



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

IN REPLY PLEASE
REFER TO OUR FILE

February 13, 2013

Rosemary Chiavetta
Pa. Public Utility Commission
2nd Floor, 400 North Street
P.O. Box 3265
Harrisburg, PA 17105

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement West Penn Power Company;
Docket No. C-2012-2307244

Dear Secretary Chiavetta:

The Bureau of Investigation and Enforcement has entered into a Formal Settlement Agreement in the above captioned complaint proceeding. This complaint has not been assigned to the Office of Administrative Law Judge.

The Commission's regulations at 52 Pa. Code § 5.232 empower a participant in a formal Commission proceeding to file an executed Settlement Agreement with your office provided that a Commission Administrative Law Judge has not been assigned to hear the case.

Please accept for filing an original of the above captioned Settlement Agreement and Statements in Support of Settlement Agreement for appropriate disposition by the Commission.

If you have any questions on this matter, please call me at 717-214-9594.

Very truly yours,

Heidi L. Wushinske
Prosecutor

cc: as per certificate of service

PA PUC
SECRETARY'S BUREAU

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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SECRETARY'S BUREAU

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
:
Complainant :
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v. :
:
West Penn Power Company :
:
Respondent :
:

Docket No.: C-2012-2307244

**JOINT PETITION FOR FULL SETTLEMENT OF
PROCEEDING**

West Penn Power Company (“West Penn” or the “Company”) and the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (“I&E”), by their respective counsel, respectively submit to the Pennsylvania Public Utility Commission (“Commission”) this Joint Petition of Full Settlement of Proceeding (“Joint Petition”). West Penn and I&E are collectively referred to herein as the “Joint Petitioners.”

The terms and conditions of this Joint Petition represent a comprehensive settlement of all issues presently pending in this proceeding. The Joint Petitioners represent that this comprehensive settlement is in the public interest and, therefore, request that the Commission approve, without modification, the proposed settlement as

set forth in the Joint Petition. In support of their request, the Joint Petitioners state as follows:

I. Introduction

1. The Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate utilities within Pennsylvania pursuant to the Public Utility Code (the “Code”), 66 Pa.C.S. §§ 101, *et seq.*

2. I&E is the entity established by the Code to prosecute complaints against public utilities pursuant to 66 Pa.C.S. § 308.2(a)(11).

3. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

4. Section 701 of the Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints against public utilities for a violation of any law or regulation that the Commission has jurisdiction to administer.

5. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or any other person or corporation subject to the Commission’s authority for violations of the Code or Commission regulations or both. Section 3301 further allows for the imposition of a separate fine for each violation and each day’s continuance of such violation(s).

6. West Penn is an electric distribution company operating as a certificated public utility in portions of the Commonwealth of Pennsylvania.

7. West Penn is a “public utility” as that term is defined in the Public Utility Code at 66 Pa.C.S. § 102(1)(i), as it provides utility service as an electric distribution company to the public for compensation.

II. BACKGROUND

8. On May 30, 2012, I&E filed a Formal Complaint with the Commission against West Penn (“Complaint”). The Complaint is an outgrowth of a fatal accident that occurred on June 2, 2009 at 23 West Hempfield Drive, Irwin, Pennsylvania (“Goretzka Property”), when the Company’s electric distribution line fell onto a tree located on the Goretzka Property. The decedent, Carrie Goretzka, ultimately came into contact with the line.

9. On July 13, 2009, a civil action for damages due to the June 2, 2009 accident was filed in the Court of Common Pleas of Allegheny County, Pennsylvania. In 2011, a second civil action based on the same accident was filed in Allegheny County, expanding the number of defendants. These actions were consolidated and treated as one matter. *Court of Common Pleas of Allegheny County, Michael Goretzka et al. v. Allegheny Energy, Inc. et al.*, at GD-09-012754 and GD-11-009919 (collectively, “Goretzka Action”).

