' Merger Proceeding, Direct Energy diverts the Commission's attention away from resolving the specific issues raised in this proceeding. Thus, to allow the Commission adequate opportunity to consider issues that are relevant to the disposition of the Merger Proceeding, the Commission should grant the Joint Applicants' motion *in limine* to exclude portions of Direct Energy's testimony that ask the Commission to reshape the structure

⁵ See generally Direct Energy St. 1, pp. 11-33.

of the existing retail electricity market in Pennsylvania. The portions of Direct Energy's testimony that the Commission should exclude from the record are more particularly described in Exhibit "A" to the Joint Applicants' motion *in limine*.

Even if the Commission were to determine that Direct Energy's testimony raises issues pertinent to this proceeding, Direct Energy has not complied with the Commission's default service regulations in raising its proposal through direct testimony. Specifically, the Commission's default service regulations set forth specific procedures for changing a DSP. Pursuant to Section 54.183(b) of the PUC's Regulations, a DSP may be changed when: (1) the EDC petitions the Commission to be relieved from the DSP function; (2) an Electricity Generation Supplier ("EGS") petitions the Commission to be assigned to the DSP function in a particular EDC's service territory; or (3) the Commission, on its own motion, proposes that an EDC be relieved from the default service obligation.⁶ In this proceeding, Direct Energy has not filed a petition to request that the Commission remove the post-merger FirstEnergy EDCs within Pennsylvania from the DSP function or notified interested parties outside the scope of the Merger Proceeding of such an objective. By not following this approach, other interested entities' due process rights are affected because they have not had proper notice that this issue is before the Commission. Therefore, the requests made in Direct Energy's testimony relating to the PUC's removal of the Metropolitan Edison Company ("Met-Ed"), the Pennsylvania Electric Company ("Penelec"), the Pennsylvania Power Company ("Penn Power"), and West Penn from the role of DSP in their respective service territories should be excluded from the record as being procedurally deficient.

Upon ruling on the Joint Applicants' motion *in limine*, the Commission should dismiss Direct Energy's motion to suspend the procedural schedule because providing additional time for

⁶ 52 Pa. Code § 54.183.

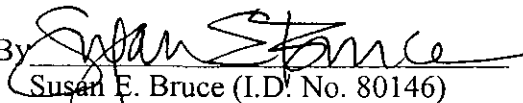
the Commission to consider the Joint Applicants' motion is unnecessary and will unreasonably delay this proceeding. As discussed above, the Merger Proceeding is an improper forum for parties to debate and the Commission to consider Direct Energy's proposal to effectuate sweeping change to Pennsylvania's default service regulations. Therefore, to allow the Commission to effectively and efficiently consider and rule upon the relevant issues properly raised within the context of this proceeding, the Commission should dismiss Direct Energy's motion to suspend the procedural schedule and instruct Direct Energy to petition for its request, if at all, in a separate proceeding.

III. CONCLUSION

WHEREFORE, the Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance and West Penn Power Industrial Intervenors respectfully request that the Commission consider the foregoing Answer and grant the Joint Applicants' motion *in limine* to exclude certain portions of Direct Energy's direct testimony. Moreover, to avoid an unnecessary delay of this proceeding, the Commission should dismiss Direct Energy's motion to suspend the procedural schedule to allow the Commission additional time to consider the Joint Applicants' motion *in limine*.

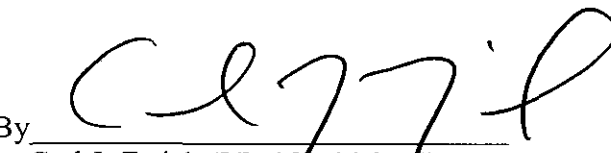
Respectfully submitted,

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Dated: September 23, 2010

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Dated: September 23, 2010

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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Docket Nos. A-2010-2176520 and A-2010-2176732

Page 3

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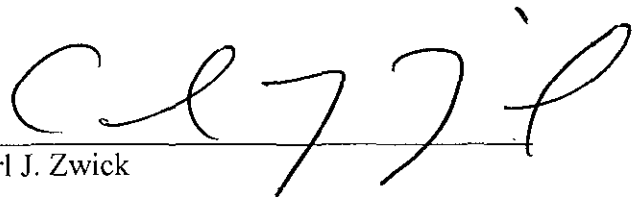
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Dated this 23rd day of September, 2010, at Harrisburg, Pennsylvania.