**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of West Penn Power Company :

for Amendment of the Order Approving :

Energy Efficiency and Conservation Plans : M-2009-2093218

and Petition for Approval of its Amended :

Energy Efficiency and Conservation Plan :

**RECOMMENDED DECISION**

Before

Dennis J. Buckley

Administrative Law Judge

This Decision recommends that the Pennsylvania Public Utility Commission (Commission) approve the Joint Petition for Settlement (Joint Petition) filed by West Penn Power Company (West Penn or Company) and the parties to this proceeding for the Amendment of the Order Approving West Penn’s Energy Efficiency and Conservation Plans (EE&C Plans) and Petition for Approval of its amended Energy Efficiency and Conservation/Demand Response Plan (EE&C/DR Plan). The Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), Pennsylvania Communities Organizing for Change (PCOC), West Penn Industrial Intervenors (WPII), the Pennsylvania State University (PSU) and the Commission’s Bureau of Investigation and Enforcement (BI&E) are all parties to this proceeding.[[1]](#footnote-1)

This Decision incorporates a consensus History provided by the parties but edited to include references to earlier proceedings and Orders at this docket so as to maintain continuity and context. The Joint Petition and Settlement terms are presented, below, as provided by the parties, with their terms unaltered.

HISTORY OF THE PROCEEDING

A comprehensive “Background” of the steps taken by the Commission to implement Act 129 is set forth in the Commission’s Order entered October 23, 2009, at this docket, and that “Background” is incorporated herein by reference.[[2]](#footnote-2)

In sum, West Penn filed its original EE&C/DR Plan on June 30, 2009, in conformity with the requirements of Act 129 of 2008, 66 Pa. C.S. § 2806.1 (Act 129 or The Act). The Act expanded the Commission’s oversight responsibilities and imposed new requirements on electric distribution companies (EDCs), with the overall goal of reducing energy consumption and demand. Act 129 requires a 1% reduction in energy consumption by May 31, 2011, a 3% reduction in energy consumption by May 31, 2013, and a 4.5% peak demand reduction by May 31, 2013.

West Penn filed amended initial EE&C/DR Plans with the Commission on December 21, 2009 and April 29, 2010. The Company’s initial EE&C/DR Plan was approved by the Commission in Orders entered on October 23, 2009, March 1, 2010 and June 23, 2010 at Docket No. M-2009-2093218. West Penn filed an amended EE&C/DR Plan with the Commission on September 10, 2010. Modifications of this filing were achieved by stipulation and an amended Plan was approved by the Commission on January 13, 2011. Further amendments to the Plan were submitted by the Company on August 9, 2011 and represent the “New Plan” addressed in the Joint Petition. Comments on the August 9, 2011 filing were submitted by OCA, WPPII, PSU, and PCOC.

After comments were submitted, a period of informal discovery and settlement discussions ensued among the parties. In an Order adopted and entered on October 28, 2011, the Commission addressed the comments filed by OCA, WPPII, PSU, and PCOC. Some issues were adjudicated and others were set for further proceedings. Specifically, the Commission approved West Penn's proposal to rename and reorganize its programs and measures to allow the Company to better focus its resources in a manner that should help it meet the Act 129 mandates. West Penn's proposal to add thirty-five new measures to the New Plan was also approved. West Penn proposed that some measures be deleted as part of the New Plan. The Company's proposals to remove the clothes dryer and programmable thermostat measures were approved; however West Penn's proposed discontinuation of the dishwasher measure was referred to the ALJ for disposition. The Commission's Order referred other specific elements of the New Plan to the OALJ for development of an evidentiary record: 1) the Conservation Voltage Reduction (CVR) Program; 2) administrative changes, specifically use of incentive ranges rather than fixed incentive amounts and adding new measures to programs as measures are approved for inclusion in the Technical Reference Manual (TRM); and 3) the new budget, cost allocation and surcharge, all resulting from the proposed changes to measures and programs. To the extent the Commission did not refer issues to OALJ, the New Plan was approved and authorized to be implemented.[[3]](#footnote-3)

On December 21, 2011, a telephonic prehearing conference was held in this matter, the parties having previously told the undersigned that an uncontested Settlement of all issues had been reached in principle. It was proposed that a Joint Petition for Settlement with Supporting Statements be submitted by January 6, 2012.

On January 6, 2012, the Joint Petition was filed by West Penn, the OCA, the OSBA, PCOC and WPII. Neither PSU nor BI&E object to the Joint Petition.

On February 17, 2012, West Penn filed a Motion to Admit into Evidence the Company's Direct Testimony in support of the New Plan. West Penn Statement No. 1, the Direct Testimony of Edward C. Miller, provides a description of and rationale for the proposed changes to the Energy Efficiency and Conservation Plan currently in effect, as well as the budget impacts resulting from the proposed changes. West Penn Statement No. 2, the Direct Testimony of Raymond E. Valdes, addresses cost recovery and reconciliation of New Plan costs. In its Motion, West Penn also sought admission of a new version of the New Plan. The New Plan was submitted as part of the Company's August 9, 2011 filing. That version of the New Plan has been edited to reflect the program changes agreed to in the Joint Settlement submitted on January 6, 2012. If the Joint Settlement is approved by the Commission, West Penn will submit the “revised New Plan” as part of its compliance with that determination. Together, the Direct Testimony, the revised New Plan, the Joint Settlement, and the Parties' Statements in Support of the Settlement provide the foundation for review of the proposed Settlement of this case. No Party objected to the Motion.

