



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

November 22, 2010

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v.
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:

Enclosed please find an original and nine (9) copies of the Office of Trial Staff's
(OTS) **Answer** in the above-captioned proceeding.

Copies are being served on all active parties of record.

Sincerely,

Richard A. Kanaskie
Senior Prosecutor
Office of Trial Staff
PA Attorney I.D. #80409

Enclosure
RAK/edc

cc: Parties of record

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**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 :
Procurement and Installation Plan :**

**OFFICE OF TRIAL STAFF'S ANSWER
IN OPPOSITION TO THE PETITION
TO INTERVENE OF PENNSYLVANIA
COMMUNITIES ORGANIZING FOR CHANGE
d/b/a ACTION UNITED, INC.**

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SECRETARY'S BUREAU**

The Office of Trial Staff (“OTS”) hereby submits this Answer in opposition to the *Petition to Intervene, or, in the Alternative to Submit Comments, of Pennsylvania Communities Organizing for Change d/b/a Action United, Inc.* OTS is charged with representation of the public interest and, accordingly, is authorized to participate in this proceeding. The OTS representation of the public interest includes balancing the interests of ratepayers, utilities and the welfare of the Commonwealth. The Pennsylvania Public Utility Commission (“Commission”) has affirmed the standing of OTS in its Interim Procedural Order (“Order”) Adopted at Public Meeting on November 8, 2008. In that Order it was stated that “[t]he Office of Trial Staff...shall continue to have standing

to initiate and participate in Commission proceedings as previously established by the Commission and the Code prior to the enactment [of] Act 129 of 2008.”¹

Pursuant to its authority under the Interim Procedural Order and in accordance with 52 Pa. Code Section 5.61, OTS hereby files this timely Answer to Pennsylvania Communities Organizing for Change d/b/a Action United, Inc. (“PCOC”) Petition to Intervene.

OTS is of the opinion that, faced with only one signatory, a supporting statement was offered at the last moment to bolster an unsatisfactory two party settlement agreement. OTS finds the timing unusual, if not puzzling, as the original party’s interest being sought to replace withdrew from the proceeding over seven (7) months ago.² The interests of the parties that PCOC claims to represent have clearly been represented as provisions of the agreement between West Penn and the Office of Consumer Advocate (“OCA”) address low income issues. There is nothing in the Petition to Intervene to suggest that PCOC’s “participation in the proceeding as a party would aid the commission in reaching its decision.”³ OTS objects to PCOC’s late intervention request as the instant petition fails to establish legal standing to participate. In addition, there is insufficient information in the Petition to establish the nature and goals of the sponsoring organization. cursory research does not provide clarity as to the nature of the goals and mission of PCOC. Their claimed status as an advocate for low income customers is not

1 *Implementation of Act 129 of 2008*, Docket No. M-2008-2071852, Order Adopted November 6, 2008.

2 PCOC knew, or should have known, the stats of ACORN seven months ago when ACORN withdrew from this proceeding. PCOC had ample opportunity to intervene and present its opinions but failed to do so in a timely manner. The issue is not whether PCOC supports or opposes the Joint Petition, but rather, the timing of the Petition to Intervene.

3 *Re Pennsylvania Power & Light Company*, 54 Pa. P.U.C. 39, 43 (1976).

clearly supported by the petition and only partially represents their interests as presented in their publicly available Mission Statement. Furthermore, membership in the Petitioner's organization appears to be open to any, and all, interested parties. The membership/enrollment pages of the Petitioner's publicly available electronic site do not contain any limiting criteria for membership. OTS is of the opinion that PCOC is trying to step into the shoes of ACORN without establishing any of the necessary criteria. Regulatory practice in Pennsylvania does not allow for a party to participate in a proceeding without first establishing the right to intervene. In this case, there is insufficient information about PCOC to allow for participation as an independent entity nor have they established sufficient criteria to support representational standing.