10. The Complaint also requested that the Commission impose a civil penalty of up to \$86,000.00 against West Penn under Code Section 3301, 66 Pa.C.S. § 3301 for the violations alleged below.

11. On October 9, 2012, West Penn filed an Answer and New Matter to the

Complaint and Preliminary Objections to selected counts in the Complaint. In its Answer and New Matter, West Penn denied the material allegations in the Complaint.

III. ALLEGED VIOLATIONS

12. If this matter had been litigated, I&E would have contended that West Penn violated certain provisions of the Code in that:

- A. West Penn failed to ensure the integrity of the subject splice. If proven, this is a violation of Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1501.
- B. West Penn failed to properly monitor, supervise and train its employees regarding the preparation and cleaning of connections and/or splices; and installation of the subject automatic splice. If proven, this is a violation of Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1501.
- C. West Penn failed to ensure that the splice at issue was free from oxidizing agents. If proven, this is a violation of Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1501.
- D. West Penn failed to properly secure the electric distribution line in the automatic splice used to hold the line. If proven, this is a violation of Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1501.
- E. West Penn failed to furnish the Commission staff information requested to assist in its investigation. If proven, each failure to provide such information constitutes a separate violation of Section 505 of the Public Utility Code, 66 Pa.C.S. § 505.

13. If this matter had been litigated, West Penn would have denied and defended against the allegations stated in paragraph 12.

IV. TERMS AND CONDITIONS OF SETTLEMENT

The terms and conditions of the settlement, for which the Joint Petitioners seek Commission approval, are set forth below.

A. Specific Settlement Provisions

14. West Penn will modify its training program to ensure that its linemen and line supervisors are properly trained in automatic splice installations, to include preparation of the conductor, in accordance with the Company's Transmission and Distribution Standards and the manufacturer's instructions.

15. West Penn will complete the modifications to its training procedures and training programs identified in paragraph 14, above, within three months of the date of this settlement. Upon finalization of these training modifications, Commission technical staff will be given the opportunity to review and accept the training module.

16. West Penn will train all linemen and line supervisors on the updated procedures identified in paragraph 14, above, and such training shall be completed within one calendar year from the date of this settlement.

17. West Penn will: (i) invite Commission technical staff to observe any training session held in furtherance of paragraph 16, above; (ii) verify that the training as required by paragraph 16 was completed; (iii) maintain records of the completed employee training; and (iv) hold quarterly discussions about progress related to paragraphs 14 through 16 with Commission technical staff for a period of eighteen months from the start of implementation.

18. West Penn will conduct refresher training at regular intervals with regard to techniques of properly preparing conductors for automatic splice installation.

19. West Penn will conduct an inspection to be completed within three years, using infrared technology, of automatic splices on its primary distribution system. The Company will remove and replace automatic splices identified through infrared inspection as being at risk of failure.

20. West Penn will maintain records of the automatic splice inspection and replacements undertaken in paragraph 19, above.

21. West Penn will perform spot checks of 5% of the installations per year (up to a cap of 100 installations per year) of those automatic splices identified as requiring replacement on a non-immediate basis following the inspection in paragraph 18, above, which spot checks may be attended by Commission technical staff.

22. West Penn will track automatic splice failures and will report, for a period of three years, on the frequency of automatic splice failures as part of its annual reliability report.

23. West Penn will contract with a third party independent contractor of the Company's choice, with the choice to be agreed to by the Commission's technical staff, to perform within one year, a review of its inspection and maintenance procedures.

24. West Penn agrees to submit to the Pennsylvania General Fund, the payment of a civil penalty in the amount of \$86,000.00.

B. General Settlement Provisions

25. This settlement shall be deemed to constitute full and complete satisfaction by West Penn of all obligations relating to the issues raised in, within the scope of or

related to the Complaint. The Joint Petitioners acknowledge and agree that this settlement shall have the same force and effect as if this proceeding were fully litigated.

