**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held October 28, 2011

Commissioners Present:

Robert F. Powelson, Chairman

 John F. Coleman, Jr., Vice Chairman

 Wayne E. Gardner

 James H. Cawley

 Pamela A. Witmer, Statement

Petition of West Penn Power Company Docket No. M-2009-2093218

for Amendment of the Orders Approving

Energy Efficiency and Conservation Plans

and Petition for Approval of its Amended

Energy Efficiency and Conservation Plans

**INTERIM OPINION AND ORDER**

**BY THE COMMISSION:**

# I. Introduction

In the *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its 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 October 23, 2009) (*October 2009 Order*), the Pennsylvania Public Utility Commission (Commission) approved in part and rejected in part the Energy Efficiency and Conservation Plan, which was filed on July 1, 2009, by West Penn Power Company d/b/a Allegheny Power (West Penn or the Company) pursuant to Act 129 of 2008 (Act 129 or the Act). The Commission required West Penn to submit a revised Plan within sixty days.

The Company submitted its revised Energy Efficiency and Conservation Plan (Revised Plan) to the Commission for consideration and disposition on December 21, 2009. By Order entered March 1, 2010 (*March 2010 Order*) the Commission approved in part and rejected in part West Penn’s Revised Plan. The Commission required the Company to submit a further revised Plan within sixty days.

On April 29, 2010, the Company filed an amended Energy Efficiency and Conservation Plan (Amended Plan). By Order entered June 23, 2010, (*June 2010 Order*) we approved the Company’s Amended Plan.

On September 10, 2010, the Company filed its second amended Energy Efficiency and Conservation Plan (Second Amended Plan). By Order entered January 13, 2011, (*January 2011 Order*) we approved the Company’s Second Amended Plan.

Now before the Commission for consideration and disposition is the Company’s *Petition for Amendment of the Orders Approving Energy Efficiency and Conservation Plans and Petition for Approval of its Amended Energy Efficiency and Conservation Plans,* filed on August 9, 2011. Several parties have filed Comments to the Petitions.

# II. Procedural History

A detailed procedural history was set forth in the *October 2009 Order* with subsequent procedural history set forth in the *March 2010 Order*. Consequently, this section summarizes the prior procedural history of this matter with the recent procedural history set forth in detail.

Allegheny filed its original Plan on July 1, 2009. The Plan was referred to Administrative Law Judge (ALJ) Katrina L. Dunderdale, who held public input hearings at Butler, Pennsylvania on July 31, 2009. ALJ Dunderdale also held evidentiary hearings on August 19 and 20, 2009.

The Parties in this proceeding are: the Department of Environmental Protection (DEP); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); the Office of Trial Staff (OTS); UGI Utilities, Inc.-Gas Division, UGI Penn Natural Gas, Inc., UGI Central Penn Gas, Inc., The Peoples Natural Gas Company d/b/a Dominion Peoples (collectively, the NGDCs); EnerNOC, Inc. (EnerNOC); West Penn Power Industrial Intervenors (WPPII); Association of Community Organizations for Reform Now (ACORN); Comperio Energy LLC d/b/a ClearChoice Energy (ClearChoice); Direct Energy Business, LLC; the Pennsylvania State University (Penn State); Field Diagnostic Services, Inc. (Field Diagnostic); and Constellation New Energy (CNE).

On September 10, 2009, ALJ Dunderdale certified the record to the Commission for consideration and disposition.

As stated previously, the *October 2009 Order* approved in part and rejected in part Allegheny’s Plan. *Inter alia*, the *October 2009 Order* directed Allegheny to file a revised Plan within sixty days. On November 9, 2009, the OSBA filed a Petition for Reconsideration (Petition) of the *October 2009 Order.* The Commission denied in part and granted in part the OSBA Petition by Opinion and Order entered on

December 23, 2009 (*December 2009 Order)*. Specifically, the Commission denied the OSBA’s request that Allegheny be required to recognize Lighting customers served under Tariff No. 39, Schedules 51-59 and 71, as a separate class or classes for purpose of cost-recovery. *December 2009 Order* at 8. The Commission did, however, grant OSBA’s request that Allegheny be required to file a red‑line version of its revised plan. *December 2009 Order* at 11.

