

**PENNSYLVANIA UTILITY LAW PROJECT**

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December 13, 2010

**Via E-Filing**

Secretary Rosemary Chiavetta  
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:

Please accept for filing in the above captioned proceeding the following Amended  
Petition to Intervene by Pennsylvania Communities Organizing for Change, Inc. d/b/a ACTION  
United ("PCOC") filed pursuant to 52 Pa. Code § 5.41.

Thank you for your assistance, and please feel free to contact me directly should you  
have any questions.

Very truly yours,



Julie George, Esq.

cc: Honorable Mark A. Hoyer  
Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have today served a true copy of the Amended Petition to Intervene upon the parties of record in this proceeding listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Via Electronic Mail and First Class Mail**

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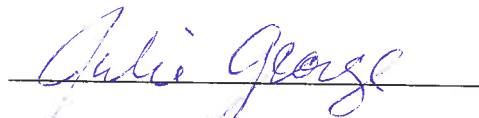
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Dated: December 13, 2010

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**AMENDED PETITION TO INTERVENE, OR IN THE ALTERNATIVE TO SUBMIT  
COMMENTS, OF PENNSYLVANIA COMMUNITIES ORGANIZING FOR CHANGE,  
INC. d/b/a ACTION UNITED**

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TO THE HONORABLE MARK A. HOYER:

Pennsylvania Communities Organizing for Change, Inc. d/b/a ACTION United (“PCOC”), through counsel, the Pennsylvania Utility Law Project, hereby Petitions to Intervene or in the alternative, be permitted to file Comments to the Proposed Settlement in the above-captioned proceeding pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code Sections 5.71-5.74, and states as follows:

**RELEVANT HISTORY OF THE PROCEEDING**

1. On August 14, 2009, West Penn Power d/b/a Allegheny Power (“West Penn” or “company”) pursuant to its obligations under Act 129, filed its Smart Meter Procurement

and Installation Plan (“SMIP” or “Smart Meter Plan”) pursuant to Section 2807(f) of the Public Utility Code, 66 Pa.C.S. § 2807(f), and the Smart Meter Procurement and Installation Order entered by the Pennsylvania Public Utility Commission (“Commission”) on June 24, 2009, at Docket No. M-2009-2092655 (“Implementation Order”).

2. Several parties were granted intervener status in the West Penn Act 129 proceeding, including the Commission’s Office of Trial Staff (“OTS”), the Office of Consumer Advocate (“OCA”), the West Penn Power Industrial Interveners (“WPPII”), the Pennsylvania Department of Environmental Protection (“DEP”), the Office of the Small Business Advocate (“OSBA”), Constellation New Energy, Inc. and Constellation Energy Commodities Group, Inc. (collectively, “Constellation”) and The Pennsylvania Association of Community Organizations for Reform Now (“ACORN”).
3. ACORN actively participated in the Act 129 proceedings on behalf of low and lower income customers and residents within the West Penn service territory.
4. On April 7, 2010, ACORN, having dissolved its status as a corporate entity, petitioned to withdraw from the proceeding, leaving low-income households without an active party to exclusively represent low-income issues in the Act 129 proceedings.
5. On May 6, 2010, an Initial Decision was issued by the ALJ.

