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September 10, 2009

VIA ELECTRONIC FILING

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

In re: Docket No. M-2009-2093218
Petition of West Penn Power Company dba Allegheny Power

Dear Secretary McNulty:

Enclosed for filing on behalf of The Pennsylvania State University is the original paper copy of is its Reply Brief in the above matter. The e-filing receipt is attached to the paper copy. Copies of the Reply Brief were 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: The Honorable Katrina L. Dunderdale (w/encl.)
Certificate of Service(w/encl.)
090910-McNulty (PSU Reply Brief).wpd

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judge
Katrina L. Dunderdale, Presiding

Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan	:	Docket No. M-2009-2093218

REPLY BRIEF OF THE PENNSYLVANIA STATE UNIVERSITY

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DATED: September 10, 2009

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STATUTES:

I. INTRODUCTION

This proceeding concerns the Energy Efficiency and Conservation Plan ("EE&C Plan") filed by West Penn Power Company d/b/a Allegheny Power ("Allegheny") on July 1, 2009 pursuant to the requirements of Act 129 of 2008, P.L. 1492 ("Act 129"), 66 Pa.C.S. §§ 2806.1-2806.2. The Pennsylvania State University ("Penn State" or "University") is a major generation, transmission, and distribution service customer of Allegheny at its University Park campus receiving service through Allegheny Tariff No. 37 ("Tariff 37").[1]

The focus of the University's intervention and participation is the EE&C Plan services for Tariff 37. Within its Plan, Allegheny has inequitably and inappropriately identified Tariff 37 for participation in its proposed Lighting Efficiency Program and proposed Distributed Generation Program.

The cost recovery surcharge mechanism proposed by Allegheny as part of its EE&C Plan anticipates an Allegheny monthly surcharge to the University of $17,725.29, or approximately $210,000 annually, under Tariff 37. Penn State St. No. 1 at 3 and 6. Approximately one-third of the monthly surcharge or $6,644.08 occurs as a result of the proposed participation of Tariff 37 in the Lighting Efficiency Program. Penn State St. No. 1 at 6.[2]

[1] The University also receives generation, transmission, and distribution service from Allegheny under Tariff No. 39 ("Tariff 39") for approximately 100 additional accounts at the University Park campus and campuses at New Kensington, Fayette and Mont Alto.

[2] These proposed additional charges would, of course, be on top of the "market" rates for generation service that Penn State is already presently paying for electric service to University Park. Penn State is the only Allegheny customer not presently protected by capped rates for electric generation service. *See* Penn State's Main Brief at 6-7.

II. PROCEDURAL HISTORY

A procedural history is presented in Section II of Penn State's Main Brief.

III. DESCRIPTION OF EDC PLAN

A description of the plan pertinent to the interests of the University's service under Tariff 37 is presented in Section III of the University's Main Brief.

Allegheny asserts, in Section III.B of its Main Brief, that it sought public input on its EE&C Plan and that, "[i]n the end, no unresolved major issues or concerns with the Plan were identified as part of the stakeholder process." Irrespective of what may or may not have been identified as part of the stakeholder process, the detailed briefs filed by the many parties to the proceeding demonstrate that there are, in fact, significant unresolved issues and concerns with the Allegheny EE&C Plan.

In footnote 12, page 18, of its Main Brief, Allegheny states in regard to Penn State that "individuals from Penn State were specifically invited to the general stakeholder meeting sponsored by the Company on [INSERT DATE]." The [INSERT DATE] is blank in the Allegheny Main Brief because there is no evidence of record that Allegheny "specifically invited" Penn State to a general stakeholder meeting. In fact, Allegheny did not seek the input of the University prior to submission of its Plan to the Commission. To the contrary, what is of record and testified to by both Penn State and Allegheny witnesses is that Allegheny did not contact the University about the EE&C Plan until *after* the Plan had been filed.[3]

[3] Penn State Statement No. 1 at 4; Allegheny Statement No. 2-R at 25.