Allegheny filed its Revised Plan on December 21, 2009, with a corrected red‑lined version being filed on January 4, 2010. On December 24, 2009, the Commission issued a Secretarial Letter directing that Comments on the Revised Plan would be considered timely if filed on or before January 8, 2010, with Reply Comments being considered timely if filed on or before January 19, 2010.

Comments on the Revised Plan were submitted by OSBA and OCA. WPPII filed a letter noting that it did not object to Allegheny’s Revised Plan. Allegheny filed Reply Comments. By its *March 2010 Order,* the Commission approved in part and rejected in part Allegheny’s Revised Plan. The Company was directed to file a further revised Energy Efficiency and Conservation (EE&C) Plan within sixty days of the entry of the March 1, 2010 Order. Interested parties were given ten days following the filing of the further revised Plan in which to file comments, with reply comments due ten days thereafter.

On April 29, 2010, the Company submitted its Amended Plan. The Company also submitted a separate redline version of the Amended Plan showing changes to the version filed on December 21, 2009. On May 10, 2010, EnerNOC filed Comments to the Amended Plan. No additional Comments or Reply Comments were filed. By Order entered June 23, 2010, the Commission approved the Company’s Amended Plan.

On September 10, 2010, the Company submitted its Second Amended Plan. Answers and comments to the Petition were filed by the Office of Small Business Advocate (OSBA), the Pennsylvania State University (PSU), and the West Penn Power Industrial Intervenors (WPPII). On October 18, 2010, the Pennsylvania Communities Organizing for Change (PCOC) filed a Petition to Intervene and comments on the Second Amended Plan. The Company filed a reply to the comments of the OSBA, the WPPII, PSU and PCOC on November 1, 2010. In a Secretarial Letter dated November 4, 2010, the Commission referred the proceeding to the OALJ. On December 17, 2010, Administrative Law Judges Dennis J. Buckley and Elizabeth H. Barnes issued a Recommended Decision. On January 13, 2011, the Commission adopted the Recommended Decision and approved the Second Amended Plan as modified by the Joint Stipulation.

The instant Petitions were filed as above noted. The following Parties filed Comments to the Petitions: WPPII; Pennsylvania Communities Organizing for Change (PCOC); Pennsylvania State University (Penn State); and the OCA.

# III. Prior Amended Plan Petitions

On January 15, 2009, the Commission adopted an Implementation Order establishing standards for EE&C plans, including a requirement to submit annual reports outlining the results from the implementation of their EE&C plans. The Implementation Order did not contain a deadline for filing the annual reports.

On June 25, 2010, the Commission provided additional guidance to the EDCs regarding the annual reporting requirements and required the EDCs to submit their annual reports by September 15, 2010. The Commission also permitted the EDCs to submit proposed changes to their EE&C plans at that time.

On September 1, 2010, the Commission issued another Secretarial Letter providing the requirements for submitting revised EE&C plans should the EDCs wish to revise their EE&C plans during the annual reporting process. That Letter also recognized that the Orders approving the EDC’s EE&C plans also allowed EDCs to propose a plan change through the Commission’s standard procedures for rescission and amendment of Commission orders under 52 Pa. Code §§ 5.41 and 5.572.[[1]](#footnote-1)

On September 10, 2010, in accordance with the September 1, 2010 Secretarial Letter, the Company filed a Petition for Approval of its Amended EE&C Plan (First Amended Plan).[[2]](#footnote-2) The Company’s First Amended Plan removed four programs that relied on smart meter technology, maintained two voluntary programs related to smart meter technology, and made other miscellaneous changes to the Second Revised Plan, the plan then in effect, based on the elimination of the aforementioned programs and the additional experience gained while the Second Revised Plan was in effect.

