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September 12, 2011

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

VIA HAND DELIVERY

RE: Petition of West Penn Power Company for Amendment of the Orders Approving Energy Efficiency and Conservation Plan and Petition for Approval of Amended Energy Efficiency and Conservation Plan; Docket No. M-2009-2093218

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the original and three (3) copies of the Comments of West Penn Power Industrial Intervenors ("WPPII"), in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with a copy of this document. Please date stamp the extra copy of this transmittal letter and Comments, and kindly return them to our messenger for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By Vasiliki Karandrikas
Vasiliki Karandrikas

Counsel to West Penn Power Industrial Intervenors

VK/sds
Enclosures
c: Chief Administrative Law Judge Charles E. Rainey, Jr. (via Hand Delivery)
Jonathan P. Nase, Office of Special Assistants (via E-mail and Hand Delivery)
Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION 2011 SEP 12 PM 3:59

PA PUC
SECRETARY'S BUREAU

Petition of West Penn Power Company for Amendment of the Orders Approving Energy Efficiency and Conservation Plan and Petition For Approval of Amended Energy Efficiency And Conservation Plan	:	Docket No. M-2009-2093218

COMMENTS OF WEST PENN POWER INDUSTRIAL INTERVENORS

I. INTRODUCTION

Act 129 of 2008 ("Act 129") imposed upon certain Pennsylvania electric distribution companies ("EDCs") annual energy efficiency and demand reduction obligations for the 2010-2013 period.[1] Act 129 required Pennsylvania EDCs falling within its purview to implement Energy Efficiency and Conservation ("EE&C") plans approved by the Pennsylvania Public Utility Commission ("PUC" or "Commission") that offered customer programs designed to achieve the mandated energy efficiency and demand reduction targets.

With regard to energy efficiency and conservation, Act 129 requires EDCs to adopt a plan, approved by the Commission, to reduce electric consumption by at least 1% by May 1, 2011, and by at least 3% by May 31, 2013, adjusted for weather and extraordinary loads.[2] In addition, by May 31, 2013, peak demand is to be reduced by a minimum of 4.5% of the EDC's annual system peak demand in the 100 hours of highest demand, measured against the EDC's peak demand during the period of June 1, 2007, through May 31, 2008.[3]

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[1] As articulated in Act 129, only EDCs with at least 100,000 customers are required to submit energy efficiency and conservation programs. 66 Pa. C.S. § 2806.1, *et seq.*
[2] 66 Pa. C.S. § 2806.1(c).
[3] *See id.* § 2806.1(d).

Consistent with Act 129, on July 1, 2009, West Penn Power Company d/b/a Allegheny Power ("West Penn" or "Company") submitted a Petition for Approval of an 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 ("EE&C Plan"). After a series of Commission Orders and timely Company filings, the Company's EE&C Plan, as refiled in accordance with Commission directives, was approved by the Commission on June 23, 2010.[4]

On September 10, 2010, West Penn filed a Petition to amend its EE&C Plan ("First Amended Petition") seeking to shift substantial costs (*i.e.*, approximately $8.1 million) from the Residential class to the Commercial & Industrial ("C&I") customer classes.[5] As a result of West Penn's proposed reallocation of EE&C program costs, the Company proposed to increase the EE&C Surcharge for customers on Rate Schedule 30 (large) by approximately 39% and for customers on Rate Schedules 40, 41, 44 and 46 by approximately 26%.[6] In response to the Company's First Amended Petition, West Penn Power Industrial Intervenors ("WPPII") filed an Answer and Comments on September 30, 2010, and October 12, 2010, respectively.

At hearings held on the First Amended Plan, West Penn presented three separate Joint Stipulations between the Company and stakeholders that resolved all disagreements between West Penn and those parties. One of the Joint Stipulations was between West Penn and WPPII ("West Penn-WPPII Joint Stipulation"), in which West Penn agreed to reduce the incremental cost increase for customers on Rates 40, 44 and 46, such that these classes would be responsible for approximately $900,000 in incremental costs. In addition, as a result of the

[4] The Commission addressed West Penn's initial EE&C Plan in Orders entered October 23, 2009, March 1, 2010, and June 23, 2010.
[5] *See* First Amended Plan at 231-32.
[6] *See id.* at 238.

