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September 10, 2009

VIA ELECTRONIC FILINGJames J. McNulty, Secretary
PA Public Utility Commission
400 North Street, Keystone Bldg., 2nd Fl.
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Re: Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval for Recovery Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan; Docket No. M-2009-2093218

Dear Secretary McNulty:

Enclosed please find the original, Reply Brief of Amicus Curiae Independent Oil and Gas Association of Pennsylvania in Support of Natural Gas Substitution Measures, which was electronically filed today, in the above-referenced matter. As evidenced by the attached Certificate of Service, the parties of record have been served in the manner indicated.

If you have any questions regarding this filing, please contact me at your convenience.

Very truly yours,


Kevin J. MoodyKJM/jls
Enclosure

cc: Certificate of Service (w/enc)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing Reply Brief on the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**REPLY BRIEF
OF
AMICUS CURIAE
INDEPENDENT OIL AND GAS ASSOCIATION OF PENNSYLVANIA
IN SUPPORT OF
NATURAL GAS SUBSTITUTION MEASURES**

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I. INTRODUCTION

As permitted by 52 Pa. Code § 5.502(e), the Independent Oil and Gas Association of Pennsylvania (“IOGA”) as *amicus curiae* submits this reply brief in response to the position of the Department of Environmental Protection (“DEP”) and West Penn Power Company d/b/a Allegheny Power (“AP”) that natural gas substitution measures do not qualify as “energy efficiency and conservation measures” as defined in Act 129. Although DEP does not develop this argument in its brief in this proceeding,¹ it has developed this argument in another Act 129 Plan proceeding, and AP appears to advocate the same position.²

IOGA supports the position of the NGDCs³ that natural gas substitution measures that have demonstrated sustainable, long-term electric usage reduction opportunities for retail customers constitute energy efficiency and conservation measures under Act 129. IOGA takes no position on whether any particular electricity-to-gas substitution (or switching) opportunity, beyond that which West Penn Power Company d/b/a Allegheny Power (“AP”) has provided, should be presently included in AP’s Act 129 Plan or, alternatively, addressed in a separate proceeding.

¹ DEP Main Brief (MB) at 4.

² AP MB at 28.

³ UGI Utilities, Inc.; UGI Penn Natural Gas, Inc.; UGI Central Penn Gas, Inc.; The Peoples Natural Gas Company; Columbia Gas of Pennsylvania, Inc.; and National Fuel Gas Distribution Corporation.

II. INTEREST OF AMICUS CURIAE

IOGA is a non-profit trade association representing Pennsylvania independent natural gas producers and marketers. IOGA's members produce, transport and market their Pennsylvania Appalachian natural gas production to Pennsylvania natural gas distribution companies ("NGDCs") and to Commission-licensed natural gas suppliers ("NGSs") for use by Pennsylvania retail customers. IOGA's members also include NGSs that transport and market their own Pennsylvania Appalachian production, as well as the production of other companies, to Pennsylvania retail customers.

As independent producers and marketers of low cost, energy efficient Pennsylvania Appalachian natural gas, IOGA has an obvious interest in the production and use of natural gas. The Commission is well aware that the use of Pennsylvania-produced natural gas not only provides efficiency and cost savings to Pennsylvania customers, it also provides significant economic development and jobs to Pennsylvania. But the promotion of these interests and the electricity demand and consumption reductions required by Act 129 are not mutually exclusive. As shown in the brief of the NGDCs, there can be no reasonable dispute that natural gas is a more efficient end-use fuel than electricity, even when the electricity is generated by natural gas.⁴ Accordingly, IOGA's interest in natural gas production and usage to help decrease electricity usage is consistent with electricity reduction requirements of Act 129 and, thus, is also in the public interest. As the NGDCs point out, although electricity-to-gas substitution measures enable more use of natural gas at the end-use level, these types of measures will not only reduce electric usage, "but total energy usage [electric and gas] will be reduced also."⁵

⁴ NGDCs MB at 12 - 17; *see also*, http://www.naturalgas.org/overview/uses_electrical.asp (Electric Generation Using Natural Gas).

⁵ NGDCs MB at 20.

III. DESCRIPTION OF EDC PLAN⁶

As applicable to the issue IOGA is addressing, AP's Act 129 Plan includes one gas substitution opportunity – customer-proposed combined heat and power (“CHP”) applications under the Custom Application Program, with potential rebates of up to 50% of a project cost (capped at \$500,000).⁷

IV. SUMMARY OF ARGUMENT

Programs that enable customers to switch from less efficient usages of electricity to more efficient usages of natural gas for space heating, water heating and appliances are “energy efficiency and conservation measures” as defined in Act 129. If the Commission declines to require such programs in AP's plan in this abbreviated proceeding, the Commission should make clear that it is not because these programs are excluded from the scope of Act 129 or contrary to the purpose of Act 129.