On December 3, 2010, at the evidentiary hearing on the First Amended Plan, West Penn presented as exhibits three separate Joint Stipulations between the Company and stakeholders that resolved all disagreements between West Penn and those Parties. On December 10, 2010, the Parties filed Letters acknowledging acceptance or non-opposition to the three Joint Stipulations and the First Amended Plan as modified by the Joint Stipulations.

On December 17, 2010, ALJs Dennis J. Buckley and Elizabeth H. Barnes recommended that the Commission approve the Joint Stipulations and First Amended Plan as modified by the Joint Stipulations. On January 13, 2011, the Commission adopted the ALJs’ Recommended Decision and approved the First Amended Plan as modified by the Joint Stipulations. The First Amended Plan is the plan that is currently in effect, and is referred to throughout the remainder of this Opinion and Order as “the Current Plan.”

Consistent with the Commission’s Order of June 10, 2011, at

Docket No. M-2008-2069887, governing the filing of plan amendments, West Penn submitted on August 9, 2011, its Amended Plan (New Plan).

# IV. Proposed Amended Plan and Need for Changes to the Current Plan

 On August 9, 2011, West Penn filed a Petition seeking approval of amendments to its amended Energy Efficiency and Conservation Plan (EE&C Plan or New Plan). In its Petition, West Penn proposes the following changes to its EE&C Plan.[[3]](#footnote-3)

1. Renaming and reorganizing currently approved measures;
2. Deleting currently approved measures;
3. Adding new measures;
4. Administrative changes;
5. Budget updates and adjustments; and
6. Cost recovery adjustments.

West Penn requests that due to the compressed timeframe for meeting the Act 129 mandates the Commission resolve any issues based on comments submitted by interested parties.

 We recognize that there is less than two years remaining in the current four year EE&C Program in which West Penn must meet its 4.5% peak demand reduction and 3% consumption reduction targets. We also recognize that any delay in ruling on the changes proposed by West Penn will further limit the time it has to implement the revised plan. However, we are also cognizant of the due process rights of other parties that represent West Penn’s various customers and ratepayers, who are ultimately paying for West Penn’s EE&C Plan. As such, we will approve some elements of West Penn’s Petition through this Interim Opinion and Order and refer the remaining elements to the Office of Administrative Law Judge (OALJ) for the scheduling of such proceedings as may be necessary and the issuance of a Recommended Decision on an expedited basis. We will provide full rationale, where necessary, for the elements approved in this Interim Order in the Final Order that will be issued following our receipt of the ALJ’s Recommended Decision.

1. **Elements of the Petition being Approved**

**1. Renaming and Reorganization of Measures**

West Penn proposes to rename and reorganize the measures contained in the previously approved plan. West Penn states that the renaming and reorganizing of its programs and measures is designed to match the programs and measures being offered by the other FirstEnergy companies. West Penn asserts that this will allow it to leverage the benefits from the uniformity in the programs being offered by the four FirstEnergy companies.[[4]](#footnote-4)

WPPII, in its Answer, states that it understands West Penn’s interest in seeking to align its EE&C Plan more closely with the other FirstEnergy companies. WPPII also states that it supports West Penn’s efforts to capitalize on economies of scale and synergies through common plan administration and program implementation activities, which allow West Penn to focus resources on compliance with the Act 129 mandates.[[5]](#footnote-5) The OCA comments that overall, West Penn made positive improvements to its EE&C Plan.[[6]](#footnote-6)

 We agree with West Penn, WPPII and the OCA that the reorganization and renaming of the programs and measures, as summarized in WPP Table 5, will allow West Penn to leverage the administrative, marketing and delivery efforts currently being deployed by the other three FirstEnergy companies. The synergies obtained by the renaming and reorganizing of the programs and measures to match those of the other FirstEnergy companies should allow West Penn to better focus its resources in a manner that should help it meet the Act 129 mandates. As such, we approve West Penn’s proposal to rename and reorganize its programs and measures as set forth in its New Plan. This approval does not extend to the proposed modifications, deletions and additions of programs or measures referred to the OALJ as discussed below. In addition, this approval does not extend to any cost allocation and cost recovery issues referred to the OALJ as discussed below.