FINDINGS OF FACT

1. West Penn Power Company is an electric public utility authorized to provide electric service in southwestern, south-central and northern Pennsylvania. The Company serves approximately 715,000 customers in Pennsylvania in an area of about 10,400 square miles with a population of approximately 1.5 million.

2. Proposed amendments to West Penn’s existing, Commission-approved EE&C/DR Plan were submitted by West Penn on August 9, 2011, and represent the “New Plan” under consideration in this proceeding.

3. In an Order adopted and entered on October 28, 2011, the Commission approved West Penn's proposal to rename and reorganize its programs and measures to allow the Company to better focus its resources in a manner that should help it meet the Act 129 mandates. West Penn's proposal to add thirty-five new measures to the New Plan was also approved.

4. The Commission's October 28, 2011 Order referred other specific elements of the New Plan to the Office of Administrative Law Judge for development of an evidentiary record: 1) the Conservation Voltage Reduction Program; 2) administrative changes, specifically use of incentive ranges rather than fixed incentive amounts and adding new measures to programs as measures are approved for inclusion in the Technical Reference Manual; and 3) the new budget, cost allocation and surcharge, all resulting from the proposed changes to measures and programs. To the extent the Commission did not refer issues to OALJ, the New Plan was approved and authorized to be implemented.

5. At a telephonic prehearing conference on December 21, 2011, all active Parties to the case confirmed that an uncontested Settlement of all issues had been reached. It was proposed that a Joint Petition for Settlement with Supporting Statements be submitted by January 6, 2012.

6. A Joint Petition for Settlement with Supporting Statements was filed on January 6, 2012, and on February 17, 2012, West Penn filed a Motion to Admit into Evidence the Company's Direct testimony in support of the New Plan.

SETTLEMENT TERMS

The terms of the proposed Settlement, as set forth in the Joint Petition, are as follows:

6. The Company shall be permitted to implement the CVR Program at the proposed 1.5% voltage level, subject to the following conditions:

a. The Company will complete a detailed engineering work-up before it deploys CVR on any circuit. CVR will not be deployed on any circuit unless the Company's analysis concludes that voltages to all customers on the circuit can be maintained within the Commission's current voltage standard for customers with the 1.5% voltage reduction. The detailed engineering work-up will include:

i. Evaluation of multi-points along the entire line, including distribution equipment, circuit configuration, wire size, distance and the end points.

ii. Evaluation at peak load conditions.

iii. Assessment and modeling (using accepted industry standards, e.g. consistent with 52 Pa. Code § 57.14(b) (Voltage Requirements), and ANSI C84 standard of the individual distribution circuit candidates for the reduction).

b. As part of the mitigation strategy, the Company will monitor and evaluate circuit performance and voltage levels across the CVR circuits on a regular basis during the course of the program. If voltage levels outside Commission parameters are experienced across the circuits in the CVR Program during the evaluation and monitoring process, the Company will promptly resolve the problems or suspend CVR on the impacted circuits until problems are adequately resolved. Should voltage level problems on a circuit where CVR was implemented not be readily and promptly resolvable, CVR on that circuit will be suspended. If multiple instances of CVR circuits with unresolved voltage problems accrue, the Company will reassess whether continued deployment of the CVR Program should occur. In the event the CVR Program is suspended and the Company determines that funds are required elsewhere in the Plan in order to meet statutory energy efficiency or peak demand reduction requirements, those funds will be allocated to other Plan programs, consistent with Commission procedures.

c. Prior to the deployment of the CVR Program, the Company will install metering equipment at seven (7) customer locations for WPPII members and ten (10) small business customer locations that will allow delivered voltage to be monitored on a continuous basis. With respect to the small business customer locations, Company field engineers will determine the location of the metering equipment based on circuit configuration and any special or unique customer characteristics. Voltage information will be accessible to WPPII member customers at those locations on a quarterly basis. Voltage information from the small business customer locations will be accessible to OSBA on a quarterly basis. The metering equipment will remain in place at least until May 2013, or when the current CVR Program is suspended or concluded, whichever is sooner, with the exception of metering installed in customer equipment. With respect to metering installed in customer equipment, unless the Company and the customer mutually agree to extend the voltage monitoring, the Company may unilaterally determine whether it should be removed after the current CVR Program is suspended or concluded or May 2013, whichever is sooner. The metering equipment will be installed and maintained at the Company's initial expense, and is recoverable as a Program expense through the EE&C Surcharge tariff rider through direct assignment to the rate schedule(s) under which electric service is delivered to the customer locations that receive the metering equipment. If any new metering equipment is installed in customer equipment, rather than at the current meter installation, to monitor the CVR Program, the Company will negotiate an agreement with the customer for each meter installation that addresses liability relating to operation of the meter, meter location, meter connection issues and safety standards. Agreement on these issues shall not be unreasonably withheld by the customer. Should voltage monitoring at the aforementioned seventeen (17) locations indicate that voltage is not being delivered within Commission voltage standards, the Company will promptly take all necessary steps to remedy the voltage problem. The Company will meet with and discuss the need for any additional voltage monitoring of WPPII member service locations or small business customers impacted by the CVR Program on an as-needed basis.

