

PENNSYLVANIA UTILITY LAW PROJECT

118 LOCUST STREET
HARRISBURG, PA 17101-1414

JOHN C. GERHARD, ESQ.
JGERHARDPULP@PALEGALAID.NET

PHONE: (717) 236-9486, EXT. 201
FAX: (717) 233-4088
MOBILE: (717) 576-2588

January 5, 2010

Via Electronic Filing (E-filing)

Secretary James J. McNulty
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

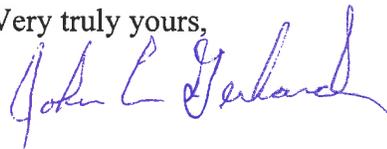
Dear Secretary McNulty:

Pursuant to 52 Pa. Code § 5.502, enclosed for filing please find the Reply Brief of the Pennsylvania Association of Community Organizations for Reform Now ("ACORN") in the above captioned proceeding.

Copies of this letter have been provided to all parties of record in the manner indicated on the enclosed Certificate of Service.

Please contact me directly if you have any questions. Thank you.

Very truly yours,



John C. Gerhard
Counsel for ACORN

Encl.

cc: Certificate of Service
The Honorable Mark A. Hoyer

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have today served a Reply Brief upon the parties of record in this proceeding listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Via Electronic Mail and First Class Mail

John L. Munsch, Esq.
West Penn Power Company
800 Cabin Hill Drive
Greensburg, PA 15601-7737
jmunsch@alleghenypower.com

Theodore S. Robinson
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
Robinson@citizenpower.com

John F. Povilaitis, Esq.
Matthew A. Totino, Esq.
W. Edwin Ogden, Esq.
Ryan, Russell, Ogden & Seltzer
800 North Third Street
Suite 101
Harrisburg, PA 17102-2025
jpovilaitis@ryanrussell.com
mtotino@ryanrussell.com
weogden@ryanrussell.com

Richard A. Kanaskie, Esq.
Adeoulu Bakare, Esq.
Pennsylvania Public Utility Commission
Office of Trial Staff
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120
rkanaskie@state.pa.us
abakare@state.pa.us

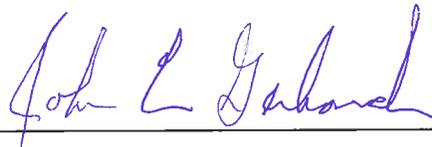
Lauren Lepkoski, Esq.
Office of the Small Business Advocate
Commerce, Bldg., Suite 1102
300 North 2nd Street
Harrisburg, PA 17101
llepkoski@state.pa.us

Christy M. Appleby, Esq.
Tanya J. McCloskey, Esq.
Office of the Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
cappleby@paoca.org
tmccloskey@paoca.org

Susan E. Bruce, Esq.
Adam L. Benshoff, Esq.
Shelby Linton-Keddie, Esq.
McNees Wallace & Nurick, LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
sbruce@mwn.com
abenshoff@mwn.com
skeddie@mwn.com

Christopher A. Lewis, Esq.
Christopher R. Sharp, Esq.
Melanie J. Tambolas, Esq.
Blank Rome LLP
One Logan Square
Philadelphia, PA 19103
lewis@blankrome.com
sharp@blankrome.com
tambolas@blankrome.com

Scott Perry, Esq.
Aspassia V. Staevska, Esq.
Commonwealth of Pennsylvania
RCSOB, 9th floor
400 Market Street
Harrisburg, PA 17101
scperry@state.pa.us
astaevska@state.pa.us



John C. Gerhard
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
jgerhardpulp@palegalaid.net
Counsel for ACORN

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**Petition of West Penn Power d/b/a :
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Installation Plan :**

REPLY BRIEF OF THE ASSOCIATION OF COMMUNITY
ORGANIZATIONS FOR REFORM NOW ("ACORN")

Harry S. Geller, Esquire
John C. Gerhard, Esquire
Julie George, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
Phone: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net
Counsel for ACORN

Dated: January 5, 2010

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I. INTRODUCTION

The Association of Community Organizations for Reform Now (“ACORN”) is filing this Reply Brief in response to certain arguments made by West Penn Power Company (“Allegheny” or “Company”) in its Main Brief, filed on December 18, 2009.

As set forth in this Reply Brief, ACORN respectfully recommends the Pennsylvania Public Utility Commission (“Commission”) only approve Allegheny’s Smart Meter Technology Procurement and Installation Plan (“SMIP” or “Plan”) after confirming the Plan provides sufficient protections for low income customers. In particular, this Reply Brief will address (a) Allegheny’s arguments regarding the ability of low income customers to afford the SMIP and (b) the need to revisit certain Universal Service and Energy Conservation programs.

II. REPLY ARGUMENT

A. LOW INCOME CUSTOMERS MAY NOT HAVE SUFFICIENT OPPORTUNITY TO SAVE ENERGY AND/OR MONEY.

Allegheny proposes arguments for why it thinks low income customers can save energy and thereby mitigate the impact of the new costs of SMIP. These arguments fail for a number of reasons.