Penn State is not suggesting that Allegheny deliberately attempted to exclude it from the stakeholder process.[4] However, we do suggest and take issue with the argument that Allegheny's EE&C Plan programs and rate offerings have been thoroughly vetted[5] and, thus, entitled to preferred weighting. Penn State has been improperly included in the Lighting Efficiency Program and the Distributed Generation Program for all the reasons stated in its Main Brief. If Allegheny had thoroughly vetted its Plan proposals, Allegheny would have been aware that University Park has no potential to participate in either the Lighting Efficiency Program or the Distributed Generation Program and, we submit, not included Tariff 37 in these Programs.

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4 *See* Allegheny Main Brief at 18, footnote 12.

5 *See* Allegheny Main Brief at 2.

IV. SUMMARY OF ARGUMENT

The decision by Allegheny to classify Tariff 37 "similarly as" Tariff 39 Schedule 30 (Large) customers is inequitable, inappropriate and inconsistent with both Act 129 and Allegheny's recent post-2010 default service proceeding to the extent that it results in Tariff 37 being included with Tariff 39, Schedules 20, 22, 30 (Small) and 30 (Large) in the Lighting Efficiency Program.

Tariff 37 should be reclassified and then excluded from the Lighting Efficiency Program since no opportunity exists for the University Park campus to participate in the Program and, under the circumstances presented here, it would cause the University to unreasonably subsidize other customers, particularly small commercial customers, who would benefit from the Program. Tariff 39 Schedules 20 and 22 general service customers are not participants in any of the other EE&C Plan programs sponsored by Allegheny for Tariff 37.[6]

Of the remaining four programs - - the Commercial and Industrial Drives Program, the Custom Applications Program, the Customer Load Response Program, and the Distributed Generation Program - - the University should be excluded from the Distributed Generation Program. The Distributed Generation Program is designed for customers with existing generators; however, Penn State's generators cannot be used for the Program because of air quality permitting limitations.

Significantly, no party, other than Allegheny opposed the removal of Tariff 37 from the Lighting Efficiency Program or the Distributed Generation Program in either testimony or brief.

[6] The University, of course, would still be a participant in the Lighting Efficiency Program through its approximate 100 Tariff 39 accounts. Its opposition to the Lighting Efficiency Program does not concern its Tariff 39 service but rather its much larger and very different Tariff 37 service.

V. ARGUMENT

A. Act 129 Conservation and Demand Reduction Requirements

1. Overall Conservation Requirements

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

a. 2011 Requirements

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

b. 2013 Requirements

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

2. Overall Demand Reduction Requirements

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

3. Requirements for a Variety of Programs Equitably Distributed

As presented in Section V.A.3. of Penn State's Main Brief, Tariff 37 should be removed from the Lighting Efficiency Program and the Distributed Generation Program.

4. 10% Government/Non-Profit Requirement

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

5. Low Income Program Requirements

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

6. Issues Relating to Individual Conservation and Demand Reduction Programs

a. Residential

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

b. Commercial

Allegheny discusses Penn State's proposed reclassification and grouping of Tariff 37 in Section V.A.6.b.2 of its Main Brief. Allegheny argues that Tariff 37 should be included in the Lighting Efficiency and Distributed Generation Programs because Penn State at University Park

(Tariff 37) has the potential to participate and benefit from these Programs.[7] The evidence of record does not support this argument and the inclusion of Tariff 37 in these Programs.

The Lighting Efficiency Program

Tariff 37 has no potential to participate in and benefit from the Lighting Efficiency Program. As explained by Penn State witness Prinkey, the University has already made large investments in the replacement of lighting at University Park (Tariff 37), the very kind of investments and improvements envisioned by the proposed Lighting Efficiency Program.[8] Any other lighting improvements would be outside of the incentives proposed in the Lighting Efficiency Program and would probably fall under the proposed Custom Applications Program. Penn State St. No. 1 at 7.[9] Penn State (Tariff 37) should not be forced to participate in and fund a Program which will benefit small customers of Tariff 39 to which Tariff 37 bears no similarity.[10] Tariff 37 should be removed from the Lighting Efficiency Program.[11]

The Distributed Generation Program

Tariff 37 has no potential to participate in and benefit from the Distributed Generation Program. As explained by Penn State witness Prinkey, the University has evaluated the possibility of using its generators to participate in similar programs. It has found that the air permits associated with each generator would not allow the generator to be operated so as to participate in the program. These same air permits would preclude the University's participation

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[7] See Allegheny Main Brief at 41-42, citing Allegheny Statements Nos. 3-R, p.9 and 2-R, pp. 24, 25-26.