d. The Company shall take all steps required to maintain voltage levels consistent with the service voltage requirements in the Commission’s regulations at 52 Pa. Code § 57.14.

e. Currently unresolved voltage issues on circuits that have been identified for the CVR Program will be resolved prior to CVR Program implementation on these circuits.

f. To the extent that CVR Program implementation causes any voltage fluctuation outside the range permitted by PUC regulations and such fluctuation damages customer equipment or interrupts service, the Company's liability for damages shall be in accordance with the Commission-approved Rules and Regulations of the Company’s Tariff. Said liability is not modified by the Commission's approval of the CVR Program.

g. The Company will provide an annual assessment of the impact of the CVR Program for all circuits in the CVR Program in a given year during the reporting period in its annual reports as required for the approved EE&C/DR Plan. Such an annual assessment will include the following:

i. An assessment of the impact of the program on customer voltage levels by circuit.

ii. A description of mitigation strategies implemented and the performance of such strategies.

iii. Non-confidential information about any customer issues raised or any formal ALJ or informal Commission Bureau of Consumer Services customer complaints received ("Complaints"), including a description of the nature of the Complaint, actions taken on the Complaint and how the matter was resolved, if it was resolved. The Company will provide information on any impacts or harmful effects raised by customer Complaints, including, but not limited to, Complaints about motors running hotter than normal or failing prematurely; unexplained equipment malfunctions; equipment damages; loss of production and output; voltage related power quality issues; dim incandescent light; batteries failing to recharge properly; and/or random equipment failures resulting from voltage drops outside the Voltage Requirements previously mentioned.

iv. Information regarding the impact of any PJM 5% emergency voltage reductions with the Conservation Voltage Reduction program. Within 60 days of PUC approval of the Company's amended EE&C/DR Plan, the Company will review the CVR Program with PJM representatives. The Company will propose to the Commission any CVR Program revisions necessary to resolve any issues or concerns identified by PJM in a manner that complies with the Commission's service voltage requirements. The Company shall provide the settling parties with notice of the Company's meeting(s) with PJM, concerns identified by PJM, and actions by the Company to address PJM's concerns. Any dialogue between PJM and the Company on this subject shall be summarized and included in the annual assessment of the impact of the CVR Program.

v. The EM&V methodology, custom protocol and other means used to calculate and verify CVR-related energy savings and demand reductions. This will include a statement reporting the status of implementation of the custom protocol and any EM&V results that have been produced.

h. The Company shall include a description of its CVR Program on its website listing of residential EE&C Programs.[[4]](#footnote-4) In addition, Company service representatives in the call centers, as well as field representatives to Large C&I customers, will be trained on the operation of the CVR Program. Call Center representatives, field representatives, and the Company's engineers will be informed of the implementation of the CVR Program, and the circuits affected thereby, so that they are positioned to discuss the Program with customers and can incorporate the CVR Program into their analysis of any reported customer problems.

7. In the event the Company decides to exercise its ability to modify incentive levels pursuant to the ranges approved by the Commission, it will first provide parties to this case and its stakeholder group with notice of those plans and, if requested, meet via conference call with those parties and other interested stakeholders to discuss changes in incentive levels. A defined process will be established for stakeholders to be informed of the modifications to incentive levels, timeframes for responses by stakeholders, and implementation procedures.

8. The Company will reinstate $143,000 to the low income residential sector budget, moving the funds from other non-low income residential programs.

9. The Company will retain the dishwasher rebate measure within the Residential Energy Efficient Products Program.

10. In its annual EE&C/DR filings, the Company will calculate on a segregated basis an estimate of the EE&C/DR Surcharge revenues for small commercial customers and government customers.

11. The Company will continue to honor all commitments made to PCOC in the December 2, 2010 stipulation at this docket.

12. Regardless of their support or non-opposition to the CVR Program, the parties preserve all arguments relative to any cost recovery the Company may seek in the future for claims paid to customers relating to voltage issues that result from the CVR Program.

13. Regarding the addition of new measures approved by the Technical Resource Manual (TRM), the Company will follow the Commission’s procedures established in the June 11, 2011 Implementation Order. However if, subsequent to this case, the Commission approves for any electric distribution company the use of new measures approved by the TRM without further filings and approvals being required, the Company is permitted to request the same procedural treatment for the same type of measures and the parties to this case agree not to oppose such a request by the Company.