 **2. Addition of New Program Measures**

 West Penn proposes to add thirty-five new measures to its New Plan. West Penn states that these measures were selected based on its experience, participation results and measure or program costs offered by the other FirstEnergy companies, information obtained through a Commission sponsored EDC best practices workshop, and input from ADM Associates Inc., the program evaluator for the other FirstEnergy companies. West Penn then evaluated the cost per MWh saved for each measure and selected those measures that provided savings in a cost effective and timely manner within the Act 129 spending cap.[[7]](#footnote-7)

No party opposed the addition of the thirty-five new measures. The OCA specifically states that West Penn has made positive improvements to its EE&C Plan by including the thirty-five additional energy efficiency measures, which include more lighting measures in the residential, government and non-profit sectors, less reliance on smart meter technology and an overall plan Total Resource Cost test value of 2.2.[[8]](#footnote-8)

We agree with West Penn and the OCA that the thirty-five new programs, summarized in WPP Table 6, should help West Penn meet the Act 129 mandates in a cost-effective and timely manner within the 2% cost cap. As such, we approve West Penn’s proposal to add the thirty-five new measures set forth in its New Plan. This approval does not extend to the proposed modifications, deletions and additions of programs or measures referred to the OALJ as discussed below. In addition, this approval does not extend to any cost allocation and cost recovery issues referred to the OALJ as discussed below.

 **3. Deletion of Program Measures**

West Penn proposes to delete the clothes dryer, programmable thermostat and dishwasher measures from its Plan. West Penn states that clothes dryers and programmable thermostats were eliminated because they are not ENERGY STAR rated appliances, making it difficult for customers and vendors to know which units qualify under West Penn’s current plan. West Penn proposes to remove the dishwasher measure simply to make its program offering more consistent with the other FirstEnergy companies’ offerings. In addition, West Penn asserts that no other EDC in West Penn’s vicinity offers a dishwasher measure; therefore, removing this measure will reduce customer confusion.[[9]](#footnote-9)

The OCA states that it does not agree with the elimination of the dishwasher incentive simply because the other FirstEnergy companies and EDCs in West Penn’s area do not have a similar measure. The OCA further notes that dishwashers are an ENERGY STAR rated appliance that could provide valid energy efficiency savings. The OCA also notes that while it understands the value of consistency across the FirstEnergy companies, the continuation of the dishwasher measure should be considered to the extent that it provides a benefit.[[10]](#footnote-10)

We agree with West Penn that the clothes dryer and programmable thermostat measures should be eliminated as they are not ENERGY STAR rated and are not, therefore, likely to contribute to West Penn’s ability to meet the Act 129 mandates in a cost effective manner. As such, we approve West Penn’s proposal to remove the clothes dryer and programmable thermostat program measures from its EE&C Plan.

However, based on the evidence before us, we are not persuaded that the dishwasher measure should be discontinued at this time. Therefore, before making a final ruling on the dishwasher measure, we will refer this issue to the OALJ for further development of the evidentiary record.