In support of its recommendation to deny the petition, OTS answers the Petition in the following enumerated fashion:

1. OTS acknowledges that PCOC is petitioning to intervene in the instant proceeding at this late stage. OTS hereby submits this Answer opposing the intervention. In addition, OTS maintains that the Commission should deny the request to file Comments attached to this petition.

2. Admitted in part. The procedural history as presented is admitted. The statutory provisions of Act 129 speak for themselves and any averments pertaining to its interpretation are denied.

3. Admitted in part. It is admitted that the entities listed were parties to the proceeding. By way of further comment, OTS entered its Notice of Appearance on

August 20, 2009 as its status to participate in this proceeding is by right as explained in the Commission's Interim Procedural Order.

4. Admitted in part. It is admitted that ACORN participated in the Act 129 proceedings.

5. Admitted.

6. Admitted. By way of further comment, OTS offers that the referenced Initial Decision resolved all matters pertaining to the Company's original filing.

7. Admitted in part. A Petition to Stay the Exceptions Period was submitted on May 13, 2010. The established procedural schedule and the contents of the Petition to Stay the Exceptions Periods speak for themselves and no response is necessary.

8. Admitted. The referenced document speaks for itself. Any interpretations of the Secretarial Letter are denied.

9. Admitted.

10. Admitted in part. It is admitted that the Secretary issued a letter on May 21, 2010. The referenced document speaks for itself and no further response is necessary. Any attempts to interpret the contents of this document are denied.

11. Admitted.

12. Admitted in part. It is admitted that West Penn and the Office of Consumer Advocate jointly filed a document purported to be a settlement. OTS has submitted an Answer to this Petition identifying it as nothing more than a stipulation between two parties. OTS denies that the submitted document represents a Joint Petition for

Settlement as anticipated by the Commission's Opinion and Order Adopted July 15, 2010 and Entered July 21, 2010.

13. Admitted. The Secretarial Letter speaks for itself and no further comment is necessary.

14. Admitted in part, Denied in part. The proposed agreement between the Company and the Office of Consumer Advocate contains provisions that will impact all ratepayers within the impacted service territory. By way of further comment, OTS is without sufficient knowledge or information to form an opinion as to the representation that “[p]rovisions of the Settlement [that] address matters affecting cost, procedural protections and studies addressing the effect on low income customers” as no specific references have been provided by the Petitioner. Furthermore, clarification is needed to define the difference between “low income customers and other low income individuals residing within the West Penn service territory.” To the extent that “other low income individuals” are not customers of West Penn, any representations lack standing and must be ignored.

15. Denied in part. The publicly stated Mission Statement of the organization indicates that “Action United is a membership organization of low and moderate income Pennsylvanians working to build power through organizing communities to win changes on the issues that are important to them.”⁴

16. OTS is without sufficient knowledge or information to form an opinion as to the claimed basis for PCOC's late intervention. By way of further comment, OTS

4 See, <<http://www.actionunited.org/missionstatement>>

maintains that the claimed interests have been adequately represented throughout this proceeding. ACORN, through its participation addressed potential low income issues in the submission of their Brief in this proceeding. Furthermore, the very averments in the agreement between West Penn and OCA claimed to be supported by PCOC were negotiated by the signatories. The Office of Consumer Advocate's charge is to represent the interests of all residential ratepayers, including low income customers. PCOC is not an indispensable party. Clearly, low income interests have been adequately represented throughout this proceeding.

17. Denied. Given the Petitioners are attempting to submit an Answer to the agreement between the Company and the Office of Consumer Advocate supporting measures negotiated by the signatories to the agreement, clearly the interests of PCOC's claimed constituency have been adequately represented. The document it seeks to offer comments on is based entirely on representations of other parties. At this late stage of the proceeding, PCOC's participation is not justified under the circumstances represented in this averment. There was no impediment to PCOC seeking active status seven months ago when ACORN withdrew from the proceeding. PCOC's failure to file a Petition to Intervene in a timely fashion should not be cured at this late stage of the proceeding.⁵

18. Denied. ACORN's withdrawal occurred over seven (7) months ago. The entire content of the agreement between the Company and the Office of Consumer Advocate was developed after the withdrawal of ACORN. Clearly, the circumstances of

⁵ A similar late filed Petition to Intervene was denied by the Commission in the *Pennsylvania Public Utility Commission v. Philadelphia Gas Works* at Docket No. M-00021612 wherein it was noted that Philadelphia City Council filed its Petition several months after the case began and did not demonstrate the type of extraordinary circumstance necessary to warrant consideration of the request.