DISCUSSION

Commission policy promotes settlements, 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve precious administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a "settlement" reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. *Pa. P.U.C. v. CS Water and Sewer Associates,* 74 Pa. P.U.C. 767, 771 (1991); *Pennsylvania Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165, (Order entered October 4, 2004).

In their supporting statements, PCOC, OCA, OSBA and West Penn state that, after extensive discovery and discussion, the proposed Settlement resolves all issues, that it fairly balances the interests of West Penn and its ratepayers, it is in the public interest, it is consistent with the requirements of Act 129, and it should be approved. The Petitioners provide reasons why adopting the settlement is in the public interest. These reasons include satisfactory termination of the proceeding and avoiding further litigation and possible appeals. In their statements of support, the Petitioners set forth their positions regarding the terms and conditions of the Joint Petition. The statements of support are summarized below.

**PCOC Statement in Support**

PCOC supports the Joint Settlement given that the Settlement, at paragraph 8, provides that the Company will reinstate $143,000 to the low- income residential sector budget, moving the funds from other non-low- income residential programs. PCOC states that the reinstatement of funds designated to the low-income residential sector is in the public interest.

The reinstatement of $143,000 dedicated to low- income households will ensure that low-income energy efficiency and conservation efforts remain in compliance with Act 129.

PCOC contends that energy efficiency and conservation efforts specifically directed to low-income utility consumers are a cost effective means of reducing the monthly energy costs of those households least able to afford them, therefore advancing the public policy goals of promoting affordable energy service to low-income customers. Furthermore, the reduction in energy use by those low-income customers participating in the Company’s Customer Assistance Program (CAP) will control those costs of the program borne by other residential ratepayers; thereby promoting the public policy goals of maintaining cost efficient universal service programs.

In its original comments, PCOC had expressed concern that a permanent Conservation Voltage Reduction (CVR) program combined with intermittent peak load reductions required by PJM may unduly jeopardize the provision of reliable service. PCOC argued that low-income customers – particularly the elderly and infirm – are much more likely to be at home during peak load times when insufficient supply could cause PJM to require a voltage reduction. These concerns have been addressed within the terms of the Settlement and those provisions are in the public interest. The Settlement, at Paragraph 6d., provides that the Company shall be permitted to implement the CVR Program at the proposed 1.5% voltage level, subject to the requirement that it shall take all steps required to maintain voltage levels consistent with the service voltage requirements in the Commission’s regulations at 52 Pa. Code § 57.14. PCOC asserts that the assurance and commitment of the Company to take all steps to maintain service voltage at levels in accord with current regulations will promote the continued provision by the Company of reliable service to its customers and is in the public interest. Further, the Settlement, at Paragraph 6f, provides that to the extent that CVR Program implementation causes any voltage fluctuation outside the range permitted by PUC regulations and such fluctuation damages customer equipment or interrupts service, the Company's liability for damages shall be in accordance with the Commission-approved Rules and Regulations of the Company’s Tariff. Liability is not modified by the Commission's approval of the CVR Program.

PCOC contends that the Settlement, at Paragraph 6g iv, is in the public interest in that it establishes a mechanism for promoting and monitoring the effectiveness of the Company’s efforts to maintain safe and reliable service. The Settlement specifically requires that within 60 days of PUC approval of the Company's amended EE&C/DR Plan, the Company will review the CVR Program with PJM representatives. The Company will propose to the Commission any CVR Program revisions necessary to resolve any issues or concerns identified by PJM in a manner that complies with the Commission's service voltage requirements. The Company shall provide the settling parties with notice of the Company's meeting(s) with PJM, concerns identified by PJM, and actions by the Company to address PJM's concerns. Any dialogue between PJM and the Company on this subject shall be summarized and included in the annual assessment of the impact of the CVR Program. PCOC asserts that a review by the company of its CVR plan with PJM representatives and an annual assessment intended to measure the actual impact of the CVR Program is an effective means of ensuring reliability of service and is thus in the public interest. Such an annual assessment will include the information regarding the impact of any PJM 5% emergency voltage reductions with the CVR program and will require review by PJM and the taking of swift action to resolve concerns arising from the assessment.

PCOC concludes by stating that the Settlement allows West Penn to amend its EE&C Plan and move forward with its CVR program, while retaining the level of essential funding for low-income energy efficiency and conservation efforts, reaffirming prior commitments to multi-family, low-income housing efficiency efforts and coordination with other utility companies and promotes the continued provision of safe and reliable electric service. Accordingly, PCOC believes that the Settlement represents a reasonably balanced resolution of the numerous issues in this proceeding, is in the public interest and requests that the Commission approve the Settlement without modification.

**OCA Statement in Support**

The OCA submits that the proposed Settlement is in the public interest and in the interest of West Penn’s residential ratepayers and that the Settlement satisfactorily resolves all issues with respect to the September 12, 2011 Comments filed by the OCA in this docket.