6. On May 13, 2010, West Penn filed a Petition to Stay the Exceptions Period in this proceeding. Exceptions in this case were due May 26, 2010, with Reply Exceptions due June 7, 2010. West Penn averred that a Stay of the Exception period in this matter is necessary and appropriate so that the Parties may consider the impact on West Penn's proposed SMIP given the proposed merger of Allegheny Power and its affiliates (including West Penn) into FirstEnergy Corporation.<sup>1</sup>
7. On May 14, 2010, the Secretary of the Commission ("Secretary") issued a letter advising the Parties that the Answer period to the Petition to Stay would be shortened to May 18, 2010.
8. On May 18, 2010, the OSBA filed an Answer opposing the Petition to Stay. The OCA filed a letter stating its support of the West Penn Petition. No other party filed an Answer to the Petition.
9. On May 21, 2010, the Secretary issued a letter advising the Parties that the Commission was exercising its authority under 52 Pa. Code § 1.2(a) and (c) and 52 Pa. Code § 5.533(a) to stay the filing of Exceptions in this matter until the Commission has had an opportunity to consider the Petition and the Answer thereto filed by the OSBA, at a June 2010 Public Meeting.
10. On May 27, 2010, West Penn filed a Reply to New Matter raised by the OSBA.
11. On October 19, 2010, West Penn and the Office of the Consumer Advocate ("OCA") joined in a Joint Petition for Settlement ("Settlement") and requested that the Commission approve the Settlement.

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<sup>1</sup> *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving A change of control of West Penn Power Company And Trans-Allegheny Interstate Line Company, Docket Nos. A-2010-2176520, A-2010-2176732, (Filed May 17, 2010).*

12. A Secretarial Letter, dated October 21, 2010, shortened the time for filing Answers to the Joint Petition for Settlement to ten days after the date of the letter.
13. On November 1, 2010, PCOC filed a Petition to Intervene.
14. On November 10, 2010, West Penn filed a letter not objecting to PCOC's Petition to Intervene.
15. On November 22, 2010, the Office of Trial Staff filed an Answer in Opposition to the Petition to Intervene of PCOC.
16. After a review of the record, the Commission, by Secretarial Letter dated December 8, 2010, referred this matter to the Office of the Administrative Law Judge for further proceedings.
17. The Settlement will affect the interests of low income customers residing within the West Penn service territory. Provisions of the Settlement address matters affecting cost, procedural protections and studies addressing the effect on low income customers.<sup>2</sup>
18. The Petitioner, PCOC, is a not-for-profit membership-based advocacy organization incorporated in Pennsylvania. Its application for 501(c)(4) status is pending. One aspect of PCOC's mission is to advocate on behalf of low and lower income persons on numerous consumer issues, including access to and affordability of utility service. In this

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<sup>2</sup> 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 (dated October 19, 2010) ¶¶18-19,25,27.

proceeding PCOC is intervening on behalf of its low-income members who are customers of Allegheny Power.

19. PCOC does business as ACTION United. ACTION Untied is not incorporated.
20. PCOC membership status is achieved through specific enrollment.
21. PCOC is a statewide organization. Many PCOC members reside within West Penn territory and are customers of the company;<sup>3</sup> they rely on the company for their electricity, including heating and cooling needs, and will be affected by the issues presented in this ongoing proceeding. In particular, they are potentially eligible to participate in and receive the benefits of the West Penn's SMIP; they will also share the costs of the SMIP on ratepayers. They therefore have a direct, immediate, substantial, and distinct interest in this proceeding.
22. PCOC, as an advocacy membership organization, has authorized its Executive Director to take positions and to intervene in proceedings on behalf of PCOC and its members.
23. PCOC seeks to intervene to ensure that its interests and those of its members are protected and advanced in this proceeding. The interests of PCOC members, particularly its low-income members who are Allegheny Power customers are not adequately

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<sup>3</sup>PCOC members who are Allegheny low income customers include: Kelly J. Boucher 374 Route 908, Natrona Heights, PA 15065; Jaclyn M. Bubash 8 Pine St, Natrona Heights, PA 15065; Christy J. Neal 58 Pond St, Natrona Heights, PA 15065; Kristie S. Singer 1417 Pennsylvania Ave, Natrona Heights, PA 15065



represented despite the fact that these PCOC members will be bound by the Commission's decision.

24. Given the withdrawal of ACORN, low-income interests are not presently adequately represented by other participants in this proceeding. No other active party exclusively represents the unique and specific interests of low-income customers. PCOC's intervention in this proceeding will remedy this situation and ensure that the unique and particular interests of its members and of low-income customers are adequately represented. ACORN's withdrawal constitutes extraordinary circumstances sufficient to justify the Commission granting this Petition to Intervene, or, in the alternative, the ability to submit comments concerning the Settlement.
  