FirstEnergy/Allegheny Energy Merger being consummated, the incremental EE&C cost increase originally assigned to Rates 20, 22, 30 (small), and 30 (large) was completely eliminated. On January 13, 2011, the Company's First Amended Petition, as modified by the Joint Stipulations, including the West Penn-WPPII Joint Stipulation, was approved by the Commission.[7]

On February 25, 2011, the FirstEnergy/Allegheny Energy Merger was completed. As of that date, West Penn became part of the FirstEnergy corporate family, which originally included Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec") and Pennsylvania Power Company ("Penn Power") (collectively, "PA Companies").[8]

On August 9, 2011, the Company submitted a Petition for Amendment of the Orders Approving Energy Efficiency and Conservation Plans and Petition for Approval of Amended Energy Efficiency and Conservation Plans ("Second Amended Petition"). Through the Second Amended Petition, West Penn seeks changes, *inter alia*, to make its current EE&C Plan more consistent with those of the PA Companies.[9] The Company claims that the proposed changes are necessary to position itself to meet its post-2011 statutory EE&C requirements.[10] Accordingly, the Company requests that the Commission approve the proposed changes as soon as possible.[11]

On August 19, 2011, WPPII filed an Answer in the above-captioned proceeding, which sets forth WPPII's preliminary response to West Penn's Second Amended Petition.[12] WPPII is an *ad hoc* coalition of large, energy-intensive industrial and institutional customers of electricity

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[7] *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 (Order entered Jan. 13, 2011).
[8] *See* Second Amended Petition at 4.
[9] *Id.* at 5.
[10] *Id.*
[11] *Id.* at 17.
[12] By these Comments, WPPII seeks to supplement and, where appropriate, expand upon its preliminary response to the Second Amended Petition. As such, WPPII will not repeat the contents of its August 19 Answer in these Comments.

located within West Penn's service territory. WPPII members purchase service from West Penn primarily under Rate Schedules 30 (Large), 40, 41, 44 and 46. Electricity costs comprise a significant portion of operations costs for all WPPII members. The members of WPPII are therefore concerned with issues regarding the rates, terms and quality of their electricity service and, as a result, have been actively involved in numerous PUC proceedings addressing rates, terms and conditions of service in the Company's service territory.[13]

WPPII respectfully submits these Comments for the Commission's consideration when evaluating West Penn's Second Amended Petition.[14] As a preliminary matter, WPPII does not oppose the Company's proposal to increase the allocation of costs to the Large C&I class due to its relatively minor amount (*i.e.*, $8,000). WPPII, however, would strongly oppose any additional costs being allocated to the Large C&I class, including WPPII members, given the budget amounts absorbed by the Large C&I class as a result of the Company's previous EE&C proceeding. By these Comments, WPPII further: (1) challenges the appropriateness of the Company's proposed budget increase for the Customer Load Response ("CLR") Program, which will be funded, in large measure, through a decrease in the budget for the Customer Resources Demand Response ("CRDR") Program absent additional evidence that such re-allocation will improve the CLR Program's cost-effectiveness; (2) has serious reservations about the Company's proposed Conservation Voltage Reduction ("CVR") Program, under which the Company will reduce voltage levels by 1.5% on strategically selected distribution circuits, due to potential adverse impacts on WPPII members' equipment as well as the lack of appropriate notice to customers regarding its proposed implementation; (3) opposes the Company's proposal to reduce

[13] WPPII's Petition to Intervene in this proceeding was granted by Administrative Law Judge ("ALJ") Katrina L. Dunderdale at the July 28, 2009, Prehearing Conference.

[14] WPPII hereby files these Comments two days out-of-time due to the Commission's weather-related closures on September 8-9, 2011.

the budgets for Large C&I programs to fund, at least in part, the Non-Residential portion of the CVR Program; and (4) has concerns that the Company's proposal to restate all incentives as ranges may result in confusion and undue discrimination, absent additional customer safeguards. WPPII reserves the opportunity to address additional issues in Reply Comments, as necessary.

II. COMMENTS

A. The Company Fails To Support the Need for Increased Funding for the CRDR Program, Given That Such Program Does Not Meet the Commission's Total Resource Cost Test.

The Company's current EE&C Plan includes the CLR Program and the CRDR Program, both of which are available to Large C&I customers. In the Second Amended Petition, the Company proposes to increase the budget for the CRDR Program, in large measure, by decreasing the budget for the CLR Program purportedly due to its performance to date.[15] The Company's filing, however, fails to provide any supporting information about expected improvements in customer performance due to the availability of increased funding.

Furthermore, although the Company indicates that the CRDR Program is outperforming the CLR Program, the difference in performance is *de minimus*. In fact, both programs are significantly below the Commission's Total Resource Cost ("TRC") test target of 1.0, with the most favorable projections for the CLR and CRDR Programs at 0.26 and 0.75, respectively, in Year 3.[16] Thus, West Penn has not adequately justified that ratepayer resources would be more cost effectively and efficiently utilized in the CRDR Program compared with the CLR Program. WPPII respectfully submits ratepayer resources are best focused on those EE&C Programs that pass the Commission's TRC test.