V. ARGUMENT

A. Act 129 Conservation and Demand Reduction Requirements

1.-5. IOGA's position on these issues is addressed in Section V.A.6. below.

6. Issues relating to individual conservation and demand reduction programs

DEP argues that electricity to gas substitution (or switching) measures are not “energy efficiency and conservation measures.”⁸ Although AP accepts the possibility that gas switching programs could be added to Act 129 plans as a result of the ongoing plan reviews or the fuel switching working group,⁹ AP “does not dismiss the possibility that the Commission may

⁶ This reply brief uses the same format as the parties' main briefs.

⁷ NGDCs MB at 5, 9.

⁸ DEP MB at 4.

⁹ AP MB at 27-28.

conclude that fuel switching programs conflict with the purpose of Act 129 and should not be included in the Plans.”¹⁰ Consistent with DEP’s position, AP argues that gas switching programs are “not specifically endorsed by Act 129 as a Plan measure” and “not specifically identified as an ‘energy efficiency and conservation measure’ under Act 129.”¹¹

This position appears not to be consistent with the statutory definition of “energy efficiency and conservation measures” in Act 129 and the applicable principles of statutory construction, or the purpose of Act 129. In its Technical Reference Manual (“TRM”) Order, the Commission implicitly rejected the position that fuel switching is beyond the scope of Act 129. The Commission should expressly reject this position in this proceeding.

Act 129 defines “energy efficiency and conservation measures” as follows:

(1) Technologies, management practices or other measures employed by retail customers that reduce electricity consumption or demand if all of the following apply:

- (i) The technology, practice or other measure is installed on or after the effective date of this section at the location of a retail customers.
- (ii) The technology, practice or other measure reduces consumption of energy or peak load by the retail customers.
- (iii) The cost of the acquisition or installation of the measure is directly incurred in whole or in part by the electric distribution company.¹²

The definition then lists examples of energy efficiency and conservation (“EE&C”) measures according to: (1) fuel source (solar panels, geothermal heating); (2) application (energy efficient windows, doors, lighting and appliances; insulation; reflective roof coverings; and energy efficient heating and cooling equipment on systems; and (3) activity (retrofitting exit signs, high

¹⁰ *Id.* at 28 n.31.

¹¹ *Id.* at 28.

¹² 66 Pa. C.S. § 2806.1(m) (emphasis added).

bay fluorescent lighting and pedestrian/traffic signals). The definition concludes with “other technologies, practices or measures approved by the commission.”¹³

The overriding statutory requirements are that “energy efficiency and conservation measures” must be employed by retail customers and reduce the customer’s electricity consumption or demand.¹⁴ The three conditions in subparagraphs (i), (ii) and (iii) of the definition actually impose only two additional conditions, one relating to the time and place of installation [66 Pa. C.S. § 2806.1(m)(1)(i)] and the other requiring some cost to be incurred by the electric utility [66 Pa. C.S. § 2806.1(m)(1)(iii)]. The condition in subparagraph (ii) merely restates the overriding general requirement of the reduction of consumption or peak demand.

In view of the fact that natural gas is a more efficient end-use fuel than electricity,¹⁵ energy efficient equipment and appliances powered by natural gas and used for space heating, water heating and clothes drying, for example, clearly qualify as “energy efficiency and conservation measures” under the statutory definition.¹⁶ The position of DEP and AP ignores the overriding statutory requirements and instead incorrectly focuses on the illustrative list of examples as the controlling statutory provisions.

The list is merely illustrative of the various types of technologies, practices and measures that qualify as “energy efficiency and conservation measures” – the list does not supersede the general requirements, so there is no need for “gas switching” or “fuel switching” measures to be specifically “identified” or “endorsed” in the definition, as AP contends. Nonetheless, the list encompasses efficient natural gas powered equipment, systems or appliances in the terms

¹³ *Id.*

¹⁴ 66 Pa. C.S. § 2806.1(m).

¹⁵ NGDCs MB at 12, 13-16.

¹⁶ *See*, NGDCs MB at 18-21.

“energy efficient heating and cooling equipment or systems and energy efficient appliances.”

The argument that natural gas powered equipment, systems or appliances are not included within the scope of Act 129 because the Act is concerned with reductions in electricity consumption or peak demand does not adequately focus on the specific statutory language or the applicable principles of statutory construction.

The term “energy” is not defined in Act 129 or elsewhere in the Public Utility Code. Undefined words in a statute are construed according to their common and approved usage, or plain and ordinary meanings,¹⁷ and dictionaries are generally used to determine the meaning of undefined words.¹⁸ The Statutory Construction Act also provides that “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly” and that “[e]very statute shall be construed, if possible, to give effect to all its provisions.”¹⁹ Moreover, the plain meaning of clear and unambiguous terms cannot be ignored under the pretext of pursuing what is alleged to be the spirit of the statute.²⁰ In the context of Act 129, the plain and ordinary meaning of “energy” is “usable power (as heat or electricity); *also*: the resources for producing such power.”²¹ Thus, the plain and unambiguous meaning of the term “energy” in the context of “energy efficient heating and cooling equipment

¹⁷ 1 Pa. C.S. § 1903; *Com. v. Johnson*, 612 A.2d 1382 (Pa.Super. 1992).