25. In its Opposition to PCOC's November 1, 2010 Petition, the Office of Trial Staff asserts that the involvement of the Office of Consumer Advocate is sufficient to represent the interest of low-income households.<sup>4</sup> The OCA represents all residential customers. Low-income customers are a distinct and unique subset of residential consumers, with distinct and unique perspectives and concerns. These issues may or may not overlap with the more broad-based concerns of the residential class.
  
26. Further hearings will be held in this matter, as per the December 8, 2010 Secretarial Letter. The hearings will address new matters such as the Joint Petition for Settlement.

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<sup>4</sup> *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, Office of Trial Staff's Answer in Opposition to the Petition to Intervene of Pennsylvania Communities Organizing for Change d/b/a Action United, Inc. (November 22, 2010) ¶16-17.

These new matters will affect low income customers of the Company. It is important that low-income customers be permitted to intervene in order to represent their distinct interest in this proceeding.

27. Commission procedures permit PCOC's participation in this proceeding. Section 5.72(a) of the Pennsylvania Code provides:

(a) Persons. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

- (1) A right conferred by statute of the United States or of the Commonwealth.
- (2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.
- (3) Another interest of such nature that participation of the Petitioner may be in the public interest.<sup>5</sup>

28. The Commission's Rules of Administrative Practice and Procedure are broad and are to be liberally construed.

(a) This subpart shall be liberally construed to secure the just, speedy, and inexpensive determination of every action or proceeding to which it is applicable. The commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.<sup>6</sup>

29. Authorization of participation by a party within a specific proceeding is within the appropriate discretionary authority of the Commission.

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<sup>5</sup> 52 Pa. Code §5.72(a).

<sup>6</sup> 52 Pa. Code § 1.2.

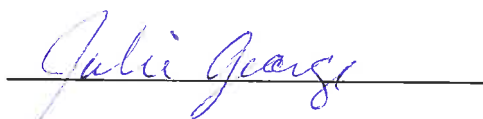
30. PCOC's membership and the perspective it brings to this proceeding is unique. The public interest will be served by incorporating this perspective.
31. By using its discretion to allow the participation of PCOC, the Commission serves the public interest without affecting the substantive rights of any other party.
32. The inclusion within the settlement of matters affecting low-income members of PCOC constitutes extraordinary circumstances sufficient to grant this Petition to Intervene, or in the alternative, the ability to submit comments concerning the Settlement.
33. PCOC intends to exclusively address the proposed settlement as it affects the impact of SMIP activities and costs on low income households, ensuring that the settlement contains protections for low-income households.
34. PCOC's intervention will not result in delay or affect adversely the interest of any party to this proceeding.
35. PCOC's Answer /Comments to the Settlement were submitted in a timely manner in accord with the Secretarial letter of October 21, 2010.

36. The Petitioners are represented by the Pennsylvania Utility Law Project. Attorneys for receiving service of all documents in this proceeding are:

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**WHEREFORE**, PCOC respectfully requests that the Honorable Judge Hoyer grant this Petition to Intervene, or in the alternative accept the Answer/Comments to the proposed Settlement and make such other order as is just and appropriate.

Respectfully submitted,

A handwritten signature in blue ink that reads "Julie George". The signature is written in a cursive style and is positioned above a solid horizontal line.

Harry S. Geller, Esq.  
Julie George, Esq.  
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December 13, 2010

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**VERIFICATION**

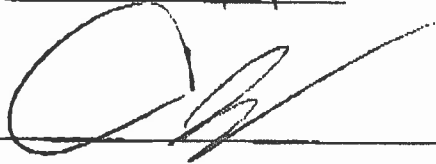
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I, Craig Robbins, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date:

12/10/2010

Signature:

  
Craig Robbins  
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