



THOMAS T. NIESEN  
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June 14, 2010

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

In re: Dockets Nos. A-2010-2176520 and A-2010-2176732  
Joint Application of West Penn Power Company, d/b/a Allegheny Power, Trans  
Allegheny Interstate Line Company and FirstEnergy Corporation

Dear Secretary Chiavetta:

Enclosed for filing on behalf of ARIPPA are an original and three (3) copies of its Petition to Intervene in the above matter. Copies of the Petition to Intervene are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By

Thomas T. Niesen

Encl.

cc: Certificate of Service (w/encl.)  
Jeff A. McNelly (w/encl.)

100614-Chiavetta (Intervention).wpd

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Joint Application of West Penn Power :  
Company, d/b/a Allegheny Power, :  
Trans-Allegheny Interstate Line :  
Company, and FirstEnergy Corporation : Docket Nos. A-2010-2176520  
for Approval of a Change of Control of : A-2010-2176732  
West Penn Power Company and Trans- :  
Allegheny Interstate Line Company :

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**PETITION TO INTERVENE OF  
ARIPPA**

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AND NOW, comes ARIPPA, by its attorneys, and, pursuant to 52 Pa. Code §§5.71, *et seq.*, files this Petition to Intervene in the above-captioned proceeding. In support thereof, ARIPPA represents as follows:

**I. BACKGROUND**

1. On May 18, 2010, West Penn Power Company, d/b/a Allegheny Power (“West Penn”), Trans-Allegheny Interstate Line Company (“Trans-Allegheny”), and FirstEnergy Corporation (“FE”) (collectively “Joint Applicants”), filed a Joint Application under Chapters 11 and 28 of the Pennsylvania Public Utility Code seeking a change of control under which Allegheny Energy, Inc. (“Allegheny Energy”), the ultimate parent of West Penn and Trans-Allegheny, would become a wholly owned subsidiary of FE. Joint Applicants also sought approval of revisions to affiliated interest agreements under Chapter 21 of the Public Utility Code.

2. Metropolitan Edison Company (“Met-Ed”) and Pennsylvania Electric Company Pennsylvania Electric Company (“Penelec”) (collectively “Companies”) are current subsidiaries of FE.

3. ARIPPA<sup>1</sup> is a trade association comprising operating non-utility generation (NUG) power plants across Pennsylvania, most of which use waste coal as a source of fuel. Most of ARIPPA’s members have long-term, Commission-approved power contracts with Met-Ed and Penelec, and have invested over \$2 billion in Pennsylvania over the last two decades in the development of non-utility generation power plants under authority and in furtherance of state and federal legislative goals.

4. ARIPPA has actively participated in and has been a party to all major proceedings before the Commission affecting the Companies, or its parent, FE, including but not limited to the Restructuring Settlements approved by the Commission at Docket Nos. R-00974008 and Docket No. R-00974009; the Proceeding for Approval of the Merger of GPU Inc. with and into First Energy Corp. (“FirstEnergy”) at Docket No. A-110300 and A-110400; the Petition seeking Expedited Commission Authorization to Implement an Interim Deferral Tracking Mechanism for their Provider of Last Resort (“POLR”) Generation Service at Docket Nos. P-00001860; P-00001861; the Implementation of the Alternative Energy Portfolio Standards Act of 2004 at Docket No. L-00060180; the Met-Ed and Penelec 2006 Base Rate Proceedings consolidated with the Merger Savings Remand Proceeding, at Docket Nos. R-00061366, R-00061367, P-00062213, P-00062214, and A-110300F0095 and A-110400F0040; and the Petition for a Declaratory Order Regarding the Ownership Of Alternative Energy Credits and any

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<sup>1</sup>ARIPPA was previously known as the Anthracite Region Independent Power Producers Association.

Environmental Attributes Associated with Non-Utility Generation Facilities under Contract to Pennsylvania Electric Company and Metropolitan Edison Company at Docket No. P-00052149. ARIPPA's Petition to Intervene in the Default Service Proceeding at Docket Nos. P-2009-2092053 and P-2009-2092054 was denied purely on procedural grounds, having been untimely filed. However, ARIPPA continued to monitor the proceeding informally, remains interested in the final outcome of that proceeding, and has recently filed a Petition to Intervene in the complaint proceeding filed against the compliance tariff filed therein.

5. The name of ARIPPA's Executive Director, and his address, are as follows:

Jeff A. McNelly, ARIPPA Executive Director  
2015 Chestnut Street  
Camp Hill, PA 17011  
Phone: 717 763 7635  
Fax: 717 763 7455  
Email: [jamcnelly1@arippa.org](mailto:jamcnelly1@arippa.org)

6. The names and address of ARIPPA's attorneys are:

Thomas T. Niesen  
Regina L. Matz  
THOMAS, LONG, NIESEN & KENNARD  
212 Locust Street, Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
Phone: 717-255-7600  
Fax: 717-236-8278  
Email: [tniesen@thomaslonglaw.com](mailto:tniesen@thomaslonglaw.com)  
[rmatz@thomaslonglaw.com](mailto:rmatz@thomaslonglaw.com)

The above-listed attorneys are authorized to receive service on behalf of ARIPPA. ARIPPA requests that a copy of all correspondence, discovery, Commission notices and Orders and any other documents hereinafter filed in this proceeding be served at each

address provided above, and that the email addresses of all three persons, the Executive Director and counsel, be included on any email communications.