¹⁸ *Delmarva Power & Light Co. v. Com.*, 870 A.2d 901, 910 (Pa. 2005); *Philadelphia Eagles Football Club, Inc. v. City of Philadelphia*, 823 A.2d 108, 127 (Pa. 2003) (Per Nigro, J., with two justices concurring and two justices concurring in result), *reargument denied*.

¹⁹ 1 Pa. C.S. § 1921(a).

²⁰ 1 Pa. C.S. § 1921(b); *Luther P. Miller, Inc. v. Underground Storage Tank Indemnification Bd.*, 965 A.2d 398, 404 n.7 (Pa.Cmwlth. 2009); *Pennsylvania Retailers' Associations v. Lazin*, 426 A.2d 712 (Pa.Cmwlth. 1981) (court may not ignore express language of a statute).

²¹ Merriam Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/energy>.

or systems and energy efficient appliances” includes efficient equipment, systems or appliances powered by natural gas. The plain and unambiguous meaning of these terms is not limited to efficient electric equipment, systems or appliances.

The Commission has implicitly concluded this in two orders. In its Technical Reference Manual (“TRM”) Order – contrary to AP’s argument²² – the Commission deferred a determination whether gas substitution or switching measures are “standard energy efficiency measures” that should be included in the TRM’s estimated deemed annual energy savings calculations, or treated as “custom measures” that are “too complex or unique” to be included in the TRM.²³ Thus, AP’s assertion (“Commission has not endorsed any custom calculation for fuel switching”)²⁴ is correct, but only because the fuel switching working group has not yet convened. If AP’s characterization of the Commission’s resolution of PPL’s “custom measure” suggestion were correct, there would have been no point to the Commission’s establishing the working group. Finally, in its Total Resource Cost (“TRC”) Test Order, the Commission included a formula for the calculation of energy savings that result from fuel substitution.²⁵

Also, despite its arguments to the contrary, AP has shown its agreement that electricity-to-gas substitution measures are “energy efficiency and conservation measures” as defined in Act

²² AP MB at 27 (TRM Order “did not sustain PPL’s suggestion that fuel switching be considered by using a ‘custom’ calculation”).

²³ *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual Update (“TRM Order”)*, M-00051865, Order entered June 1, 2009, at 9; TRM at 1 (“The Technical Reference Manual (“TRM”) was developed to measure the resource savings from standard energy efficiency measures.”), 7 (“Custom measures are considered too complex or unique to be included in the list of standard measures provided in the TRM.”).

²⁴ AP MB at 30.

²⁵ *Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test*, M-2009-2108601, Order entered June 23, 2009, Appendix at i-ii.

129 by admitting that CHP fuel substitution projects may be proposed under its Custom Application Program.²⁶

Accordingly, in this proceeding the Commission should explicitly affirm its prior determinations (and PPL's position) that electricity-to-gas substitution measures are "energy efficiency and conservation measures" as defined in Act 129. The Commission should make clear that if it declines to require such additional programs in PPL's plan in this abbreviated proceeding, it is not because these programs are excluded from the scope of Act 129, but because of other considerations.

7. Proposals for improvement of Allegheny Power's EDC plan

Not applicable; IOGA takes no position on this issue.

B. Cost Issues

1. Not applicable; IOGA takes no position on this issue.

2. Cost effectiveness/cost-benefit issues

IOGA's position on these issues is set forth above in Section V.A.6.

3.-4. Not applicable; IOGA takes no position on these issues.

C. CSP Issues

Not applicable; IOGA takes no position on these issues.

D. Implementation and Evaluation Issues

Not applicable; IOGA takes no position on these issues.

E. Other Issues

IOGA takes no position on other issues.

²⁶ NGDCs MB at 9. IOGA notes that PECO and PPL proposed electricity-to-gas substitution measures in their Act 129 Plans. *Id.*

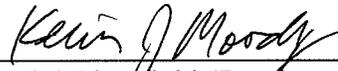
VI. CONCLUSION

For the reasons set forth above, IOGA requests that the Commission reaffirm that efficient natural gas equipment, systems or appliances that reduce retail customers' electricity consumption or peak load come within the plain and unambiguous terms of Act 129's definition of "energy efficiency and conservation measures."

VII. PROPOSED ORDERING PARAGRAPHS

1. Natural gas substitution or switching measures that reduce customers' electricity consumption or peak demand are "energy efficiency and conservation measures" under Act 129.

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