



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

IN REPLY PLEASE
REFER TO OUR FILE

November 12, 2010

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

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:

The Office of Trial Staff (“OTS”) is compelled to submit this Answer in Opposition to the request of West Penn Power Company d/b/a Allegheny Power (“West Penn” or “Company”) for leave to submit a Reply to Answers properly filed by the parties in the above referenced proceeding. On November 8, 2010, the Company submitted its request for leave to the Secretary of the Pennsylvania Public Utility Commission (“Commission”). Attached to the request was a document entitled *Reply to Answers in Opposition to Joint Petition for Settlement*. As supported by the comments below, OTS maintains that the request for leave must be denied and the attached comments stricken.

Neither the Commission’s Regulations¹ nor the Secretarial Letter² issued in this proceeding provide for the submission of a Reply to Answers to a Petition. The Commission is fully aware of its authority and discretion in requesting responsive documents. Recent correspondence regarding the annual reporting requirement for the Energy Efficiency and Conservation (“EE&C”) plans illustrate this understanding.³ There was no oversight or omission on behalf of the Commission in not providing for responsive documents to Answers submitted to the Joint Petition for Settlement. The Company’s unilateral request is made more egregious by the inclusion of the document it is requesting approval to submit. Rather than adhere to accepted regulatory procedures and the Commission’s Order, the Company instead creates its own standards for review of the current contested proceeding through unauthorized submissions. OTS maintains that the submitted document must be rejected and the Company’s request be denied. Furthermore, the Company’s submission of a responsive document actually supports the

1 See generally, 52 Pa. code § 5.61 et al.

2 Secretarial Letter at Docket No. M-2009-2123951 dated October 21, 2010.

3 See, e.g., Secretarial Letter issued November 9, 2010 at Docket No. M-2009-2093215 addressing PECO Energy Company’s annual report of its Energy Efficiency and Conservation Plan.

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OTS request for Evidentiary Hearings as the Joint Petition failed to establish substantial evidence in support of its proposal. Otherwise, no additional submission would be necessary.

The Company continues to seek resolution of a contested proceeding through its stipulation with only one other party. In the above referenced proceeding, only the Office of Consumer Advocate (“OCA”) has signed the proposed settlement agreement. The Company has submitted that “a majority of the parties in this case either support or do not oppose the settlement.”⁴ In reality, only OCA has supported the agreement between it and the Company. In a footnote on page one of the OCA/Company agreement, it is noted that Constellation New Energy, Inc. and Constellation Energy Commodities Group, Inc. (collectively “Constellation”) and the Department of Environmental Protection (“DEP”) have indicated that they do not oppose the agreement between OCA and the Company. Whereas OCA has included correspondence in the form of a Statement in Support, the Joint Petition itself contains no representations directly from Constellation and DEP as to their intent with respect to the proposed stipulation between the Company and the OCA. Furthermore, the Company attempts to include an Answer of a non-party⁵ as indicative of support for the agreement. OTS maintains that this circular enlistment of supporters still does not satisfy the Commission’s Order that required West Penn and the Parties to file a proposed Settlement Agreement in this proceeding, otherwise the schedule for Exceptions and Reply Exceptions would be enforced.⁶ Accordingly, OTS has submitted Exceptions to the Initial Decision of Administrative Law Judge Mark A. Hoyer in accordance with the schedule established by the Commission.

Curiously, the request for leave to file a responsive document to the Answers to the Joint Petition is not joined by the other signatory to the underlying agreement. Only the Company has requested permission to bolster its substantively and procedurally deficient Joint Petition. At a minimum, all parties purporting to support, or, as the Company has unilaterally indicated, do not oppose the agreement between the Company and OCA should have joined in this unilateral request. OTS is of the opinion that the absence of comments by these parties is indicative of their understanding that there are no provisions for the submission of responsive documents.

The recognition of the Company’s request has implications that go far beyond the merits of this proceeding. Recognition of a one party agreement as well as the abandonment of Commission procedures as suggested in this filing will create a

⁴ See attachment to request for leave to file *Reply to Answers in Opposition to the Joint Petition for Settlement*.

⁵ Pennsylvania Communities Organizing for Change d/b/a Action United Inc. (“PCOC”) submitted a Petition to Intervene. No action has been taken on this Petition. By letter dated November 4, 2010, OTS has indicated it will be filing an Answer to PCOC’s Petition to Intervene in accordance with the Commission’s Regulations.

⁶ Docket No. M-2009-2123951, Order Adopted July 15, 2010 and Entered July 21, 2010, page 11.

dangerous precedent as it will allow the parties to establish alternative procedures for all cases going forward. The allowance of replies to Answers to Petitions is not supported by established Regulations and must not be considered in this proceeding.

If the Commission were to determine that the agreement between the Company and the OCA should be reviewed, OTS continues its request for the assignment of this disputed proceeding to the Office of Administrative Law Judge for the scheduling of Evidentiary Hearings that will allow for the development of a full and complete record. The magnitude of the changes suggested in the agreement cannot support any request for expedited proceedings. A full procedural schedule is necessary to allow for the supporters of the agreement to present evidence with the intervening parties submitting responsive testimony. Commission determinations must be supported by substantial evidence. OTS maintains that this standard has not been met with the submission of the agreement between the Company and OCA.

Sincerely,



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

RAK/edc

cc: Parties of Record
Hon. Mark A. Hoyer
Office of Special Assistants