## **II. ARIPPA'S INTERESTS IN THIS PROCEEDING**

7. The Commission's regulations require, *inter alia*, that a petition to intervene demonstrate an "interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding." 52 Pa. Code §5.72(a)(2).

8. ARIPPA's interests in this proceeding are as follows: (1) Its members are providers of substantial amounts of energy and capacity to current FE subsidiaries pursuant to long-term, Commission-approved contracts that further state and federal statutory goals and objectives intended to foster independent power production; and (2) ARIPPA has been an active party to each major FE proceeding before this Commission since its acquisition of Met-Ed and Penelec in which the interests of its non-utility generator members were or could be affected, even if not immediately impacted facially by the Companies' initial filings.

9. The Pennsylvania General Assembly explicitly recognized ARIPPA's member companies' interests under the Electricity Generation Customer Choice and Competition Act ("Competition Act"), 66 Pa.C.S. §§2801-2812.<sup>4</sup> ARIPPA's members' NUG operating contracts also have statutory recognition under the federal Public Utilities Regulatory Policies Act of 1978 ("PURPA"). In any proceeding in which the

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<sup>4</sup>The Competition Act specifically provided that a utility's cost obligations under Commission-approved NUG contracts were to be recovered as a transition or stranded cost (66 Pa.C.S. §2808(c)(1)) and that payments under Commission-approved NUG contracts qualified as exceptions to the Competition Act's rate cap (66 Pa.C.S. §2804(4)(iii)(B)). The Competition Act also recognized in its declaration of policy the special status of long-term power supply agreements entered into by GPU Energy as required by federal law, 66 Pa.C.S. §2802(15), charging the Commission with the obligation to ensure the recovery of the costs thereunder.

restructuring of the electric industry or utility generation in general is affected, ARIPPA's members have sought to participate in order to protect their ongoing interests.

### **III. GROUNDS FOR INTERVENTION**

10. ARIPPA has participated in matters involving the Companies where the interests of its members may be impacted. In the present proceeding, the proposed merger may impact the operations of FE and its subsidiaries, including Met-Ed and Penelec, and thus impact ARIPPA's members as generation and capacity suppliers to the FE corporation. Only through the benefit of participation in the proceeding, including the review of testimony and the possible conduct of discovery and presentation of evidence, as well as the participation in any settlement conferences, will ARIPPA be able to fully discern and protect the impact the proposed merger may have upon its members.

11. ARIPPA's intervention is necessary to ensure that proposals by the Joint Applicants, or any other parties' proposals, do not negatively impact the interests of ARIPPA's members in their continued sales of energy and capacity to the Companies, their receipt of payment for the same in compliance with federal and state law regarding NUG contracts and future compliance with FE's NUG stranded cost recovery. ARIPPA has a unique perspective which is not otherwise represented by any other party to the proceeding and which should be considered by the Commission, and will be bound by any action of the Commission.

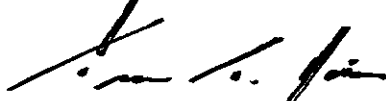
### **IV. ARIPPA'S POSITION**

12. ARIPPA will participate in this proceeding, including any hearings that may be held, through the review of discovery, presentation of evidence, cross-examination and briefing, in order to assure that the interests of its members will not be

detrimentally impacted by the Joint Applicants' or other parties' proposals. No other participant represents the interests of ARIPPA.

WHEREFORE, ARIPPA respectfully requests that the Commission entertain this Petition to Intervene and grant ARIPPA's intervention.

Respectfully submitted,



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Thomas T. Niesen

Attorney ID No. 31379

Regina L. Matz

Attorney ID No. 42498

THOMAS, LONG, NIESEN & KENNARD

212 Locust Street, Suite 500

P.O. Box 9500


Harrisburg, PA 17108-9500

Attorneys for ARIPPA

DATED: June 14, 2010

**VERIFICATION**

I, Jeff A. McNelly, Executive Director of ARIPPA, hereby state that the facts set forth in the foregoing Petition to Intervene are true and correct to the best of my knowledge, information and belief and that I expect ARIPPA to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



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Jeff A. McNelly  
Executive Director  
6/14/2010

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West Penn Power Company and Trans- :  
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**CERTIFICATE OF SERVICE**

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I hereby certify that I have this 14<sup>th</sup> day of June, 2010, served a true and correct copy of the Petition to Intervene of ARIPPA, upon the persons listed below via first class mail, postage prepaid, as follows:

Honorable Wayne L. Weismandel  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
P. O. Box 3265  
Harrisburg, PA 17105-3265

Honorable Mary D. Long  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Piatt Place  
301 Fifth Avenue, Room 220  
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Allison C. Kaster  
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Office of Trial Staff  
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PA Attorney I.D. No. 31379