

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
800-684-6560 (in PA only)

FAX (717) 783-7152  
consumer@paoca.org

December 18, 2012

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

Re: Petition of West Penn Power Company for  
Approval of its Act 129 Phase II Energy  
Efficiency and Conservation Plan  
Docket No. M-2012-2334398

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Sincerely,

A handwritten signature in cursive script that reads "Christy M. Appleby".

Christy M. Appleby  
Assistant Consumer Advocate  
PA Attorney I.D. # 85824

Enclosures

cc: Hon. Elizabeth H. Barnes, ALJ  
Certificate of Service

163362

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of West Penn Power Company	:	
For Approval of its Act 129 Phase II	:	Docket No. M-2012-2334398
Energy Efficiency and Conservation Plan	:	

---

PREHEARING MEMORANDUM  
OF THE  
OFFICE OF CONSUMER ADVOCATE

---

Pursuant to Section 333 of the Public Utility Code, 66 Pa.C.S. § 333, and in response to the November 29, 2012 Prehearing Conference Order issued in the above-captioned matter, the Office of Consumer Advocate (OCA) provides the following information:

**I. Introduction**

On October 15, 2008, Act 129 of 2008 (Act 129 or the Act) was signed into law by Governor Edward G. Rendell. Act 129 made numerous amendments to Chapter 28 of the Public Utility Code and required the seven major electric distribution companies (EDCs) to file energy efficiency and conservation plans (EE&C Plans), which occurred in the summer of 2009. These Phase I Plans expire on May 31, 2013. On August 3, 2012, the Pennsylvania Public Utility Commission (Commission) entered the Phase II Implementation Order at Docket Nos. M-2008-2069887 and M-2012-2289411, tentatively adopting EDC-specific targets for reducing energy consumption for the next EE&C Program term (June 1, 2013-May 31, 2016). Each EDC was given an EDC-specific Phase II consumption reduction target (as a percentage of its expected sales for the June 1, 2009 through May 31, 2010 period). The Commission directed that: (1) 10% of overall consumption reductions come from the Government/Non-Profit/Institutional sector; (2) a Plan's portfolio of measures includes a proportionate number of low-income

measures; and (3) EDCs obtain a minimum of 4.5% of their consumption reductions from the low-income sector. The Total Resource Cost Test (TRC) will continue to be used to evaluate each EDC's Plan. The Act caps annual spending on the Plan at 2% of the EDC's total revenues for the calendar year 2006. The Act provides for full and current cost recovery of the Plan costs through an automatic adjustment rider, but it prohibits the recovery of lost revenues by the EDC. The costs incurred are to be allocated to the classes that directly benefit from the measures implemented, unless a system wide benefit can be shown.

The Phase II Implementation Order stated that an EDC could submit a Petition for Evidentiary Hearing no later than August 20, 2012 for the limited purpose of challenging these consumption reduction requirements. If no Petition was filed, the consumption reduction requirements would be deemed accepted. Phase II Implementation Order at 31. On August 20, 2012, Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company (West Penn) (collectively the FirstEnergy Companies or Companies) filed a Joint Petition for an Evidentiary Hearing on the Energy Efficiency Benchmarks Established for the Period June 1, 2013 through May 31, 2016. The OCA filed the Direct Testimony of Geoffrey C. Crandall in the matter, hearings were held and the parties filed Main Briefs. On December 5, 2012, the Commission issued an Order which denied the FirstEnergy Companies' request to amend the consumption reduction targets and upheld the consumption reduction targets established in the Phase II Implementation Order.

Met-Ed, Penelec, Penn Power and West Penn are each required to file a Plan under Act 129 and the Commission's Phase II Implementation Order. The Commission stated that the Plans must be ruled upon by March 15, 2013 for the FirstEnergy Companies.

## **II. Procedural History**

On November 13, 2012, West Penn Power Company (West Penn Power or the Company) filed its Petition for Approval of its Energy Efficiency and Conservation Phase II Plan (Phase II Plan) with the Commission, pursuant to Section 2806.1 of the Public Utility Code and pursuant to the Implementation Order entered by the Commission at Docket Nos. M-2008-2069887 and M-2012-2289411 on August 3, 2012. The three-year cost of the Company's EE&C Phase II Plan is projected to be \$70,687,806. The Company plans to reduce annual energy consumption by nearly 337,533 MWh by May 31, 2016, by implementing nine energy efficiency programs. With respect to residential customers, West Penn Power has proposed the following four programs: (1) an Appliance Turn-In Program; (2) a Home Performance Program; (3) Energy Efficient Products Program; and (4) Low Income Program.

