

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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December 13, 2010

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:

Enclosed for filing is the Petition of the Office of Consumer Advocate for Leave to File a Reply and Reply of the Office of Consumer Advocate to the Office of Trial Staff's Answer in Opposition to Intervene of the Pennsylvania Communities Organizing for Change, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Sincerely,

A handwritten signature in cursive script that reads "Christy M. Appleby".

Christy M. Appleby
Assistant Consumer Advocate
Pa. Attorney Id. No. 85824

cc: Honorable Mark A. Hoyer

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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	:	

PETITION OF THE OFFICE OF CONSUMER ADVOCATE
FOR LEAVE TO FILE A REPLY

The Office of Consumer Advocate files this Petition for Leave to File A Reply in the above-captioned proceeding and states in support of the Petition the following:

1. On October 19, 2010, West Penn Power Company d/b/a Allegheny Power (Allegheny Power or the Company), and the OCA filed a Joint Petition for Settlement.

2. On November 1, 2010, the Pennsylvania Communities Organizing for Change (PCOC) through its counsel the Pennsylvania Utility Law Project (PULP) filed a Petition to Intervene (Petition), or, in the Alternative to Submit Comments (Comments) in the above-captioned matter.

3. On November 10, 2010, Allegheny Power filed a letter stating that it did not oppose the Intervention of PCOC and stating that if the Petition was granted, then PCOC's Comments in response to the Settlement should also be considered.

4. On November 22, 2010, the OTS filed an Answer in Opposition to the Petition to Intervene of PCOC (Answer).

5. In its Answer, OTS raised an argument which had not previously been raised by any party. OTS's Answer stated that "the Office of Consumer Advocate's charge is to represent the interests of all residential ratepayers, including low income customers. PCOC is not an


indispensible party. Clearly, low income interests have been adequately represented throughout this proceeding.” OTS Answer at ¶ 16.

6. The OCA submits that any reliance on the Consumer Advocate’s participation in this proceeding as basis for the Commission to deny PCOC’s Petition is in error, and therefore, the OCA should be afforded an opportunity to respond. The OCA’s response will be limited to this argument raised in OTS’s Answer.

7. By this Petition, the OCA seeks leave to file its Reply. The OCA’s Reply will not prejudice any party and, as explained above, is necessary and appropriate in light of the argument with respect to OCA in OTS’s Answer. The OCA’s Proposed Reply is attached hereto.

WHEREFORE, the Office of Consumer Advocate respectfully requests leave to file the attached Reply.

Respectfully submitted,


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DATE: December 13, 2010

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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	:	

REPLY OF THE OFFICE OF CONSUMER ADVOCATE
TO THE OFFICE OF TRIAL STAFF'S ANSWER IN
OPPOSITION TO INTERVENE OF
THE PENNSYLVANIA COMMUNITIES ORGANIZING FOR CHANGE

Pursuant to its Petition for Leave to Reply, the Pennsylvania Office of Consumer Advocate (OCA) submits this Reply to the Office of Trial Staff's (OTS) Answer in Opposition to the intervention of the Pennsylvania Communities Organizing for Change (PCOC). The OCA hereby replies to one of the arguments raised by the OTS in opposition to the PCOC intervention.

I. INTRODUCTION

1. On October 19, 2010, West Penn Power Company d/b/a Allegheny Power (Allegheny Power or the Company), and the OCA filed a Joint Petition for Settlement.

2. On November 1, 2010, the Pennsylvania Communities Organizing for Change (PCOC) through its counsel the Pennsylvania Utility Law Project (PULP) filed a Petition to Intervene (Petition), or, in the Alternative to Submit Comments (Comments) in the above-captioned matter.

3. On November 10, 2010, Allegheny Power filed a letter stating that it did not oppose the Intervention of PCOC and stating that if the Petition was granted, then PCOC's Comments in response to the Settlement should also be considered.

4. On November 22, 2010, the OTS filed an Answer in Opposition to the Petition to Intervene of PCOC. (Answer).

5. In its Answer, OTS raised an argument which had not previously been raised by any party. OTS's Answer stated that "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." OTS Answer at ¶ 16.

6. The OCA submits that any reliance on the Consumer Advocate's participation in this proceeding as a basis for the Commission to deny PCOC's Petition is in error. For the reasons set forth below, the OCA submits that the presence of the OCA in this proceeding may not be used as a basis upon which to prevent PCOC's participation in this proceeding.

II. RESPONSE

7. The OCA's participation in this proceeding cannot serve as a bar to the participation of other interested parties. In paragraph 16 of its Answer, OTS states that:

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 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 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.

OTS Answer at ¶ 16.

8. Section 309-6 of the Consumer Advocate's authorizing legislation specifies that: "Nothing contained herein shall in any way limit the right of any consumer to bring a proceeding before either the commission or a court." 71 P.S. § 309-6; see also, Barasch v. Pa. P.U.C., 546 A.2d 1296 (Pa. Commw. 1988), *modified on denial of reargument by*, 550 A.2d 257 (Pa. Commw. 1989)(notice to the Office of Consumer Advocate does not constitute notice to the customers of a utility).

9. In South River Power Partners, L.P., v. Pennsylvania Public Utility Commission, 673 A. 2d 422, 426 (Pa. Commw. 1996), the Court stated:

we must reject South River's contention that the active participation in this case by the Office of Consumer Advocate and various other parties eliminates the need for notice to be provided to West Penn's customers.

The Court continued:

While the majority of West Penn's customers would undoubtedly be content to allow the Office of Consumer Advocate to fight their battle for them, due process requires at a minimum that West Penn's customers be notified of the PUC hearing and be afforded an opportunity to participate in that proceeding if they so choose.

South River at 427. The OCA submits that parties may not be excluded from a proceeding for the reasons that have been advanced here, namely that the OCA already is participating in that same proceeding and has negotiated a settlement that addresses low-income concerns.

10. The OCA submits that the interests represented by the OCA and the PCOC are not identical. The OCA represents the interests of all of the Company's customers, both those who are low-income and those who are not. It would be incorrect to assume that the OCA's

broad-based presence will adequately accommodate the specific concerns that PCOC seeks to address in this proceeding.


11. In addition to this, the OCA and PCOC do not have access to the same base of experience on which to shape their participation in this proceeding. Therefore, it is unlikely that the participation of PCOC and the OCA would be duplicative.

12. While the OCA acknowledges that its interest and that of PCOC may overlap to some degree in this matter, as much can be said of numerous other parties to this proceeding. Likewise, the OCA and PCOC may present different perspectives of how the Settlement comports with the requirements of Act 129 and is in the public interest.

III. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully submits that OTS's Answer in Opposition to the Petition to Intervene of Pennsylvania Communities Organizing for Change may not be granted on the basis of OCA's participation in this case.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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 :

I hereby certify that I have this day served a true copy of the foregoing document, Petition of the Office of Consumer Advocate for Leave to File a Reply and Reply of the Office of Consumer Advocate to the Office of Trial Staff's Answer in Opposition to Intervene of the Pennsylvania Communities Organizing for Change, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 13th day of December 2010.

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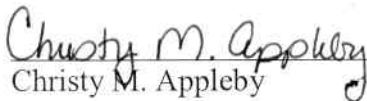
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