1. **Elements of the Petition being Referred to OALJ**

**1. Conservation Voltage Reduction Program**

West Penn proposes to add a new Conservation Voltage Reduction (CVR) program that closely resembles the CVR program implemented by PECO. West Penn’s CVR program, however, is not designed to be deployed system wide and will have a

1.5 percent voltage reduction on selected circuits.[[11]](#footnote-11)

The OCA, Penn State, PCOC, and WPPII all raised system reliability and quality of service issues regarding the proposed CVR program.[[12]](#footnote-12) In addition, PCOC questions the savings that can be attributed to West Penn in relation to any energy savings a West Penn customer may realize from the CVR program.[[13]](#footnote-13) Furthermore, the OCA, Penn State, PCOC and WPPII all raised concerns about the allocation and recovery of costs associated with the proposed CVR program.[[14]](#footnote-14)

We are of the opinion that the OCA, Penn State, PCOC and WPPII have raised legitimate questions of fact and law regarding the implementation of the proposed CVR program, its impact on system reliability, quality of service and the savings to be attributable to this proposed program. As such, we will refer the issue of whether the CVR program, as proposed by West Penn, should be added to West Penn’s EE&C Plan to the OALJ for consideration. This referral includes all cost allocation and cost recovery issues raised by the OCA, Penn State, PCOC and WPPII regarding the CVR Program.

**2. Administrative Changes**

West Penn proposes to make several administrative changes to its Plan designed to streamline the administration of programs and to make them consistent with the other FirstEnergy companies. Specifically, West Penn proposes to include incentive ranges rather than a fixed incentive amount. In addition, West Penn seeks approval to add new measures to programs as the measures are approved for inclusion in the Technical Reference Manual (TRM). Under West Penn’s proposal, West Penn would not seek additional Commission approval if conditions described in Witness Miller’s testimony are met.[[15]](#footnote-15)

The OCA and WPPII comment that the incentive ranges being proposed give West Penn too much discretion that could result in higher than necessary incentives, weaken the program impact, and cause uncertainty and confusion with trade allies and customers. The OCA and WPPII state that if West Penn is permitted to use incentive ranges, such approval should set forth a defined process for changing the incentive level to avoid discrimination.[[16]](#footnote-16) The OCA asserts that West Penn’s proposal to add new measures that are included in the TRM without seeking further Commission approval is expressly contrary to the Commission’s June 10, 2011 *Implementation Order* and should be denied.[[17]](#footnote-17)

The Commission finds that the OCA and WPPII have raised questions of fact and law regarding the implementation of the administrative changes proposed by West Penn. Further development of the evidentiary record is necessary to resolve these issues. As such, we will refer the administrative changes proposed by West Penn to the OALJ for consideration.

**3. Cost Allocation and Cost Recovery**

West Penn is proposing a new budget, cost allocation and surcharge, all prompted by its proposed EE&C Plan changes. West Penn proposes to increase costs allocated to the residential class by $608,000, the government sector by approximately $2.2 million and the large commercial and industrial sector by $8,000. West Penn also proposes to decrease the costs allocated to the small commercial and industrial class by $2.8 million. West Penn asserts that the average bill impacts from these changes range from -0.4% to +0.2%.[[18]](#footnote-18) West Penn explains and seeks approval of its new EE&C Surcharge and authorization to implement its revised rates.[[19]](#footnote-19)

The OCA and PCOC raise concerns about the proposed reduction in the funding for programs that target low-income customers.[[20]](#footnote-20) The OCA also raises concerns about the proposed residential class cost allocation increase in light of prior settlements.[[21]](#footnote-21) Penn State raises questions regarding the allocation of costs to its tariff.[[22]](#footnote-22) WPPII raises concerns about the proposed decrease in funding for the Customer Load Response Program and increased funding of the Customer Resources Demand Response Program.[[23]](#footnote-23) WPPII also raises concerns about West Penn’s proposal to fund the CVR program through reductions in programs offered to large commercial and industrial customers.[[24]](#footnote-24)

As the Commenters have raised factual and legal issues regarding West Penn’s proposed EE&C Plan budget, cost allocation and cost recovery, we will refer these issues to the OALJ for consideration. As the proceedings before the OALJ are to be expedited, we caution the Parties against re-litigating issues that were previously decided by the Commission.

