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October 2, 2009

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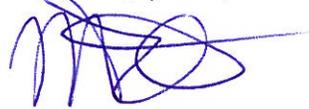
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
400 North Street – 2nd Floor
Commonwealth Keystone Building
Harrisburg, Pennsylvania 17120

Re: Petition of West Penn Power Company d/b/a Allegheny Power for
Expedited Approval of its Smart Meter Technology and Installation
Plan, Docket No. M-2009-2123951

Dear Secretary McNulty:

Attached is the Answer of West Penn Power Company d/b/a Allegheny Power in Opposition to the Petition to Intervene of Citizen Power, Inc. in the above-referenced proceeding. Copies have been served on the parties to this proceeding as indicated in the attached Certificate of Service.

Very truly yours,



Matthew A. Totino

JFP/ck

Enclosures

- c. Certificate of Service
The Honorable Mark M. Hoyer

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of West Penn Power Company :
d/b/a Allegheny Power for Expedited : Docket No. M-2009-2123951
Approval of its Smart Meter Technology :
And Installation Plan :

**ANSWER OF THE WEST PENN POWER COMPANY D/B/A ALLEGHENY
POWER IN OPPOSITION TO THE PETITION TO INTERVENE OF CITIZEN
POWER, INC.**

West Penn Power Company d/b/a Allegheny Power, by and through its counsel, files this Answer in Opposition to the Petition to Intervene of Citizen Power, Inc. ("CP") in the above-captioned proceeding. In short, Allegheny Power opposes the intervention because CP does not have a direct interest in this proceeding, and CP has failed to establish that its interests in Allegheny Power's SMIP will not be adequately represented by existing participants in the case. Both of these elements are essential and must be met for a party to be eligible to intervene. Therefore, the CP intervention is not in the public interest. In support of its Answer, Allegheny Power avers as follows:

I. Introduction

1. Act 129 of 2008 ("Act 129")¹ requires Electric Distribution Companies with at least 100,000 customers in Pennsylvania to file Smart Meter Implementation Plans ("SMIP" or "Plans") with the Commission to address the installation of smart meters and associated smart meter technology.

2. By petition dated September 25, 2009, CP seeks intervention in this proceeding. The Petition is silent as to whether CP is a membership organization and

¹ Act 129 became effective November 14, 2008.

whether CP has any members that are Allegheny Power customers. But, counsel for CP has represented that CP is not a membership organization, which signifies that there are no CP "members" who are also customers of Allegheny Power. Counsel for CP added that there is one CP employee that is a customer of Allegheny Power. However, that fact is irrelevant to CP's Petition, as there is no representation in the Petition that CP itself is a customer of Allegheny Power.

3. Section 5.72 of the Commission's regulations contains the standard for eligibility to intervene in a Commission proceeding. Under Section 5.72, eligibility to intervene is established only when the petitioner has a statutory right to intervene, when the petitioner has a direct interest in the matter that is not adequately represented by existing participants, or when the petitioner has another interest of such a nature that participation is in the public interest. 52 Pa. Code § 5.72(a)(1),(2), (3).

4. CP does not claim or cite to any statutory right to intervene. Neither has CP established a direct interest in this proceeding that is sufficient to intervene. CP is not a customer of Allegheny Power and does not have any members that are customers of Allegheny Power. Therefore, CP has admitted that it is not directly affected by the outcome in this case, and in accordance with Commission precedent,² its intervention request should be denied.

5. And, CP has failed to establish that its interests in Allegheny Power's SMIP will not be adequately represented by existing participants in the case, which is an

² *Re Pike County Light & Power Company*, Docket No. P-00011872 (Order entered June 22, 2001). In its order, the Commission denied the Petition to Intervene of the Industrial Energy Consumers of Pennsylvania ("IECPA"). The Commission based its denial on IECPA's admission that it is not directly affected by the outcome of this case and that neither it nor its members are customers of Pike County. Neither does CP advance any competitive interests that would warrant intervention. *See, e.g., Pa. Pub. Util. Comm'n v. PG&W*, 1992 Pa. PUC LEXIS 113.

essential element that must be met for a party to be eligible to intervene. Prior interventions in Allegheny Power cases by CP is irrelevant to the issue of whether they should be granted party status in this case because each case is fact specific as to whether interests are already adequately represented. Therefore, CP is not entitled to intervene.

6. In its Petition to Intervene, CP identifies itself as a non-profit public policy research, education, and advocacy organization that devotes almost all of its resources to consumer (particularly low-income) and environmental protection issues.³

7. Although CP did not specifically identify its interests in Allegheny Power's SMIP, in writing, as part of its Petition to Intervene or Prehearing Memorandum, CP did identify orally at the prehearing conference the issues that it proposes to address in this proceeding. At the prehearing conference, the following issues were identified by CP: (i) Whether SMIP costs are just and reasonable; (ii) whether the cost of the In Home Device (IHD) are just and reasonable; (iii) whether the stranded costs are minimized; and (iv) whether costs are properly allocated on a customer class basis, including the factor of relative benefits to each class.