The FirstEnergy Companies' filings were assigned to the Office of Administrative Law Judge and further assigned to Administrative Law Judge Elizabeth H. Barnes for investigation. On November 29, 2012, ALJ Barnes issued a Prehearing Conference Order. On December 19, 2012, the Prehearing Conference will be held in Harrisburg.

On December 7, 2012, the OCA filed Notices of Intervention and Public Statements in each of the respective dockets for the FirstEnergy Companies.

On December 21, 2012, the OCA will file Comments in accordance with the Phase II Implementation Order.

## **III. Issues and Sub-issues**

Based upon a preliminary analysis of the West Penn Power filing and participation in stakeholder meetings, the OCA has compiled a list of issues and sub-issues, which it anticipates will be included in its investigation of the filings. It is anticipated that other issues may arise and may be pursued during the course of these proceedings.

The following list sets forth the issues at this time that the OCA anticipates it will examine:

(1) Reasonableness of the proposed energy conservation plan and the individual program design for meeting the requirements of Section 2806.1 of the Code and the Commission's Phase II Implementation Order;

(2) Reasonableness of the balance of the portfolio of programs proposed and whether the programs are equitably distributed across rate classes;

(3) Whether the Plan meets the requirements of Section 2806.1 and the Phase II Implementation Order for low-income and government/educational/non-profit customers;

(4) Review of the proposed multi-family buildings programs and the proposed cost allocation of those programs;

(5) Reasonableness of the proposed program costs, including the proposed budgets;

(6) Reasonableness of the proposed cost recovery mechanisms and the allocation of overhead and common costs;

(7) Reasonableness and cost effectiveness of the proposed programs, including the cost-effectiveness of the Plan as measured by the Total Resource Cost (TRC) test;

(8) Reasonableness of the proposed measurement and verification and evaluation plans; and

(9) The need for an on-going stakeholder group.

The OCA specifically reserves the right to raise additional issues as may be necessary.

#### **IV. Witnesses**

The OCA intends to present the direct testimony of the following witness in this proceeding. In order to expedite the resolution of this proceeding, the OCA requests that copies

of all interrogatories, comments and answers to interrogatories be mailed directly to the expert witness as well as to counsel for the OCA.

EE&C Plans and Cost Recovery

David G. Hill, Ph.D.  
Managing Consultant  
Vermont Energy Investment Corporation  
255 South Champlain Street  
Burlington, VT 05401  
Telephone: (802) 658-6060 ext. 1034  
E-mail: [Dhill@veic.org](mailto:Dhill@veic.org)

The OCA specifically reserves the right to call additional witnesses, as necessary. As soon as the OCA has determined whether an additional witness or witnesses will be necessary for any portion of its case, all parties of record will be notified.

**V. Service on the OCA**

The OCA will be represented in this case by Assistant Consumer Advocates, Christy M. Appleby and Candis A. Tunilo. Two copies of all documents should be served on the OCA as follows:

Christy M. Appleby  
Candis A. Tunilo  
Assistant Consumer Advocates  
Office of Consumer Advocate  
5<sup>th</sup> Floor, Forum Place  
555 Walnut Street  
Harrisburg, Pa. 17101-1923  
Telephone: (717) 783-5048  
Fax: (717) 783-7152  
E-mail: [cappleby@paoca.org](mailto:cappleby@paoca.org)  
[ctunilo@paoca.org](mailto:ctunilo@paoca.org)

## **VI. Discovery**

To date, the OCA has issued one set of formal interrogatories. The OCA has also participated in one informal discovery conference. The OCA will continue to participate in informal discovery conferences in order to attempt to expeditiously resolve discovery questions.

In order to effectively investigate and adequately develop a record on these issues in the limited timeframe for this proceeding, the OCA requests a modification of the Commission's procedural rules, as set forth below:

(1) Answers to written interrogatories shall be served in-hand within seven (7) calendar days of service.