**V. Conclusion**

As set forth above, we approve, in the interim, certain portions of the Amended Energy Efficiency and Conservation Plan submitted by West Penn Power Company, on August 9, 2011. West Penn Power Company is permitted to implement any portion of its Amended Energy Efficiency and Conservation Plan that has been approved without modification by the Commission in the *October 2009 Order*, the *March 2010 Order*, the *June 2010 Order*, the *January 13, 2011 Order* or this Interim Opinion and Order. All other portions of the proposed Amended Energy Efficiency and Conservation Plan not approved by prior Commission Order or this Interim Opinion and Order will be referred to the Office of Administrative Law Judge for the scheduling of such proceedings as may be necessary and the issuance of a Recommended Decision on an expedited basis; **THEREFORE;**

 **IT IS ORDERED:**

1. That certain portions of the Amended Energy Efficiency and Conservation Plan, which was filed on August 9, 2011, by West Penn Power Company are approved consistent with the discussion in this Interim Opinion and Order.

2. That West Penn Power Company is permitted to implement those portions of its Amended Energy Efficiency and Conservation Plan expressly approved consistent with this Interim Opinion and Order.

3. That all portions of the Amended Energy Efficiency and Conservation Plan, which was filed on August 9, 2011, by West Penn Power Company that are not expressly approved in this Interim Opinion and Order are referred to the Office of Administrative Law Judge for the scheduling of such proceedings as may be necessary and the issuance of a Recommended Decision on an expedited basis.

4. That a copy of this Interim Opinion and Order be served on all of the parties of record.

 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: October 28, 2011

ORDER ENTERED: October 28, 2011

1. *See e.g.,* October 28, 2009 Order at 126. [↑](#footnote-ref-1)
2. In the proceedings related to the September 10, 2010 Plan filed by the Company, the ALJs referred to the September 10, 2010 filing as the “Second Amended Plan.” For the purposes of this Opinion and Order, the September 10, 2010 Plan will be referred to as the “First Amended Plan.” [↑](#footnote-ref-2)
3. West Penn Petition at 8. [↑](#footnote-ref-3)
4. West Penn Petition at 8. [↑](#footnote-ref-4)
5. WPPII Answer at 4 [↑](#footnote-ref-5)
6. OCA Comments at 3. [↑](#footnote-ref-6)
7. West Penn Petition at 9. [↑](#footnote-ref-7)
8. OCA Comments at 3. [↑](#footnote-ref-8)
9. West Penn Petition at 9 and 10. [↑](#footnote-ref-9)
10. OCA Comments at 13. [↑](#footnote-ref-10)
11. West Penn Petition at 11. [↑](#footnote-ref-11)
12. See, OCA Comments at 4-9; Penn State Comments at 2 and 3;

PCOC Comments at 2-5; WPPII Answer at 5 and WPPII Comments at 6-8. [↑](#footnote-ref-12)
13. PCOC Comments at 4 and 5. [↑](#footnote-ref-13)
14. See, OCA Comments at 12, 14 and 15; Penn State Comments at 2 and 3; PCOC Comments at 2; WPPII Comments at 8 and 9. [↑](#footnote-ref-14)
15. West Penn Petition at 11. [↑](#footnote-ref-15)
16. OCA Comments at 10 and 11; WPPII Comments at 9-11. [↑](#footnote-ref-16)
17. OCA Comments at 11 and 12. [↑](#footnote-ref-17)
18. West Penn Petition at 10. [↑](#footnote-ref-18)
19. West Penn Petition at 11-15. [↑](#footnote-ref-19)
20. OCA Comments at 12 and 13; PCOC Comments at 2, 3 and 5-8. [↑](#footnote-ref-20)
21. OCA Comments at 14 and 15. [↑](#footnote-ref-21)
22. Penn State Comments at 3. [↑](#footnote-ref-22)
23. WPPII Answer at 4 and 5; WPPII Comments at 5. [↑](#footnote-ref-23)
24. WPPII Comments at 8 and 9. [↑](#footnote-ref-24)