Like PCOC, the OCA originally expressed concerns with respect to West Penn’s CVR program. The OCA expressed concerns regarding the lack of a mitigation plan or any on-going evaluation of the impacts of the voltage reduction. The OCA was also concerned about the criteria for the selection of circuits to be included in the program, particularly evaluation of whether voltage would be maintained within the regulatory requirements. The OCA recommended that, at a minimum, the CVR program should include evaluations and mitigation plans. OCA Comments at 9. The Settlement provides for a mitigation plan, circuit analysis, and an on-going evaluation of the impacts of the 1.5% voltage reduction. Under the Settlement, CVR will not be deployed on any circuit unless West Penn’s analysis concludes that the voltages to all customers, including the 1.5% reduction, on the circuit can be maintained within the Commission’s current voltage regulations at 52 Pa. Code § 57.14. Settlement at ¶ 8(a),(d). The OCA submits that this condition maintains the Commission’s standards for voltage levels and requires that the CVR will not cause the voltage levels to fall below Commission regulation requirements.

West Penn will also complete a detailed engineering work-up before it deploys CVR on any circuit. Currently identified but unresolved voltage issues on the circuits will be resolved prior to the CVR program deployment on these circuits. Settlement at ¶ 8(e). The Company will also implement a mitigation strategy to monitor and to evaluate the circuit performance and voltage levels on a regular basis during the course of the program. Settlement at ¶ 8(b). If problems arise on the circuit that cannot promptly be resolved, the Company will suspend the CVR program on that circuit. Settlement at ¶ 8(b). If multiple instances occur across CVR circuits, the Company will reassess whether continued deployment of the CVR program should occur. If the CVR program is suspended, those program funds will be re-allocated to other Plan programs, consistent with Commission procedures for measure changes. Id. This ensures that problems will be addressed promptly, and changes will be made as conditions require.

West Penn will provide an annual assessment of the CVR Program for all circuits in the CVR program in a given reporting year in its annual EE&C/DR Plan. The assessment will include: (1) an assessment of the impact of the program on customer voltage levels by circuit; (2) a description of mitigation strategies implemented and the performance of such strategies; (3) non-confidential information about customer issues raised in any formal ALJ or informal Commission Bureau of Consumer Services (BCS) customer complaint proceedings, including a description of the nature of the Complaint, actions taken on the Complaint and how the matter was resolved; (4) information on the impact of any PJM 5% emergency voltage reductions on the CVR program; and (5) the Evaluation, Measurement and Verification (EM&V) methodology, custom protocol and other means used to calculate and to verify CVR-related energy savings and demand reductions. Settlement at ¶ 8(g)(i)-(v). The OCA submits that this annual assessment will allow the settling parties and the Commission to understand the impacts of the proposed program on West Penn’s system, PJM and customers and to make informed recommendations going-forward.

In its Comments, the OCA raised an additional concern with the proposed CVR program regarding the impact of the CVR on PJM’s 5% emergency voltage reduction procedures. The Settlement provides that within 60 days of Commission approval of the EE&C Plan, West Penn must review the CVR program with PJM representatives. West Penn will implement any measures necessary to resolve any concerns expressed by PJM representatives. Additionally, the Company will provide the settling parties with notice of the meeting(s) and inform the settling parties of concerns identified by PJM and actions taken by the Company to address these concerns. Settlement at ¶ 8(g)(iv). West Penn will also include information about this issue in its annual assessments. The OCA submits that the Settlement adopts the OCA’s recommendation for coordination with PJM and should assist in mitigating potential conflicts between PJM’s 5% emergency voltage reduction and the CVR program.

In its Comments, the OCA was concerned about the potential CVR program impact on customers. The OCA was concerned that customers, without knowledge of the voltage decrease, would not be able to express a potential voltage-related problem to a customer service representative in a manner that the customer service representative would understand and could diagnose as a service quality problem triggered by the voltage decrease. The Settlement provides several ways to address the problem. First, the Company will provide a description of the CVR program on its website listing of all of the residential EE&C programs. Settlement at

¶ 8(h). Therefore, residential customers will have access to information about the existence of the CVR program. Second, West Penn will train its Call Center representatives and its field representatives for large C&I customers, on the operation of the program and the circuits where the program is deployed. These representatives and the Company’s engineers will be positioned to identify potential problems, discuss the program with customers, and to incorporate the CVR Program into their analysis of the customer’s reported problems. *Id.* The customer service representative training will be important in helping to identify whether customers are experiencing voltage-related problems. The annual assessment also will include non-confidential information about any issues raised through the Formal Complaints or informal BCS Complaints, including the nature of the Complaint, actions taken by the Company and how the matter was resolved.

West Penn proposed two administrative changes to the EE&C Plan. The first was to change from a fixed incentive level to an incentive range. In the second administrative change, West Penn proposed to offer new measures within the existing programs and approved budgets as the new measures were approved for inclusion in the TRM. Under the Settlement, the Company will first provide parties to this case and its stakeholder group with notice of the plan to change the incentive level, and if requested, will meet via conference call with interested stakeholders. A defined process will be established for stakeholders to be informed of changes to the incentive levels; timeframes for responses; and implementation procedures. Settlement at ¶ 7. The OCA supports this proposed change because it will provide stakeholders with information about the changes, a process to address any concerns with the proposed change, and a defined implementation procedure.

