

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE

Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

William R. Lloyd, Jr.
Small Business Advocate

(717) 783-2525
(717) 783-2831 (FAX)

May 18, 2010

HAND DELIVERED

Rosemary Chiavetta, Secretary
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 Chiavetta:

I am delivering for filing today the original plus three copies of the Answer to the Petition to Stay the Exceptions Period and Verification, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding.

Two copies have been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Lauren M. Lepkoski".

Lauren M. Lepkoski
Assistant Small Business Advocate
Attorney ID No. 94800

Enclosures

cc: Parties of Record
Robert D. Knecht

SECRETARY'S BUREAU
PA PUC

2010 MAY 18 PM 3:25

RECEIVED

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER
OF THE OFFICE OF SMALL BUSINESS ADVOCATE
TO PETITION TO STAY THE “EXCEPTIONS” PERIOD**

On or about May 13, 2010, West Penn Power Company d/b/a Allegheny Power (“Allegheny Power” or “the Company”) filed with the Pennsylvania Public Utility Commission (“Commission”) a Petition to Stay the Exception Period (“Petition”) in the above-captioned proceeding regarding the Company’s Smart Meter Technology Procurement and Installation Plan (“SMIP”). Exceptions to the Initial Decision in the underlying SMIP proceeding are due May 26, 2010, with Reply Exceptions due June 7, 2010. Allegheny Power’s Petition requests that the Commission grant expedited consideration of the Petition, including that the Answer period for the Petition be shortened to May 18, 2010. The Commission issued a Secretarial Letter on May 14, 2010, granting Allegheny Power’s request to shorten the time for filing of Answers to the Company’s Petition.

The Office of Small Business Advocate (“OSBA”) answers the Petition in accordance with 52 Pa. Code §5.61 and the Commission’s May 14, 2010, Secretarial Letter as follows:

RECEIVED
2010 MAY 18 PM 3:25
PA PUC
SECRETARY'S BUREAU

ANSWER

Response to Introductory Paragraph

Unnumbered Paragraph 1 on Page 1. The averments in the first, second, and third sentences of unnumbered paragraph one constitute a summary of the request for relief and conclusions of law to which no response is required. If and to the extent a response is required, the averments in the first, second, and third sentences of unnumbered paragraph one are denied. The averments in the remaining sentences of unnumbered paragraph one are admitted.

Response to Numbered Paragraphs

I. Background

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.

II. Basis for Stay Request

8. Denied. The averments in paragraph eight are conclusions of law to which no response is required. If and to the extent a response is required, the averments in paragraph eight are denied. By way of further response, 52 Pa. Code §5.533 does not provide for the indefinite stay of the “exceptions period” that Allegheny Power has requested. Specifically, Section 5.533(a) states that “in a proceeding, exceptions may be

filed by a party and served within 20 days after the initial, tentative or recommended decision is issued *unless some other exception period is provided.*” (emphasis added)

9. Denied. The averments in paragraph nine are a summary of the request for relief and argument to which no response is required. If and to the extent a response is required, the averments in paragraph nine are denied. By way of further response, Allegheny Power’s main argument as to why its Petition should be granted is based on the announced merger between Allegheny Energy (the parent of Allegheny Power) and First Energy (the parent of Pennsylvania electric distribution companies Pennsylvania Power Company, Pennsylvania Electric Company, and Metropolitan Edison Company). However, the merger application was not filed with the Commission until on or about May 14, 2010. Moreover, since both Allegheny Energy and First Energy operate in multiple states, numerous state commissions in addition to Pennsylvania’s will also have to approve or disapprove the merger. In addition, the merger has been submitted for review to the Federal Energy Regulatory Commission. Therefore, because the merger is far from being finalized, indefinitely holding off on approving or disapproving Allegheny Power’s SMIP (based on a merger that may or may not happen) would be imprudent. This is especially true since Allegheny Power’s Energy Efficiency and Conservation Plan (“EE&C Plan”), which has already been approved by this Commission, relies heavily on the accelerated deployment of smart meters.