First, by addressing only SMIP costs and the impact of SMIP costs on low income customers, Allegheny Main Brief at 50-51, Allegheny misses the point that it is the entirety of increases in electric bills that will overwhelm low income and other vulnerable customers, cumulative increases from SMIP, Allegheny’s Act 129 Energy

Efficiency and Conservation Plan (“EE&C Plan”), and the expiration of Allegheny’s generation rate caps in 2011. See ACORN St. No. 1 at 6-8; ACORN Main Brief at 9-11. Allegheny’s SMIP cannot be viewed in a vacuum and its failure to address these real cumulative costs is a substantial problem that raises questions about the reasonableness of the Company’s Plan.

Second, Allegheny incorrectly concludes that low income households can meaningfully shift their usage so as to reduce their electric bill. Allegheny Main Brief at 52, Allegheny inappropriately bases its claim about low income usage on usage data derived from the Company’s Low Income Usage Reduction Program (“LIURP”) and on usage data derived from the Company’s Low Income Home Energy Assistance Program (“LIHEAP”). The use of these sources as a basis for making the claim that low income households use comparable amounts of electricity to other residential customers results in a flawed conclusion. The LIURP data is an inappropriate and flawed basis for comparison because LIURP targets for enrollment into the program the highest using low income households. See 52 Pa. Code § 58.10. This fact undermines the basis of Allegheny’s argument because the usage data from LIURP is skewed toward the highest using low income households; thus LIURP usage data is most certainly not representative of average low income usage. Similarly, the LIHEAP usage data Allegheny relies upon is problematic as a basis for comparison of low income and other residential customer usage. Allegheny states the Company’s LIHEAP program identifies 30% of LIHEAP recipients as high users. Allegheny Main Brief at 52-53. This LIHEAP data is essentially meaningless as a basis for determining the average low income usage level because it sheds no light on the usage levels of all of the other low income households which did

not participate in Allegheny's LIHEAP. In addition, the LIHEAP household's which have chosen to direct their LIHEAP grant to Allegheny are not representative; they have self selected themselves, most probably because of their high usage levels. Thus, Allegheny's assertion that low income customers have comparable usage to other residential users and can meaningfully shift usage is based on flawed assumptions and is incorrect.

Third, Allegheny fails to address the ACORN argument that low income customers' usage is comprised of essential uses rather than luxury uses and the reduction of these essential uses may be impossible or, where possible, harmful to the well-being of the family. ACORN St. No. 1 at 8-10; ACORN Main Brief at 11-12. Nancy Brockway, witness of the Office of the Consumer Advocate, makes similar arguments about low income usage, arguments which go unanswered by the Company. OCA St. No. 2 at 31-32; OCA Main Brief at 52-53; ACORN Main Brief at 12. The Company's failure to address the question of whether low income customers can actually shift usage to accrue meaningful savings is a substantial problem that raises questions about the reasonableness of the Company's Plan.

B. THE COMMISSION SHOULD REVISIT THE DESIGN OF CERTAIN
LOW INCOME PROGRAMS TO ENSURE THEY MEET NEW
NEEDS.

Allegheny alleges that ACORN argues the Company's CAP program is insufficient to protect low income customers from the bill impacts of SMIP. Allegheny Main Brief at 54. What Mr. Phillips argues is that CAPs, and all Universal Service

programs, will be stressed by the cumulative costs associated with SMIP, EE&C Plans, and the expiration of rate caps. These cumulative costs may overburden existing Universal Service plans for Allegheny and for other electric distribution companies. Therefore, a timely review of these programs is necessary and prudent.

The Commission clearly intends for Universal Service programs to address the needs of low income households. Particularly commenting on Act 129 programs, the Commission states in reference to low income customers, “such customers can take advantage of the many programs currently available to help low-income and payment-troubled customers pay their energy bills.” Energy Efficiency and Conservation Program: Implementation Order, Docket No. M-2009-2069887 (Order entered January 15, 2009) at 37. This reference seems clearly directed to Universal Service programs.

In order for Universal Service programs to meet the changing needs of low income customers, the programs must continually be maintained and adjusted to meet the changing realities that low income customers face. Mr. Phillips’ testimony proposes that the utility landscape will change quickly over the next few years, and the result of these cumulative changes is that electric prices will rise, making it particularly difficult, if not impossible, for low income families, particularly those on fixed incomes, to pay for this service.

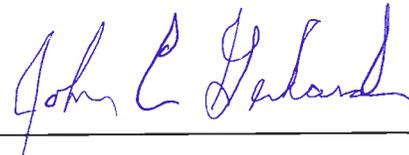
Mr. Phillips testimony highlights the importance of Universal Service programs, particularly CAP. Increasing utility costs are going to cause increasing numbers of low income families to have problems paying their utility bills. As a result, the best way for low income households to maintain service is to turn to CAP for assistance. This will place new and unique pressures on CAPs, and the Commission will

need to respond to these new pressures if CAP is to remain effective. Given the new costs customers will face, it is unreasonable to expect that changes to the CAP programs will not be required.

III. CONCLUSION

In conclusion, the arguments Allegheny puts forward regarding the ability of low income customers to reduce electric usage are fundamentally flawed. It remains unclear whether in the face of cumulative increases in utility bills low income households can safely and meaningfully shift sufficient usage and truly mitigate increases to their electric bills. As such, low income customers will turn in ever increasing numbers to Universal Service programs, particularly CAP, for help. The Company and the Commission should make a timely review of these Universal Service programs to ensure they are adequate to this coming need.

Respectfully submitted,



Harry S. Geller, Esquire
John C. Gerhard, Esquire
Julie George, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
Phone: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net
Counsel for ACORN

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