[15] *See* Testimony of Edward C. Miller (hereinafter, "Miller Testimony") at 15; *id.* at 23.
[16] *See* Second Amended Petition, Appendix G at 13.

B. Prior To Implementing the Proposed CVR Program, the Company Should Be Required To Include Provisions To Protect Customers from Adverse Impacts and Provide Affected Customers with Adequate Notice.

The Company proposes to introduce a CVR Program, under which the Company will permanently reduce voltage by 1.5% on selected distribution circuits that have sufficient voltage levels to accommodate such reduction while remaining within the PUC's voltage requirements.[17] Conspicuously absent from the Company's filing, however, is a meaningful discussion of the potential customer impact of the CVR Program's implementation, particularly on customers' commercial and industrial operations, which may utilize equipment that is very sensitive to even the smallest changes in voltage levels.

According to the Second Amended Petition, the Company explains that its cost allocation approach for the CVR Program was based, in part, on the assumption that Large C&I customers – *i.e.*, customers served on Rate Schedule 30 with a billed demand of 500 kW or greater, and Schedules 40, 41, 44 and 46 – would not be affected by the CVR Program because such customers take service at sub-transmission or transmission levels.[18] Although they primarily take service under the foregoing rates, some Large C&I customers, including certain WPPII members, have smaller accounts taking distribution-level service on Rate Schedules 20, 22 and/or 30. Thus, it is unclear how such Large C&I customers would be unaffected by the Company's CVR proposal.

The Company claims that existing monitoring protocols will ensure that "any major problems on a circuit would be quickly detected."[19] WPPII certainly supports vigilant system monitoring; however, detecting a major problem <u>after</u> it occurs, even if it is done so quickly, still results in a customer or customers whose service and, consequently, business operations have

[17] Miller Testimony at 11.
[18] Testimony of Raymond E. Valdez (hereinafter, "Valdez Testimony") at 4; *id.* at 6.
[19] Miller Testimony at 12.

been disrupted or unexpectedly shutdown. As a result, the Second Amended Plan is deficient to the extent that it fails to anticipate the potential adverse impacts of the CVR Program and to propose appropriate measures to prevent negative consequences. The CVR proposal is also deficient because it does not address a customer's right of recourse in the event that equipment is damaged or service is interrupted due to CVR Program implementation.

In addition, based on the Second Amended Petition, it appears that the Company does not intend to provide customers on affected circuits with prior notice of this permanent voltage reduction. According to the Company, it "requires all significant operating changes at a customer's location to be reported...prior to the customer making such changes" so that the Company can ensure that the circuit and service equipment is capable of handing the change.[20] As a threshold matter, the Company does not define the phrase "significant operating changes," nor is that term defined in the Company's Tariff. As a result, it is not clear what type of operating changes would fall within a customer's purported reporting obligation. Moreover, under the Company's proposal, if a customer does not report significant operating changes, the Company contends it is the "customer's service that is most noticeably adversely affected first, which should prompt an inquiry after the fact."[21] In short, the Company inappropriately seeks to inform customers of the contemplated voltage reduction only in response to opportunely reported changes in operations or after-the-fact feedback from customers whose service has been negatively impacted by the CVR Program implementation.

Given the Company's responsibility to provide adequate service and the possibility that the permanent voltage reduction may impact customers' service, the Commission should direct the Company to assume a more proactive approach and provide customers on affected circuits

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[20] *Id.* at 12.
[21] *Id.* at 13.

with advance notice. In addition, such notice should afford customers with the opportunity to object to CVR Program implementation if it would negatively impact a customer's equipment and thus business operations. Such circumstances should trigger an "opt-out" of the circuit in question, whereby the Company would remove the affected customer's circuit from list of circuits undergoing the 1.5% voltage reduction.

For the reasons discussed above, the Commission should condition any approval of the CVR Program on the Company's inclusion of provisions to protect customers from potentially adverse impacts and provide affected customers with adequate notice and opportunity to "opt-out" of the CVR Program prior to implementation.