ACORN's withdrawal are not extraordinary as there has been no impact on the development of the agreement between West Penn and OCA that PCOC attempts to support. If any extraordinary circumstances existed, such circumstances occurred seven months ago with the withdrawal of ACORN.

19. Denied. As discussed above, matters negotiated between the Company and OCA impact all customers in the service territory. Provisions directed to one class do not constitute extraordinary circumstances allowing for participation at this late date in the proceeding.

20. OTS is without sufficient knowledge or information to form an opinion as to the basis for PCOC's late intervention and intended scope of its requested participation. As the averment addresses PCOC's claimed intent and does not contain any allegation of facts, no response is necessary.

21. Denied. The allowance of participation at this late stage of the proceeding adversely impacts the positions of the Office of Trial Staff as this entity seeks to comment on an agreement between the Company and OCA without the parties having the opportunity to conduct a suitable investigation into the Petitioners' standing and justification for participation.

22. Admitted in part. PCOC has attached a document entitled *Answer of Pennsylvania Communities Organizing for Change d/b/a Action United, Inc.* to its Petition to Intervene. OTS maintains that the attached document has no merit as the Petitioners' participation in this proceeding has not been established. As a non-party to this proceeding, PCOC's submitted Answer must be ignored.

23. To the extent this averment describes the legal representation of the Petitioners, no response is required.

WHEREFORE, The Office of Trial Staff specifically requests that the Petition to Intervene of the Pennsylvania Communities Organizing for Change d/b/a Action United, Inc. be denied and the Answer attached to its Petition be rejected.

Respectfully submitted,



Richard A. Kanaskie
Senior Prosecutor
PA Attorney ID # 80409

Adeolu A. Bakare
Prosecutor
PA Attorney ID # 208541

Office of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-1976

Dated: November 22, 2010

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of West Penn Power Company :
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Approval of its Smart meter Technology :
Procurement and Installation Plan :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Answer** dated November 22, 2010, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

John L. Munsch, Esquire
West Penn Power Company
800 Cabin Hill Drive
Greensburg, PA 15601-7737

Tanya J. McCloskey, Esquire
Christy M. Appleby, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, Pa 17101-1923

Daniel G. Asmus, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Matthew A. Totino, Esquire
Ryan, Russell, Ogden & Seltzer
800 North Third St., Suite 101
Harrisburg, PA 17102-2025

Kurt E. Klapkowski, Esquire
PA DEP
400 Market Street
RCSOB, 9th Floor
Harrisburg, PA 17101-2301

Harry S. Geller, Esquire
John C. Gerhard, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101-1414

Christopher A. Lewis, Esquire
Christopher R. Sharp, Esquire
Melanie J. Tambolas, Esquire
Blank Rome, LLP
One Logan Square
Philadelphia, PA 19103

Theodore S. Robinson, Esquire
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217

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Susan E. Bruce, Esquire
Adam L. Benshoff, Esquire
Shelby A. Kinton-Keddie, Esquire
McNees Wallace & Nurick LLC
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166

Lee E. Hartz, Esquire
National Fuel Gas Distribution Corp.
PO Box 2081
Erie, PA 16512

W. Edwin Ogden, Esquire
Ryan, Russell, Ogden & Seltzer
1150 Berkshire Boulevard, Suite 210
Wyomissing, PA 19610-1208

Carl J. Zwick, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

A handwritten signature in black ink, appearing to read 'Richard A. Kanaskie', written over a horizontal line.

Richard A. Kanaskie
Senior Prosecutor
Office of Trial Staff
PA Attorney I.D. #80409