**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of West Penn Power Company :

d/b/a Allegheny Power for Expedited Approval : M-2009-2123951

of its Smart Meter Technology Procurement :

and Installation Plan :

**PREHEARING CONFERENCE ORDER**

A prehearing conference in this case is scheduled for Wednesday, September 30, 2009, at 10:00 a.m. in an 11th Floor Hearing Room (PITTSBURGH PARTIES), Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222, and Hearing Room 3 (HARRISBURG PARTIES) Plaza Level, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17105-3265. In order to participate in the litigation, you must file and serve an appropriate pleading as discussed below. The parties are directed to comply with the following requirements:

THEREFORE,

IT IS ORDERED:

1. **All parties must serve me directly** (electronically at [mhoyer@state.pa.us](mailto:mhoyer@state.pa.us) and by hard copy) with any document you file in this proceeding. If you send me any document or correspondence, you must send a copy to all other parties in the case. The current service list is attached to this order. The correct address is Administrative Law Judge Mark A. Hoyer, Pennsylvania Public Utility Commission, Office of Administrative Law Judge, Pittsburgh State Office Building, Room 1103, 300 Liberty Avenue, Pittsburgh, PA 15222, Telephone: 412-565-3550, Fax: 412-565-5692.

2. Parties shall be limited to those persons or entities who: (1) file a petition to intervene pursuant to 52 Pa. Code §§5.71-5.76 (or a notice of intervention for those entities with a statutory right of participation) on or before September 25, 2009, at 4:30 p.m., and (2) attend the initial prehearing conference. After the prehearing conference, intervention is limited to those persons or entities granted party status pursuant to 52 Pa. Code §§5.71-5.76, as set forth in *Re: Mercer Gas Company*, 71 Pa. PUC 19 (1989), and *Re: S.T.S. Motor Freight, Inc.*, 54 Pa. PUC 343, 344 (1980). Petitions to intervene, if not untimely or otherwise defective on their face, shall be deemed granted if not objected to within three business days after filing. If objected to, such pleadings will be addressed by order.

3. Pursuant to 52 Pa. Code §1.55, each party shall be limited to one entry on the service list, although there can be more than one name listed. Parties shall provide the name, business address, business telephone number, business fax number (if any), and business e-mail address (if any) of the person they wish to have listed on the service list. Parties may arrange service among themselves as they agree. Pursuant to 52 Pa. Code §5.154(c), the parties are permitted without further order to limit the service of documents to parties who indicate that they do not wish to be served with such documents.

4. Pursuant to 52 Pa. Code §§1.21-1.23, you may represent yourself, if you are an individual, or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted pro hac vice, represent you. However, if you are a partnership, corporation, trust, association, joint venture, other business organization, trust, trustee, legal representative, receiver, agency, governmental entity, municipality or other political subdivision, you must have an attorney licensed to practice law in the Commonwealth of Pennsylvania or admitted pro hac vice represent you in this proceeding. Unless you are an attorney, you may not represent someone else. Attorneys shall ensure that their appearance is entered in accordance with the provisions of 52 Pa. Code § 1.24(b).

5. Parties shall review the regulation pertaining to prehearing conferences, 52 Pa. Code §5.222. Be prepared to discuss possibilities for settlement, discovery issues, issues relating to the technical conference and evidentiary hearings that will be held, service among parties and all other procedural issues relevant to this proceeding. In addition, note subsection (d), which provides, in part:

(d) Parties and counsel will be expected to attend the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto. 52 Pa. Code §5.222.

6. All of the following matters shall be addressed at the prehearing conference:

(a) Establishment of the official service list, and an informal e-mail distribution list.

(b) Modification of the Commission’s rules pertaining to discovery (52 Pa. Code, Subchapter D) and subpoenas (52 Pa. Code §5.421), if appropriate.

(c) Other matters that may aid in the orderly conduct and disposition of the proceeding and the furtherance of justice, including but not limited to the following:

(1) Simplification of the issues;

(2) The obtaining of admissions as to, or stipulations of, facts not in dispute or the authenticity of documents which might properly shorten the hearing;

(3) Limitations as to the number of witnesses;

(4) Limitations of time and scope for direct and cross-examinations; and

(5) The need for a protective order.

7. PLEASE NOTE: That in the development of a proposed schedule, the parties intending to participate in this proceeding shall confer. **The hearings in this case are tentatively scheduled for Monday and Tuesday, November 9 and 10, 2009. The technical conference is scheduled for October 5, 2009.**

8. On or before **Monday, September 28, 2009**, each party shall file and serve a prehearing memorandum which shall include a list of the issues and sub-issues in this proceeding which the party intends to address and a statement of the party’s position on each of the issues and sub-issues listed, and the names, business addresses, and telephone numbers of witnesses the party expects to call and the subject matter of each witness’ testimony. If a party is unable to prepare and serve a prehearing memorandum, it must be prepared to state on the record the issues they intend to address, their positions on those issues and the witnesses to be presented.

9. The parties are directed to cooperate and exchange information, either on an informal or formal basis. In addition, the parties are urged to use alternative means of discovery such as discovery conferences or depositions. In light of the expedited schedule, all discovery requests should be as narrowly tailored as possible and parties should coordinate their discovery if possible; responses are due on a best-efforts basis. The parties are expected to resolve discovery issues among themselves; motions to compel should be filed only after such efforts have failed. If the objections are not resolved, counsel will alert the presiding officer by e-mail of the need for a ruling, and a conference call will be scheduled. The presiding officer will make a ruling over the telephone and not reduce it to writing unless requested to do so. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa. Code §§5.361, 5.371-5.372.

10. The parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expense in litigation on all parties and conserve precious administrative hearing resources. 52 Pa. Code §§5.232 and 5.234. All stipulations entered into by the parties shall be reduced to writing, signed by the parties to be bound thereby, and moved into the record during the hearings in this case. An exception to this requirement may occur when circumstances warrant. If so, an oral presentation of a stipulation is permissible, if it is followed by a reduction to writing as herein directed.

11. The parties are to confer among themselves in an attempt to resolve all or some of the issues associated with this Petition. The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa. Code §5.231(a). The parties are strongly urged to seriously explore this possibility. A joint settlement petition executed by representatives of all parties to be bound thereby, together with statements in support of settlement by all signatory parties must be filed with the Secretary along with a CD in searchable pdf format, and both a paper copy and electronic copy in Word 2007 or a compatible format served on me.

12. Absent a continuance for good cause, all parties must be prepared to participate in the scheduled prehearing conference. Failure of a party to participate in the conference, after being served with notice of the date, time and location thereof, without good cause shown, shall constitute a waiver of all objections to the agreements reached, and an order or ruling with respect thereto.

Date: September 3, 2009 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mark A. Hoyer

Administrative Law Judge

**M-2009-2123951 - Petition of West Penn Power Company d/b/a Allegheny Power for Expedited Approval of its Smart Meter technology Procurement and Installation Plan**

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