26. This settlement reflects compromises between the Joint Petitioners and: (i) is proposed solely for the purpose of settling the present proceeding; (ii) is made without any admission by any party hereto as to any matter of fact or law, other than as may be expressly stated in this Joint Petition; and (iii) is without prejudice to any position advanced by either Joint Petitioner in these proceedings or that might be adopted by any Joint Petitioner during subsequent litigation. Notwithstanding the foregoing, however, if this settlement is approved and implemented, the Joint Petitioners shall not in any subsequent proceeding take any action or advocate any position which would disrupt the spirit or the letter of the Joint Petition or the settlement.

27. The Parties acknowledge that their actions pursuant to this Joint Petition are undertaken to resolve a disputed claim and are on an entirely voluntary basis and, except as may be expressly stated herein, this Joint Petition and settlement are made without admission against or prejudice to any factual or legal position which either Joint Petitioner has asserted previously in connection with the Complaint or otherwise. Neither Joint Petitioner may cite, refer to, or rely on this Joint Petition as precedent, an admission, or by way of estoppel in any proceeding or future negotiation between them, other than a proceeding to enforce this Joint Petition or any final order from the Commission approving the Joint Petition.

28. This Joint Petition and the settlement are conditioned upon the Commission's approval, without modification, of all of the terms outlined herein. If the Commission modifies or fails to approve any of the settlement terms, then either Joint Petitioner may elect to withdraw from the settlement and proceed to complete the litigation of these proceedings, in which event: (i) the Joint Petitioners reserve their respective rights to, among other things, request rulings on all preliminary motions that may have been filed previously, participate in a prehearing conference, conduct discovery, file testimony, confront opposing witnesses and generally participate in evidentiary hearings, submit briefs and reply briefs supporting their respective positions, etc.; (ii) the Joint Petitioners claim the privilege reserved in 52 Pa. Code § 5.231 that no part of the unaccepted settlement shall be admissible in evidence at any time against any Joint Petitioner; and (iii) no adverse inference shall be drawn against either Joint Petitioner as a result of any matter set forth herein.

29. As of the date the Commission approves this Joint Petition and settlement in a final order not subject to appeal or further challenge ("Effective Date"), I&E hereby holds harmless, releases, and forever forbears from further prosecuting any formal complaint relating to West Penn's conduct that is the subject of this Complaint and as described in this Joint Petition up to the Effective Date. Under no circumstances shall I&E request or the Commission impose any further civil or other penalties for any West Penn conduct or actions described in the formal Complaint and this Joint Petition.

30. The Joint Petitioners shall not, in any subsequent proceeding before the

Commission or any other forum, take any action, file any pleadings, or otherwise advocate any position inconsistent with or otherwise challenge or seek to overturn the terms and conditions of this Joint Petition and settlement.

31. The terms and conditions of this Joint Petition shall be implemented at all times by West Penn and I&E in good faith and fair dealing. Each Joint Petitioner shall execute such other documents as may be reasonably requested by the other Joint Petitioner to implement the intent and purpose of this Joint Petition and settlement.

32. The Joint Petitioners may enforce this Joint Petition through any appropriate action before the Commission or through any other available remedy in law, equity, or otherwise.

33. This Joint Petition constitutes the entire agreement between West Penn and I&E hereto with respect to the matters contained herein and all prior agreements with respect to the matters covered herein are superseded, and each Joint Petitioner confirms that it is not relying upon any representations or warranties of the other Joint Petitioner, except as specifically set forth herein or incorporated by reference hereto.

34. This Joint Petition shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, irrespective of the application of any conflict of laws provisions.

35. It is expressly understood and agreed between the Joint Petitioners that this Joint Petition and settlement constitutes a negotiated resolution solely of the above-captioned proceeding.

36. The Joint Petitioners shall utilize their best efforts to support this Joint Petition and settlement and to secure its approval, without modification, by the Commission.