(2) Objections to interrogatories shall be communicated orally within three (3) calendar days of the service of interrogatories; unresolved objections shall be served to the ALJ in writing within five (5) days of service of the interrogatories.

(3) Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) calendar days of service of the written objections.

(4) Answers to motions to dismiss objections and/or answering of interrogatories shall be filed within three (3) calendar days of service of such motions.

(5) Ruling over such motions shall be issued, if possible, within seven (7) calendar days of the filing of the motion.

(6) Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within seven (7) calendar days.

(7) Requests for admissions will be deemed admitted unless answered within seven (7) calendar days or objected to within five (5) calendar days of service.

The OCA reiterates that all time periods established in the foregoing discovery schedule should be calculated using calendar days.

#### **VII. Schedule**

The Prehearing Order provides a proposed schedule for these proceedings. The OCA can accept the proposed schedule and will work with the parties to address any witness scheduling issues.

#### **VIII. Public Input Hearings**

The OCA does not anticipate that a public input hearing will be necessary in this proceeding.

Respectfully Submitted,



Christy M. Appleby

Assistant Consumer Advocate

PA Attorney I.D. # 85824

E-Mail: [CApplby@paoca.org](mailto:CApplby@paoca.org)

Candis A. Tunilo

Assistant Consumer Advocate

PA Attorney I.D. # 89891

E-Mail: [CTunilo@paoca.org](mailto:CTunilo@paoca.org)

Counsel for:

Tanya J. McCloskey

Acting Consumer Advocate

Office of Consumer Advocate  
5th Floor, Forum Place  
555 Walnut Street  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152

DATE: December 18, 2012  
163746.doc



CERTIFICATE OF SERVICE

Petition of West Penn Power Company : Docket No. M-2012-2334398  
For Approval of its Act 129 Phase II :  
Energy Efficiency and Conservation Plan :

I hereby certify that I have this day served a true copy of the foregoing, the Office of Consumer Advocate's Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 18th day of December 2012.

SERVICE BY E-MAIL and INTEROFFICE MAIL

Johnnie Simms, Esq.  
Bureau of Investigation & Enforcement  
Pa. Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, P.O. Box 3265  
Harrisburg, PA 17105-3265

SERVICE BY E-MAIL and FIRST CLASS MAIL

John F. Povilaitis, Esq.  
Buchanan, Ingersoll & Rooney, P.C.  
409 Second Street, Suite 500  
Harrisburg, PA 17101-1357

Kathy J. Kolich, Esq.  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44309

Lauren M. Lepkoski, Esq.  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001

Steven C. Gray, Esq.  
Office of Small Business Advocate  
Commerce Building, Suite 1102  
300 North Second Street  
Harrisburg, PA 17101

Kevin McKeon, Esq.  
Julia A. Conover, Esq.  
Hawke McKeon & Sniscak  
100 North Tenth Street  
Harrisburg, PA 17101

Mark C. Morrow, Esq.  
Chief Regulatory Counsel  
UGI Corporation  
460 North Gulph Road  
King of Prussia, PA 19406

Susan E. Bruce, Esq.  
Charis Mincavage, Esq.  
Vasiliki Karandrikas, Esq.  
Teresa K. Schmittberger, Esq.  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

Thomas J. Sniscak, Esq.  
William E. Lehman, Esq.  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105

Heather Langeland, Esq.  
PennFuture  
200 First Ave., Suite 200  
Pittsburgh, PA 15222

Harry S. Geller, Esq.  
Patrick M. Cicero, Esq.  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101

Joseph L. Vullo, Esq.  
1460 Wyoming Avenue  
Forty Fort, PA 18704

Derrick Price Williamson, Esq.  
Barry A. Naum, Esq.  
Spilman, Thomas & Battle, PLLC  
1100 Bent Creek Blvd., Suite 101  
Mechanicsburg, PA 17050



Candis A. Tunilo  
Assistant Consumer Advocate  
PA Attorney I.D. # 89891  
E-Mail: [ctunilo@paoca.org](mailto:ctunilo@paoca.org)  
Christy M. Appleby  
Assistant Consumer Advocate  
PA Attorney I.D. # 85824  
E-Mail: [cappleby@paoca.org](mailto:cappleby@paoca.org)

Counsel for  
Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
163369