West Penn also requested permission to implement new program measures that have been added to the TRM without prior Commission approval. The Settlement provides that the Company will follow the Commission’s procedures established in the June 11, 2011 Implementation Order. Settlement at ¶ 13. If the Commission approves for any other electric distribution company the use of new measures by the TRM without further filings, the Company would be permitted under the Settlement to request the same procedural treatment for the same types of measures, without opposition from the parties in the case. *Id.* The OCA agrees that this is a reasonable resolution of the issue.

Under the Settlement, West Penn has agreed to not decrease the low-income sector program by $143,000 as the Company had originally proposed in its Plan. Settlement at

¶ 8. The OCA supports the reinstatement of the $143,000 to the low-income program budget.

Finally, under the terms of the Settlement, West Penn will continue the dishwasher incentive measure. Settlement at ¶ 9. The OCA supports the continuation of the dishwasher incentive measure because it is an ENERGY STAR rated measure and could provide valuable energy efficiency savings.

**OSBA Statement in Support**

In its Comments to West Penn’s original filing, the OSBA raised concerns about the subsidies provided to government customers by small and medium commercial customer classes, and also the Company’s introduction of a CVR program. Specifically, the OSBA outlined its concerns about the Company’s failure to identify potential damage to small commercial customer equipment as a risk of the CVR program. The OSBA states that the monitoring provisions and metering equipment to be installed at designated small business customer locations will allow the delivered voltage to be monitored on a continuous basis. (Settlement at ¶ 6c). Voltage information from this monitoring equipment will be made available to the OSBA for small business customers on a quarterly basis. In addition, the Company will monitor and remedy undue voltage fluctuations in the event that the voltage delivered is not within the Commission’s voltage standards (Settlement at ¶¶ 6c and d). The Company will also meet with the small business customers impacted by the CVR program should there be a need for additional monitoring. The Company will also include a detailed evaluation of the technical impact of the CVR in its annual EE&C/DR plan reports (Settlement at ¶ 6g). While OSBA believes that the Settlement contains reasonable protection for ratepayers, OSBA takes the position that the Company retains responsibility for the technological efficacy of this program and for any damages to customer property caused by unreasonable implementation of this program. The Company’s responsibility in this respect is explicitly recognized in the Settlement (Settlement at ¶ 6f).

**West Penn Statement in Support**

The West Penn Statement in support of the Joint Petition reiterates and, in some instances, further elaborates those points that the other parties cite as garnering their support.

With respect to the proposed elimination of the dishwasher measure, West Penn states that withdrawing this proposal will not materially change the overall results of the EE&C/DR Plan or the Residential Energy Efficient Products Program.

With respect to the CVR Program, West Penn agrees that it has committed to a detailed process that describes how it will evaluate a circuit for inclusion in the CVR Program. After selecting a circuit for inclusion in the Program, any previously unresolved voltage issues on that circuit will be resolved, and West Penn will monitor and evaluate circuit performance and voltage levels during the course of the Program. Should any voltage problem persist, the circuit will be suspended from the CVR Program. In addition, metering equipment that will continuously monitor customer voltage levels will be installed at select large and small business customer locations, and voltage information from these monitoring locations will be shared with customers. The cost of the monitoring equipment will be at the Company's initial expense, and ultimately recovered through the EE&C Surcharge tariff rider through direct assignment to the rate schedules under which electric service is delivered to the customer locations where the monitoring equipment is installed. In addition to these actions, West Penn will provide an annual assessment of the impact of the CVR Program during the reporting period in its annual reports to the Commission as required for its approved EE&C/DR Plan. Non-confidential information relating to any customer concerns that may arise will be included in these reports, as well as any information relating to discussions the Company will have with PJM representatives on the impact of the CVR Program with any PJM 5% emergency voltage reductions. Finally, West Penn will include information on the CVR Program on its website listing of residential EE&C/DR Programs. Company call center service representatives will be trained on the operation of the CVR Program, and together with West Penn field representatives will be positioned to discuss the CVR Program and incorporate that Program into their analysis of any reported customer problems.[[5]](#footnote-5)

With respect to administrative changes, i.e., the use of incentive ranges rather than fixed incentive amounts and adding new measures to programs as measures are approved for inclusion in the TRM, the Settlement at paragraphs 7 and 13 specifically address these issues. Paragraph 7 states that in the event that West Penn decides to exercise its ability to modify incentive levels pursuant to the ranges approved by the Commission, it will first provide the parties to this case and its stakeholder group with notice of those plans and, if requested, meet via conference call with those parties and other interested stakeholders to discuss changes in incentive levels. The Settlement also indicates that a process will be defined for stakeholders to be informed of the modifications to incentive levels, timeframes for responses by stakeholders, and implementation procedures. Paragraph 13 affirms that the Company will follow the Commission's existing direction on adding TRM-approved measures; however, should the Commission approve any electric distribution company use of new TRM-measures, without further filings and approvals being required, West Penn may request and Parties may not oppose such a request. These are reasonable compromises of opposing positions on these issues that satisfy all Parties concerns and which honors Commission precedent on the TRM-related issue.