10. Admitted in Part and Denied in Part. The averments in the first sentence are admitted. The OSBA is without sufficient first hand knowledge or information to form a belief concerning the truth of the averments in the second sentence of paragraph ten. Therefore, those averments are denied and strict proof thereof is demanded.

11. Admitted.

12. Denied. The OSBA is without sufficient first hand knowledge or information to form a belief concerning the truth of the averments in paragraph twelve. Therefore, those averments are denied and strict proof thereof is demanded.

13. Denied. The OSBA is without sufficient first hand knowledge or information to form a belief concerning the truth of the averments in paragraph thirteen. Therefore, those averments are denied and strict proof thereof is demanded.

14. Denied. The averments in paragraph fourteen are a summary of the request for relief and argument to which no response is required. If and to the extent a response is required, the averments in paragraph fourteen are denied. By way of further response, Allegheny Power's EE&C Plan (which has already been approved by the Commission) will mostly likely be affected if Allegheny Power decides to lessen its reliance on smart meters. If the Company reduces its use of smart meters for its EE&C Plan, that may shift more EE&C Plan costs to Small Commercial and Industrial ("Small C&I") customers. Specifically, Allegheny Power has previously represented that the accelerated deployment of smart meters to Residential customers is critical to the Company's ability to achieve the level of conservation mandated under Section 2806.1 of the Public Utility Code, 66 Pa. C.S. §2806.1.¹ If Allegheny Power revises its EE&C Plan to reduce reliance on the accelerated deployment of smart meters to Residential customers, it is likely that some or all of the replacement conservation programs will be imposed on Small C&I customers, thereby increasing the conservation funding requirement imposed on Small C&I customers. In addition, the OSBA is concerned that

¹ *Pennsylvania Public Utility Commission v. West Penn Power Company d/b/a Allegheny Power*, Docket No. M-2009-2123951 (Order entered October 22, 2009) at 6.

Small C&I customers will be prejudiced by a subsequent request by Allegheny Power for expedited approval of any such changes in the EE&C Plan or by a non-unanimous settlement excluding the OSBA.

III. Requested Relief

15. Denied. The averments in paragraph fifteen are a summary of the request for relief and argument to which no response is required. If and to the extent a response is required, the averments in paragraph fifteen are denied. By way of further response, the Commission should deny Allegheny Power's request for an indefinite stay of the "exceptions" period. By allowing an indefinite stay of the "exceptions" period, there is no definite decision date for either approving or disapproving Allegheny Power's SMIP. Allegheny Power has already been given an extension in time by this Commission to file a SMIP reducing the pace of smart meter deployment.² The Commission has also directed Allegheny Power to develop a backup EE&C Plan in case its heavily reliance on accelerated smart meter deployment fails in meeting the Company's targets for energy conservation.³ However, Allegheny Power has failed to file a backup EE&C Plan that would address those issues. Therefore, if the Commission determines that Allegheny Power's Petition should be granted, the Commission should set a date certain by which Allegheny Power is required to file changes to its SMIP and EE&C Plan. The

² See West Penn Power Company d/b/a Allegheny Power Petition to Modify a Prior Commission Order and to Reopen the Evidentiary Record (Secretarial letter dated January 13, 2010).

³ *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Cost through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093218 (Order entered October 23, 2009) at 21 and *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Cost through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093218 (Order entered March 1, 2010) at 14.

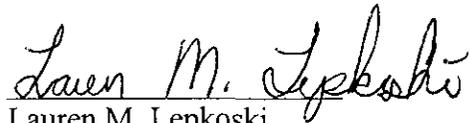
Commission should also set a date certain by which the parties' exceptions will be due if the Company misses the prescribed deadline for filing revisions to its SMIP and EE&C Plan.

16. Denied. The averments in paragraph sixteen are a summary of the request for relief and argument to which no response is required. If and to the extent a response is required, the averments in paragraph sixteen are denied.

WHEREFORE, the OSBA respectfully requests that the Commission:

- a. Deny Allegheny Power's Petition; or
- b. In the alternative, set a date certain by which Allegheny Power must file changes to its SMIP and EE&C Plan and a date certain by which the parties must file their exceptions if Allegheny Power fails to submit changes in its SMIP and EE&C Plan by the prescribed deadline.

