



October 10, 2017

Via eFiling

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Docket No. C-2016-2547322
Robert M. Mattu v. West Penn Power Company
EAP Letter in Support of the Petition for Reconsideration

Dear Secretary Chiavetta,

The Energy Association of Pennsylvania (“EAP”) files this letter on behalf of its natural gas and electric distribution company members¹ in support of the Petition of West Penn Power Company (“West Penn”) for Reconsideration (“Petition”) of the Pennsylvania Public Utility Commission’s (“Commission”) Order in *Robert M. Mattu v. West Penn Power Company*, Docket No. C-2016-2547322 (“*Mattu* Order”) which became effective on August 14, 2017. Pursuant to 52 Pa. Code §5.502(e), EAP submits this letter in the nature of an amicus filing for the purpose of providing the Commission additional insight regarding the impact of the *Mattu* Order and requests that the Commission grant the relief requested by West Penn. As regulated entities, EAP’s members have a unique and substantial interest in the outcome of the instant proceeding wherein the Commission, despite agreeing with Administrative Law Judge Katrina Dunderdale that West Penn did not violate the Public Utility Code (“Code”), any Commission order or

¹ Hereinafter referred to as NGDCs and EDCs, respectively. Members of EAP include Columbia Gas of Pennsylvania, Inc.; Pike County Light & Power Company; National Fuel Gas Distribution Corp.; PECO Energy Company; Peoples Natural Gas Company LLC; Peoples Equitable Division; Peoples TWP LLC; Philadelphia Gas Works; UGI Central Penn Gas, Inc.; UGI Penn Natural Gas, Inc.; UGI Utilities Inc.; UGI Utilities, Inc. – Electric Division; Valley Energy Inc.; Citizens’ Electric Company; Duquesne Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; Pennsylvania Power Company; PPL Electric Utilities; Wellsboro Electric Company; and West Penn Power Company.

regulation, nevertheless awarded equitable relief to the complainant based on a newly announced and subjective fairness standard.

EAP maintains that the equitable relief provided in the *Mattu* Order not only lacks legal justification and exceeds the Commission's authority under the Code but also creates regulatory uncertainty and suspect public policy. Under the reasoning adopted in the *Mattu* Order, customers, utilities, suppliers and other stakeholders whose actions are governed by laws applicable to the regulated utility business could seek equitable relief from the Commission in a variety of circumstances where they are unhappy with a particular outcome that was prescribed under the Code, Commission orders, regulations or other applicable statutes.

The analysis applied in the *Mattu* Order undermines the lawful and regular operations conducted by Pennsylvania utilities to provide safe, reliable and reasonable service to the public in the Commonwealth. It encourages the filing of a petition for relief any time a person feels "aggrieved" by lawful action of a utility and wants to be treated differently or accorded a special status. Despite the statement in the *Mattu* Order that it is not intended to be precedential, the analysis leaves the regulated community to guess whether any operation or activity which otherwise accords with industry best practice and/or lawfully adopted statutory or regulatory standards will be modified by the Commission because it may not be perceived as "fair" when applied to the specific situation of a particular customer.

In its Petition, West Penn Power listed a number of examples where a customer or a utility might conceivably seek recourse under the *Mattu* fairness analysis enunciated in the *Mattu* Order. *See*, at ¶¶ 41 and 42. In many of these situations, the Commission could find itself in the untenable situation of determining, on a case-by-case basis, whether an equitable remedy was available so as to provide a petitioner relief from a lawful obligation that all others similarly situated are required to fulfill, i.e. the obligation to pay Commission-approved energy efficiency or universal service costs or allowing the utility access to its facilities that are lawfully on the petitioner's property. By replacing the lawful utility solution with a unique remedy perceived as more "acceptable" or "fair" to the customer, the Commission is substituting its judgement for that of utility management. Such a result is in contravention of longstanding legal principals in Pennsylvania that the Commission's authority to interfere in the management of a regulated utility is limited and that the Commission is not empowered to act as a super board of directors. *See Phila. Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044 (Pa. Cmwlth. 2002) and *Metropolitan Edison Company v. Pa. PUC*, 437 a.2d 76 (Pa. Cmwlth. 1981).

Applying the newly articulated *Mattu* fairness standard would cause the Commission to render decisions where it otherwise lacks jurisdiction, to condone the discriminatory treatment of ratepayers within a single rate class, and to change the otherwise lawful and regular conduct of the utility in order to address an outcome that is not "acceptable" to a particular customer or group of customers. Over the long term, regulatory uncertainty would become the norm and utilities would be operating in a subjective business environment that would necessarily undermine reliability, resilience and the delivery of reasonable utility service.

Verifying the legitimacy of the concerns expressed above, the *Mattu* Order has already been cited by at least one complainant as a basis for granting an exception to the installation of a smart meter at her home based on her unique circumstances. In the Exceptions filed to the Initial

Decision of Administrative Law Judge Heep in *Mary Paul v. PECO Energy Company*, Docket No. C-2015-2475355, Ms. Paul argued that:

“[t]he Court erred in not considering how, even if legal, the addition of an AMI meter onto my property would case [sic] me grievous bodily harm just as the Commission ruled in case # C-2016-2547322, Robert J. Mattu [sic].”

Ms. Paul further stated that:

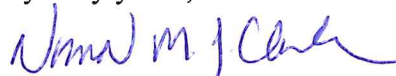
“I am not asking for a blanket exception from the AMI meters for everyone – just for me based upon my need to avoid all wireless...due to my EHS. The Commission ruled that these issues have to be decided on a case-by-case basis, and just because the utility followed all the rules, does not mean that a practice is safe for every single customer.”

See Exceptions at p. 18.

EAP contends that the concerns of its members that the *Mattu* Order will have substantial negative long term impacts on the manner in which public utility service is delivered in Pennsylvania are not conjectural or hypothetical and that the Commission overlooked these considerations when granting equitable relief for Mr. Mattu in the instant case.

For these reasons as well as those delineated in the Petition of West Penn Power Company for Reconsideration, the Energy Association of Pennsylvania respectfully requests that the Commission grant reconsideration, rescind the entered Order, adopt the Initial Decision of Administrative Law Judge Dunderdale, and dismiss the Formal Complaint filed by Robert M. Mattu.

Very truly yours,



Donna M.J. Clark
Vice President & General Counsel

CC: Robert A. Cinpinski, Esquire
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