The Settlement at Paragraph 8 eliminates the proposed reduction of $143,000 of budget funds to the low income sector budget that would have resulted by moving funds to other non-low income residential programs. In addition, the Settlement at paragraph 10 requires West Penn to calculate on a segregated basis an estimate of the EE&C/DR Plan surcharge revenues for small commercial customers and government customers. This satisfies OSBA's specific concern about this component of the Company's revenue collections raised in its comments. Finally, the Joint Petition acknowledges in Paragraph 11 that the Company will continue to honor the commitment made in its December 2, 2010 stipulation at this docket. That stipulation largely concerned budget and funding issues.

West Penn asserts that the Settlement is in the public interest because it harmonizes the Company's proposals with the specific concerns raised by the active Parties in their comments filed in response to the Petition that opened this phase of the docket. At the same time the Joint Petition implements important amendments to the Company's EE&C/DR Plan that will improve its ability to meet the energy and demand reduction mandates required under Act 129. The Joint Petition thus fulfills the important public interest objective of reducing energy and demand consumption by customers, which will provide them with opportunities to lower their electric bills. Resolving this case by settlement before hearings were required to be conducted is also in the public interest because it conserves Commission and Party resources, and allows all elements of the proposed EE&C/DR Plan amendments to be placed in effect sooner than would otherwise be the case under a litigation scenario, which also improves the Company’s ability to meet the energy and demand reduction mandates required under Act 129.

FURTHER TERMS AND CONDITIONS

As is customary, the Settlement is conditioned upon the Commission’s approval of the terms and conditions contained therein without modification. If the Commission modifies the Settlement, then any Joint Petitioner may elect to withdraw from this Settlement and may proceed with litigation and, in such event, this Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Joint Petitioners within five (5) business days after the entry of an order modifying the Settlement. Joint Petition at ¶ 16. The Settlement is made without any admission against, or prejudice to, any position which any Joint Petitioner may adopt in the event of any subsequent litigation in these proceedings. Joint Petition at ¶ 18. The parties agree that the Settlement may not be cited as Commission precedent in any future proceeding, except to the extent required to implement the Settlement. Joint Petition at ¶ 19. Likewise, the Commission’s approval of the Settlement shall not be construed to represent approval of any Joint Petitioner’s position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement in these and future proceedings involving the Company. Joint Petition at ¶ 20.

The Settlement is presented only in the context of these proceedings in an effort to resolve the proceedings in a manner which is fair and reasonable. The Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance in the future on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of this Settlement. The Settlement does not preclude the Joint Petitioners from taking other positions in proceedings of other public utilities, or any other proceeding. Joint Petition at ¶ 22.

All active parties to this proceeding either support the Joint Petition or do not object to its approval by the Commission. Joint Petition at ¶ 24.

In this proceeding, West Penn is asking the Commission for approval to make changes to West Penn’s “revised New [EE&C/DR] Plan.” Those changes are not opposed by any of the parties in this case given the agreements reached that led to final modifications of the Plan as set forth in the Joint Petition.

Act 129 requires that an EDC’s plan reduce electric consumption by at least 1% of its expected consumption for June 1, 2009, through May 31, 2010, adjusted for weather and extraordinary loads. This 1% reduction is to be accomplished by May 31, 2011. 66 Pa. C.S.

§ 2806.1(c)(1). By May 31, 2013, the total annual weather‑normalized consumption is to be reduced by a minimum of 3%. 66 Pa. C.S. § 2806.1(c)(2). Also, by May 31, 2013, peak demand is to be reduced by a minimum of 4.5% of the EDC’s annual system peak demand in the 100 hours of highest demand, measured against the EDC’s peak demand during the period of June 1, 2007, through May 31, 2008. 66 Pa. C.S. § 2806.1(d)(1).

Act 129 also establishes the following plan requirements:

(1) The plan shall include specific proposals to implement energy efficiency and conservation measures to achieve or exceed the required reductions in consumption.

(2) A minimum of 10% of the required reductions in consumption shall be obtained from units of federal, state and local government, including municipalities, school districts, institutions of higher education, and nonprofit entities.

(3) The plan shall explain how quality assurance (QA) and performance will be measured, verified and evaluated.

(4) The plan shall state the manner in which the plan will achieve the requirements of the program and will achieve or exceed the required reductions in consumption.

(5) The plan shall include a contract with one or more conservation service providers selected by competitive bid to implement the plan or a portion of the plan.

(6) The plan shall include estimates of the cost of implementation of the energy efficiency and conservation measures in the plans.

(7) The plan shall include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines. The number of measures shall be proportionate to those households’ share of the total energy usage in the service territory. The EDC shall coordinate these measures with other programs administered by the Commission or another federal or state agency. The expenditures of an EDC under this clause shall be in addition to those made under the Commission’s Regulations at 52 Pa. Code Chapter 58.