Respectfully submitted,



Lauren M. Lepkoski
Assistant Small Business Advocate
Attorney ID No. 94800

For:

William R. Lloyd, Jr.
Small Business Advocate
Attorney ID No. 16452

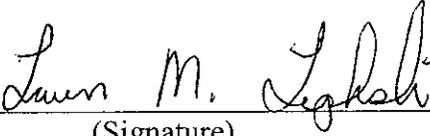
Office of Small Business Advocate
Suite 1102
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525

Dated: May 18, 2010

VERIFICATION

I, Lauren M. Lepkoski, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Date: May 18, 2010



(Signature)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
2009 MAY 18 PM 3:25
SECRETARY'S BUREAU

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

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Answer to the Petition to Stay the Exceptions Period and Verification, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise noted) upon the persons addressed below:

Hon. Mark A. Hoyer
Administrative Law Judge
Pa. Public Utility Commission
301 Fifth Avenue - #220
Pittsburgh, PA 15222
(412) 565-3550
(412) 565-5692 (fax)
mhoyer@state.pa.us

Christy M. Appleby, Esquire
Tanya J. McCloskey, Esquire
Darryl Lawrence, Esquire
Office of Consumer Advocate
555 Walnut Street - 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152 (fax)
cappleby@paoca.org
tmccloskey@paoca.org
dlawrence@paoca.org
(E-mail and Hand Delivery)

Thomas T. Niesen, Esquire
Charles E. Thomas, Jr., Esquire
Thomas Long Niesen & Kennard
P.O. Box 9500
212 Locust Street, Suite 500
Harrisburg, PA 17108-9500
(717) 255- 7615
(717) 236-8278 (fax)
tniesen@titanlaw.com
cthomasjr@titanlaw.com

Richard A. Kanaskie, Esquire
Adeolu A. Bakare, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-1976
(717) 772-2677
rkanaskie@state.pa.us
abakare@state.pa.us
(E-mail and Hand Delivery)

John L. Munsch, Esquire
Allegheny Energy
800 Cabin Hill Drive
Greensburg, PA 15601
(724) 838-6210
(724) 830-7737 (fax)
jmunsch@alleghenyenergy.com

Kurt E. Klapkowski, Esquire
Assistant Counsel
Department of Environmental Protection
RCSOB, 9th Floor
400 Market Street
Harrisburg, PA 17101-2301
(717) 787-7060
(717) 783-7911 (fax)
kklapkovsk@state.pa.us

Susan E. Bruce, Esquire
Barry A. Naum, Esquire
Shelby A. Linton-Keddie, Esquire
Carl J. Zwick, Esquire
McNees Wallace & Nurick, LLC
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(717) 237-5300 (fax)
sbruce@mwn.com
bnaum@mwn.com
skeddie@mwn.com
czwick@mwn.com

Christopher A. Lewis, Esquire
Christopher R. Sharp, Esquire
Melanie J. Tambolas, Esquire
Blank Rome, LLP
One Logan Square
Philadelphia, PA 19103
(215) 569-5793
(215) 832-5739
lewis@blankrome.com
sharp@blankrome.com
tambolas@blankrome.com

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

Date: May 18, 2010

Divesh Gupta, Esquire
Constellation Energy, Inc.
111 Market Place - #500
Baltimore, MD 21202
(410) 470-3158
(410) 213-3556 (fax)
divesh.gupta@constellation.com

David I. Fein
Constellation Energy
550 Washington St. - #300
Chicago, IL 60661
(312) 704-8499
david.fein@constellation.com

W. Edwin Ogden, Esquire
Ryan, Russell, Ogden & Seltzer
1150 Berkshire Boulevard - #210
Wyomissing, PA 19610-1208
(610) 372-4761
(610) 372-4177 (fax)
WEOgden@ryanrussell.com



Lauren M. Lepkoski
Assistant Small Business Advocate
Attorney ID No. 94800