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May 27, 2010

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VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street – 2nd Floor
Commonwealth Keystone Building
Harrisburg, Pennsylvania 17120

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

Dear Secretary Chiavetta:

Enclosed is an original and three (3) copies of Allegheny Power's Reply to "New Matter" Raised in The Office of Small Business Advocate Answer in the above-referenced proceeding. Copies have been served on each of the parties to this proceeding as indicated on the attached Certificate of Service.

Thank you for your attention to this matter.

Very truly yours,


John F. Povilaitis

JFP:ck
Attachment
c. Certificate of Service

SECRETARY'S BUREAU
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY TO "NEW MATTER" RAISED IN
THE OFFICE OF SMALL BUSINESS ADVOCATE ANSWER**

On May 13, 2010, West Penn Power company d/b/a Allegheny Power ("Allegheny Power" or "Company") submitted a Petition to Stay the Exception Period ("Petition") in this proceeding. With the exception of the Office of Small Business Advocate ("OSBA"), no party opposed the Petition. OSBA filed an Answer urging denial of the Petition or, in the alternative, requesting that the Commission establish a date certain by which Allegheny Power must file changes to its SMIP and EE&C Plan, and a date certain by which exceptions must be submitted if those plans are not filed by the prescribed deadline.¹ In several instances, OSBA's Answer provides "by way of further response," additional information and argument that can be fairly described as New Matter. In accordance with Section 5.63 of the Commission's regulations, Allegheny Power answers the OSBA's "further responses" as follows to assist the Commission in fully understanding the issues before it.

1. In paragraph 9 of its Answer, OSBA states that:

[B]ecause the [FirstEnergy Corp./Allegheny Energy Inc.] 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

¹ OSBA Answer p. 7.

Commission relies heavily on the accelerated deployment of smart meters.

Allegheny Power simply cannot delay resolution of its SMIP Plan to the point its achievement of the Company's Act 129 EE&C Plan reduction mandates is jeopardized. Therefore, it is inaccurate to describe the delay in the Exception deadline sought by the Petition as an indefinite stay, particularly when the Petition committed to provide a status report to the Commission on discussions among the parties in 30 days. Furthermore, OSBA apparently construes the Petition as seeking a deferral of a Commission decision on the Company's SMIP Plan until the merger is "finalized" relative to state and federal regulatory review.² No such suggestion was made in the Petition, and Allegheny Power cannot and should not modify its current SMIP proposals to a proposal that assumes the merger will definitely be completed. What OSBA fails to appreciate is that the aim of discussions with the parties would be to arrive at a mutually acceptable plan that is sufficiently flexible to take advantage of efficiencies or economies that may present themselves if the merger is completed.

2. Moreover, Allegheny Power is not requesting to suspend the exceptions phase in the SMIP case indefinitely. FirstEnergy has recently received approval of a SMIP that does not require deployment of any smart meters until after the 30 month grace period provided by the Commission. In contrast, the SMIP plan recommended for approval by Administrative Law Judge Hoyer calls for deployment of 375,000 smart meters by mid-2012. The goal of making these very different approaches reasonably compatible is not easily achieved and may clearly take several meetings among the parties to accomplish. In addition, the Commission has on two occasions advised the

² OSBA Answer p. 3 .

Company that it would like Allegheny Power to develop an alternative EE&C plan that is “less reliant” on smart meters. Providing a suspension of the exception period that is not unduly restrictive will allow the parties to develop a SMIP that is not incompatible with FirstEnergy Corp’s SMIP schedule, and is compatible with a revised EE&C plan “less reliant” on smart meters. That process may be completed in a month, but that is not a certainty. However, discussions cannot proceed “indefinitely” as OSBA fears, given the importance of Allegheny Power meeting the Act 129 energy and demand reduction requirements within the deadlines imposed by that Act.

3. In paragraph 14 of its answer, OSBA correctly surmises that if a SMIP is adopted that deploys fewer smart meters than previously proposed by mid-2012, the previously approved EE&C Plan would have to be amended. OSBA then states that “[i]f 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.”³ In making this argument, the OSBA fails to appreciate that commercial customers have no legal right under Act 129 to a particular percentage of EE&C Plan costs. Therefore, an increase in the small commercial customer percentage of EE&C Plan costs due to an amendment of the plan is not *ipso facto* unlawful. And, the Commission process for reviewing EE&C Plans at a minimum on an annual basis envisions the need to amend plans periodically if appropriate. Thus, OSBA has not legally “locked in” a particular set of EE&C programs that are immune from amendment if that is appropriate. Also, even if an amended EE&C Plan does provide small commercial customers with additional or more extensive EE&C

³ OSBA Answer p. 4.

Programs and some additional costs, those customers will also presumably be obtaining a larger percentage of benefits from additional or expanded EE&C Programs. Finally, it should not be overlooked that OSBA was so concerned with the cost of the Company's SMIP that it argued the plan should be rejected by the Commission due to the costs being unreasonable compared to the SMIPs of other EDCs.⁴ Despite this cost concern, OSBA in its opposition to the Petition has given no weight to the reduced costs that small commercial customers may receive from a revised SMIP and has focused solely on the potential for additional costs to small commercial customers under the EE&C Plan. In the final analysis, until a specific set of EE&C programs is submitted and reviewed, it is speculative as to whether small commercial customers are harmed by revised programs.

4. In paragraph 15 of its Answer, OSBA asserts that it is appropriate for the Commission to set a date certain by which the Company must file changes to the SMIP and EE&C Plan on the grounds that it has "directed" development of a backup EE&C Plan, and Allegheny Power has "failed to file" such a plan.⁵ Neither the Commission nor any of the parties know at this time how the parties' will respond to any proposed revisions to the SMIP and EE&C Plans, or precisely how long evaluation of those revisions will take. What is known is that it is not in Allegheny Power's interest to so delay that process being completed so as to threaten the achievement of the Act 129 conservation and efficiency goals. OSBA's preference for a firm due date for EE&C Plan and SMIP revisions should give way to the sensible approach of suspending the exception period as the Company has requested and requiring a report from the parties on the status of discussions within 30 days. If the Commission at that time or any other time

⁴ OSBA argued in the alternative that the plan "be subjected to a rigorous *ex post* prudence review." OSBA Main Brief p. 11.

⁵ OSBA Answer p. 5.

questions the prudence of allowing more time for this process to conclude, it can reestablish an exception period at its discretion.

5. OSBA's rights are not violated by a Commission decision allowing the exception period to be suspended, with one or more status reports being filed and without a fixed deadline for discussions among the SMIP parties to conclude. With sufficient time, the parties may reach a mutually agreeable SMIP that would avoid the need for an adjudication of widely disparate party positions. That process should be unfettered by an arbitrarily selected deadline when the Company has a strong interest in timely meeting its Act 129 deadlines.

WHEREFORE, Allegheny Power respectfully requests that the Commission exercise its discretion via a further Secretarial Letter to make final its initial determination that the exception period should be suspended, and in the alternative, grant the Petition on its merits.

Respectfully submitted,

Dated: May 27, 2010



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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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And Installation Plan :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

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