[8] If Allegheny had sought the input of the University in putting together its EE&C Plan, it would have been aware of the University's investment in lighting replacement and considered it in its program distribution.

[9] The University does not take issue with its proposed participation in the Custom Applications Program.

[10] See Penn State Main Brief, Section V.A.3.

[11] As previously stated, the University, of course, would still be a participant in the Lighting Efficiency Program through its approximate 100 Tariff 39 accounts. Its opposition to the Lighting Efficiency Program does not concern its Tariff 39 service but rather its much larger and very different Tariff 37 service.

in the proposed Distributed Generation Program.[12] DEP has also raised air quality concerns with the proposed Distributed Generation Program arguing that the use of emergency or back-up generators to reduce peak demand should be prohibited.[13] Tariff 37 should be removed from the Distributed Generation Program.

c. Industrial

See the discussion of the Lighting Efficiency and Distributed Generation Programs. In Section V.A.3 of Penn State's Main Brief and Section V.A.6.b, *supra,* of this Reply Brief.

7. Proposals for Improvement of EDC Plan

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

a. Residential

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

b. Commercial

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

c. Industrial

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

B. <u>Cost Issues</u>

1. Plan Cost Issues

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

2. Cost Effectiveness/Cost-Benefit Issues

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

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[12] *See* Penn State's Main Brief, Section V.A.3 for a more detailed discussion of the University's position in regard to the proposed Distributed Generation Program.

[13] DEP Main Brief at 7-10. In concluding its argument at page 10 of its Main Brief, DEP states that "increased use of emergency generators will negatively impact Pennsylvania's air quality. Because those resources will be deployed when ozone levels are the highest, the detrimental impact to human health could be quite significant and should be avoided."

3. Cost Allocation Issues

Tariff 37 should be removed from the Lighting Efficiency Program and the Distributed Generation Program as discussed in Section V.A.3 of Penn State's Main Brief and Section V.A.6.b *supra*, of this Reply Brief. No cost for these Programs should be allocated to Tariff 37.[14]

4. Cost Recovery Issues

A discussion of cost recovery issues is presented in Section V.B.4 of Penn State's Main Brief.

C. CSP Issues

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

D. Implementation and Evaluation Issues

1. Implementation Issues

Except as discussed in Penn State's Main Brief and in this Reply Brief, Penn State takes no position with respect to issues related to the implementation of Allegheny's EE&C Plan.

2. QA Issues

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

3. Monitoring and Reporting Issues

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

4. Evaluation Issues

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

E. Other Issues

Not applicable to the University's discussion of Allegheny's EE&C Plan for Tariff 37.

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[14] As proposed by Allegheny, the cost of the Lighting Efficiency Program would be recovered from Tariff 39 Schedules 20, 22, 30 (Small), 30 (Large), and Tariff 37. As discussed in Section V.A.3 of Penn State's Main Brief, this is an unreasonable mix of rate schedules and Tariffs that has a high potential for rate subsidization by Tariff 37 of Tariff 39 rate schedules. The proposed recovery payment on a proportional demand basis does not eliminate the cross subsidization potential between Tariff 37 and Tariff 39 small commercial rates. Penn State St. No. 1 at 7-8.

VI. CONCLUSION

The equitably and appropriately distributed Energy Efficiency and Conservation Plan Programs for Tariff 37 service to University Park are the Commercial and Industrial Drives Program, the Custom Applications Program and the Customer Load Response Program. Tariff 37 should be excluded from the Lighting Efficiency Program and the Distributed Generation Program for the reasons stated in Penn State's Main Brief and this Reply Brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of September, 2009, served a true and correct copy of the Reply Brief of The Pennsylvania State University, upon the persons and in the manner set forth below:

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