|  |  |  |
| --- | --- | --- |
| PUC logo | COMMONWEALTH OF PENNSYLVANIA  PENNSYLVANIA PUBLIC UTILITY COMMISSION  P.O. BOX 3265, HARRISBURG, PA 17105-3265 | **IN REPLY PLEASE REFER TO OUR FILE** |

December 8, 2010

**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; Joint Petition for Settlement**

Docket No. M-2009-2123951

To All Active Parties:

On October 19, 2010, West Penn Power Company d/b/a Allegheny Power (West Penn) and the Office of Consumer Advocate (OCA) filed a Joint Petition for Settlement (Joint Petition) in this proceeding. West Penn requested that the Answer period for the Joint Petition for Settlement and any subsequent associated procedural steps be expedited.

By Secretarial Letter dated October 21, 2010, the Commission directed that Answers to the Joint Petition be filed within ten (10) days. On October 29, 2010, the Office of Small Business Advocate (OSBA) filed an Answer and Objections to the Joint Petition. On November 1, 2010, the West Penn Power Industrial Intervenors (WPPII) filed an Answer in Opposition to the Joint Petition. Also on that date, the Office of Trial Staff (OTS) filed an Answer in Opposition to the Petition.

On November 8, 2010, West Penn filed a Reply to Answers in Opposition to the Joint Petition. Also on November 8, 2010, the OTS filed Exceptions to the Initial Decision issued by Administrative Law Judge Mark A. Hoyer on May 6, 2010. On November 12, 2010, the OTS filed an Answer to West Penn’s Reply to Answers. OTS argued that West Penn’s Reply to Answers should be stricken.

On November 22, 2010, the Pennsylvania Department of Environmental Protection (DEP) filed a letter of non-opposition to the Joint Petition. On November 30, 2010, the WPPII filed correspondence indicating that further discussions with West Penn had resolved the WPPII’s concerns, and it now supported the Joint Petition. As a result, the WPPII was withdrawing its Answer in Opposition to the Joint Petition. On December 1, 2010, the WPPII filed a Petition for Leave to Withdraw the Answer in Opposition to the Joint Petition.

West Penn and the OCA contend that the Settlement Agreement is supported by the existing record and should be approved as submitted. The OSBA argues that the Settlement Agreement should be rejected or, in the alternative, modified. The OTS contends that the Settlement Agreement should be rejected because it is not supported by the existing record. In the alternative, the OTS submits that a new procedural schedule must be developed to allow for the presentation of evidence. No other Party addressed the need for additional hearings in this matter.

Based on our review of the record in this matter, we will refer this matter to the Office of Administrative Law Judge for further proceedings. We note, in this regard, that an Initial Decision was issued in this matter on May 6, 2010, following hearings held on November 9, 2009 and March 16, 2010. The proposed settlement agreement would modify that Initial Decision.

We further note that the period for submitting Exceptions to the Initial Decision was stayed so that the Parties could consider the impact of the proposed merger of West Penn and its affiliates into FirstEnergy Corp. on West Penn’s proposed Smart Meter Technology Procurement and Installation Plan (Plan). As noted in the Joint Petition, West Penn’s merger application was filed with the Commission on May 17, 2010. Joint Petition at 4, n. 1. In addition, as noted in West Penn’s Petition to Stay the Exceptions Period, the Commission approved the smart meter plan proposed by the FirstEnergy companies on April 15, 2010. Both of these events occurred after the record was closed in this proceeding. Under these circumstances, we believe further proceedings are advisable to ensure that (1) the impact of the proposed merger on the Plan is fully considered, and (2) the proposed Settlement has adequate support in the record.

If you have any questions regarding this matter, please contact the Office of Special Assistants at (717) 787-1827.



Sincerely

Rosemary Chiavetta

Secretary