8. However, upon review of the OCA comments and prehearing memorandum and as shown below, these cost issues raised by CP will be addressed by the OCA:

- Whether the SMIP costs are just and reasonable (OCA prehearing memo, p. 3);
- Whether the cost of the In Home Device (IHD) is just and reasonable (OCA prehearing memo, p. 3; comments, p. 15);
- Whether the stranded costs are minimized (OCA comments, p. 21);

³ CP Petition to Intervene, ¶¶ 5, 6.

- Whether costs are properly allocated on a customer class basis, including the factor of relative benefits to each class (OCA comments, p. 22-23).

Thus, these cost-related interests will be adequately represented by the OCA, which is the official Commonwealth agency authorized to represent Pennsylvania's residential customers before the Commission.⁴

9. Moreover, Pennsylvania's ACORN (Association of Community Organizations for Reform Now), which is a non-profit advocacy and membership organization whose mission is to advocate on behalf of low-income customers in Pennsylvania,⁵ is already a party to this proceeding (as an intervenor) and thus, will adequately represent the interests of low-income residential customers. And, unlike CP, ACORN averred in its Petition to Intervene that "[m]any ACORN constituents reside within Allegheny's service territory and receive electric distribution service from the company." In addition, ACORN was an active participant in Allegheny Power's EE&C/DR Plan, which has smart meter related elements, whereas CP was not. Thus, unlike with CP, Allegheny Power's SMIP will have a direct effect upon ACORN constituents.

10. And, although CP did not specifically identify any environmental protection-related issues that it intends to address in this proceeding, the Pennsylvania Department of Environmental Protection ("DEP"), which is the primary agency in Pennsylvania responsible for protecting Pennsylvania's environment, is a party (as an intervenor) in this matter. As such, any environmental issues will be adequately addressed by the Pa DEP.

⁴ Allegheny Power acknowledges that OCA's presence in the case does not preclude other residential customers from participating in a proceeding via separate representation.

⁵ ACORN Petition to Intervene, ¶ 5.

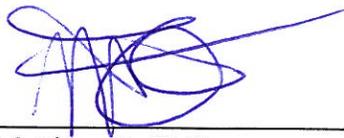
11. The Commission's standard that precludes participation of intervenors where interests are already adequately represented prevents the unnecessary duplication of issues/evidence. At the same time, the standard provides a fundamental protection for parties with the burden of proof such as Allegheny Power regarding its ability to enter into a compromise that is in the public interest. If, for example, multiple parties (in this case three if CP is granted party status) are arguing on behalf of low income customers but are arguing from different perspectives, Allegheny Power could easily be precluded from satisfying all concerns because of multiple conflicting objectives. If, on the other hand, all low income parties are presenting consistent positions, the further addition of CP is not necessary because the issues are adequately addressed by the existing parties. In either case, the intervention would not be warranted. Therefore CP's participation is also not in the public interest.

12. In conclusion, CP is not a customer of Allegheny Power and does not have any members that are customers of Allegheny Power. Therefore, CP has not established a direct interest in this proceeding. CP also has failed to establish that its interests in Allegheny Power's SMIP will not be adequately represented by existing participants in the case, which is an essential element that must be met for a party to be eligible to intervene. To the contrary, OCA's comments and prehearing memo show that the issues raised by CP will be adequately addressed by an existing parties, while ACORN, which does have members that are Allegheny Power customers, will further serve to represent residential low-income interests. Thus, CP's participation in the case will result in unnecessarily cumulative issues being addressed.

WHEREFORE, West Penn Power d/b/a Allegheny Power respectfully requests that the intervention request of CP be denied.

Dated: October 2, 2009

Respectfully submitted,



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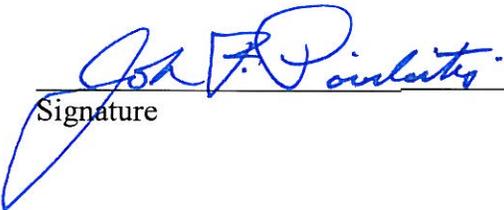
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VERIFICATION

I, John F. Povilkaitis hereby verify that the statements in the foregoing document are true and correct to the best of my information, knowledge and belief. I understand that the statements are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to the unsworn falsification to authorities.

Dated: 10/2/09


Signature

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of West Penn Power Company :
d/b/a Allegheny Power for Expedited : Docket No. M-2009-2123951
Approval of its Smart Meter Technology :
And Installation Plan :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

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ELECTRONIC MAIL

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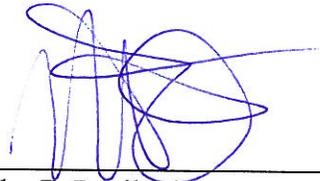
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Date: October 2, 2009



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