C. *The Company's Proposal To Fund the CVR Program Through Reductions in Large C&I Customer Program Budgets Is Inconsistent with Established Ratemaking Principles and Must Be Rejected.*

The CVR Program has a budget of approximately "$1 million for the Residential and Non-Residential classes, respectively."[22] The Second Amended Petition inappropriately seeks to reduce Large C&I customer budgets to fund the proposed CVR Program for Non-Residential Customers, even though the program is designed to benefit customers who take service at distribution levels, not at transmission or sub-transmission levels. While it remains unclear how transmission-level customers would be protected against being affected by the CVR program as discussed in Section II.B, to the extent that the Company can demonstrate that such customers would not be affected, no justification exists for them to be allocated cost responsibility for the program. Thus, as proposed, the Company's funding proposal is inconsistent with traditional ratemaking principles and must be rejected.

[22] Miller Testimony at 13.

West Penn's Large C&I customers include customers served on Schedule 30 with a billed demand of 500 kW or greater, and Schedules 40, 41, 44 and 46.[23] According to Witness Valdez, because the proposed CVR Program is a distribution circuit-related program, "no costs are being allocated to Schedules 40, 41, 44 and 46 since customers on these rate schedules typically receive service at sub-transmission or transmission voltages."[24] By contrast, Witness Miller testifies that "the $280,000 for the Large C&I portion of the new CVR Program is being funded through budget reductions in other Large C&I programs."[25] While the Company does not propose to allocate CVR Program costs to the Large C&I class, the Company seeks to reduce Large C&I program budgets to fund that program. Thus, the Company improperly seeks to fund the proposed CVR Program, which by the Company's own admission is a distribution-related program, at the expense of Large C&I customers who largely do not take service at the distribution level.[26] The Company's proposal is inconsistent with establishing ratemaking principles and, therefore, must be denied.

D. Additional Safeguards Are Necessary To Avoid the Potential for Customer Uncertainty and Discrimination That Would Otherwise Exist Under the Company's Incentive Range Proposal.

The Company proposes to restate all incentives as ranges in order to exercise unilateral discretion in awarding incentives within those ranges based on market conditions and without Commission approval. According to the Company, "the market is fluid and requires constant monitoring and 'fine tuning.'"[27] To the extent an incentive level changes, increases would be applied immediately, while the Company proposes to provide thirty days' notice of a

[23] Valdez Testimony at 4.
[24] *See* Valdez Testimony at 6; *see also* Second Amended Petition, Appendix H, at 17 (showing CVR Program costs are allocated to Tariff No. 39, Schedules 20, 22, and 30, and Tariff No. 37).
[25] Miller Testimony at 24 (emphasis added).
[26] As discussed below, Large C&I customers, including several WPPII members, may have smaller, distribution-level accounts for services outside of their normal manufacturing operations related to administrative support services.
[27] Miller Testimony at 17 (emphasis added).

reduction.[28] While WPPII is sensitive to the dynamic nature of such programs, WPPII is also concerned that the Company's proposal – to constantly "fine tune" EE&C incentive levels, without PUC oversight or approval, at the Company's sole discretion – results in an incentive structure that may cause uncertainty and be discriminatory. For these reasons, the Company's incentive range proposal should be modified to include protections to avoid customer uncertainty and discrimination.

The Second Amended Petition indicates that the Company's incentive range proposal will subject program incentive levels to "at least quarterly" reviews and "constant 'fine tuning.'"[29] Perceived uncertainty in the level and availability of incentives may diminish a customer's desire to apply for a particular EE&C program. Before a Large C&I customer receives approval to pursue an EE&C program measure, its management must conduct a cost-benefit analysis to ensure the savings associated with such measure outweigh the costs. This process often takes longer than thirty days. As a result, the Company's proposal would have the potential to diminish an incentive that a Large C&I customer has already relied upon in making its decision to participate in an EE&C program. Thus, the Company's incentive range proposal may chill program participation, particularly by Large C&I customers.

Additionally, the Company's proposal presents the potential for discrimination. The Company claims that unspecified "market conditions" will guide its decisions on the appropriate incentive level. The Second Amended Petition contains no information describing the "market conditions" or any other objective criteria to be applied in setting inventive levels. Objective criteria are necessary to ensure that the Company and its EE&C Team treat similarly situated

[28] *Id.* at 18.
[29] Miller Testimony at 18.

customers in a similar manner. In the absence of such objective criteria, applicants may be subject to undue discrimination.

Any potential benefits that the present incentive range proposal may offer the Company appear to be outweighed by the potential for customer uncertainty and discrimination. Accordingly, the Company's proposal, to the extent it is accepted, should be modified to include additional safeguards to protect customers against the potential for uncertainty and discrimination that may chill future participation, particularly by Large C&I customers, in the Company's EE&C programs.

III. CONCLUSION

WHEREFORE, the West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

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Dated: September 12, 2011

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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Dated this 12th day of September, 2011, at Harrisburg, Pennsylvania.