(8) The plan shall include a proposed cost-recovery tariff mechanism to fund the EE&C measures and to ensure full and current recovery of the prudent and reasonable costs of the plan, including administrative costs.

(9) The EDC shall demonstrate that the plan is cost-effective, using a TRC Test approved by the Commission, and provides a diverse cross section of alternatives for customers of all rate classes.

(10) The plan shall require an annual independent evaluation of its cost-effectiveness and a full review of the results of each five-year plan and, to the extent practical, how the plan will be adjusted on a going-forward basis as a result of the evaluation.

(11) The plan shall include an analysis of the EDC’s administrative costs.

66 Pa. C.S. § 2806.1(b)(1)(i)(A)-(K).

The issue before us is whether the changes to the EE&C/DR Plan proposed by West Penn and agreed to or not-objected to by the active parties maintains an EE&C/DR Plan that continues to satisfy the requirements of Act 129 and the prior related Orders of the Commission. Having reviewed the record in this proceeding as well as West Penn’s January 6, 2012, Petition and supporting statements, I conclude that West Penn’s “revised New EE&C/DR Plan” conforms with the requirements of Act 129, 66 Pa. C.S. § 2806.1, and is in the public interest, and it is recommended that the Commission issue an Order adopting the Joint Settlement as filed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa. C.S. § 2806.1

2. Act 129 of 2008, 66 Pa. C.S.A. §2806.1, required each electric distribution company to develop and file an Energy Efficiency and Conservation Plan with the Commission. 66 Pa. C.S.A. §2806.1(b)(1)(i).

3. Act 129 of 2008, 66 Pa. C.S.A. §2806.1, requires that the Commission have in place an Energy Efficiency and Conservation Program that includes procedures to make recommendations as to additional measures that will enable an electric distribution company to improve its plan and to exceed the required reductions in consumption under 66 Pa. C.S.A. §2806.1(c) and 66 Pa. C.S.A. §2806.1(d). 66 Pa. C.S.A. §2806.1(a)(6).

4. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. *Pa. P.U.C. v. CS Water and Sewer Associates*, 74 Pa. P.U.C. 767, 771 (1991); Pennsylvania Pub. Util. Comm'n v. York Water Co., Docket No. R-00049165, (Order entered October 4, 2004).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the February 17, 2012, Motion to Admit into Evidence the Company's Direct Testimony in support of proposed amendments to West Penn Power Company’s existing, Commission-approved Energy Efficiency and Conservation/Demand Response Plan, as modified by the Joint Petition for Settlement of All Issues, is granted.

2. That the Joint Petition for Settlement of All Issues filed January 6, 2012, between West Penn Power Company, the Office of Consumer Advocate, the Office of Small Business Advocate, Pennsylvania Communities Organizing for Change and West Penn Power Industrial Intervenors be approved.

3. That those portions of the Petition of West Penn Power Company for proposed amendments to West Penn Power Company’s existing, Commission-approved Energy Efficiency and Conservation/Demand Response Plan submitted on August 9, 2011, and

subsequently referred to the Office of Administrative Law Judge by the Commission’s Interim Opinion and Order of October 28, 2011, be approved as modified by the Joint Petition for Settlement of All Issues filed January 6, 2012.

4. That within thirty (30) days of the entry date of the Commission’s Order, West Penn Power Company shall file any tariffs, including supporting materials, implementing the Amended Energy Efficiency and Conservation Plan consistent with the provisions of the Joint Petition for Settlement of All Issues.

Date: April 17, 2012 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dennis J. Buckley

Administrative Law Judge

1. PSU and BI&E are not signatories to the Joint Petition, but they do not object to the Joint Petition. [↑](#footnote-ref-1)
2. See *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of Its Energy Efficiency and Conservation Plan, Approval of Recovery of Costs 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 1-6. [↑](#footnote-ref-2)
3. Petition of West Penn Power Company for Amendment of the Orders Approving Energy Efficiency and Conservation Plans and Petition for Approval of its Amended Energy Efficiency and Conservation Plans, Docket No. Docket No. M-2009-2093218 (Interim Opinion and Order, October 28, 2011) at 12-15. [↑](#footnote-ref-3)
4. The description included on the website will be as follows: "Conservation Voltage Reduction - As part of its compliance with Act 129 requirements, West Penn Power has implemented a Conservation Voltage Reduction program.  Under this program, West Penn strategically reduces voltage across designated portions of its distribution system, within regulatory guidelines.  This helps achieve energy and demand savings in a cost-effective manner, thereby helping customers lower their energy costs." Joint Petition at 8, ¶ 6h, fn. 5. [↑](#footnote-ref-4)
5. West Penn does not anticipate that the CVR Program will lead to any customer voltage problems on circuits where it is implemented. Comprehensive monitoring, planning, remedial, review and reporting measures as agreed to under the Settlement will further ensure that customers receive service from any circuit included in the CVR Program that meets or exceeds the Company's regulatory requirements. [↑](#footnote-ref-5)