V. PUBLIC INTEREST CONSIDERATIONS

37. The Joint Petitioners submit that this settlement is in the public interest and should be approved in full for the following reasons:

- A. Substantial litigation and associated costs will be avoided by this settlement. This settlement resolves a number of important and contentious issues fairly, by balancing the interests of West Penn, I&E, West Penn's customers, and the public. If approved, the settlement will eliminate the possibility of further Commission litigation and appeals, along with their attendant costs;
- B. This settlement is consistent with the Commission's policies promoting negotiated settlements. The Joint Petitioners arrived at this settlement after a number of meetings, discussions, discovery and extensive negotiations. The settlement terms and conditions constitute a carefully crafted package representing reasonable negotiated compromises on the issues addressed herein. Thus, the settlement is consistent with the Commission's rules and practices encouraging negotiated settlements (*see* 52 Pa. Code §§ 5.231, 69.391, and 69.401); and
- C. The reasons set forth in the statements in support filed by the Joint Petitioners at the above-captioned docket support approval of this settlement.

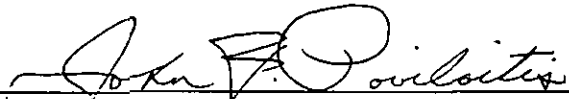
VI. CONCLUSION

WHEREFORE, the Joint Petitioners, intending to be legally bound, respectfully request that the Commission:

- A. approve the settlement set forth herein in its entirety without modification; and
- B. terminate this proceeding and mark the record closed.

IN WITNESS WHEREOF, the Joint Petitioners bind themselves to the terms and conditions set forth herein, as evidenced by the signature of their attorneys, each of whom has authority to execute this Joint Petition.


WEST PENN POWER COMPANY


By: John F. Povilaitis
BUCHANAN INGERSOLL & ROONEY PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357

Date 1/22/13

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SECRETARY'S BUREAU

BUREAU OF INVESTIGATION AND ENFORCEMENT


By: Heidi L. Wushinske
Prosecuting Attorney
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Date 1/22/13

The proposed Agreement stipulates as to the following terms:

- a) West Penn Power Company (“West Penn” or the “Company”) will modify its training program to ensure that its linemen and line supervisors are properly trained in automatic splice installations, to include preparation of the conductor, in accordance with the Company’s Transmission and Distribution Standards and the manufacturer’s instructions.
- b) West Penn will complete the modifications to its training procedures and training programs identified in paragraph 14 of the Agreement, within three months of the date of this settlement. Upon finalization of these training modifications, Commission technical staff will be given the opportunity to review and accept the training module.
- c) West Penn will train all linemen and line supervisors on the updated procedures identified in paragraph 14 of the Agreement and such training shall be completed within one calendar year from the date of this settlement.
- d) West Penn will: (i) invite Commission technical staff to observe any training session held in furtherance of paragraph 16 of the Agreement; (ii) verify that the training as required by paragraph 16 was completed; (iii) maintain records of the completed employee training; and (iv) hold quarterly discussions about progress related to paragraphs 14 through 16 of the Agreement with Commission technical staff for a period of eighteen months from the start of implementation.

- e) West Penn will conduct refresher training at regular intervals with regard to techniques of properly preparing conductors for automatic splice installation.
- f) West Penn will conduct an inspection to be completed within three years, using infrared technology, of automatic splices on its primary distribution system. The Company will remove and replace automatic splices identified through infrared inspection as being at risk of failure.
- g) West Penn will maintain records of the automatic splice inspection and replacements undertaken in paragraph 19 of the Agreement.
- h) West Penn will perform spot checks of 5% of the installations per year (up to a cap of 100 installations per year) of those automatic splices identified as requiring replacement on a non-immediate basis following the inspection in paragraph 18 of the Agreement, which spot checks may be attended by Commission technical staff.
- i) West Penn will track automatic splice failures and will report, for a period of three years, on the frequency of automatic splice failures as part of its annual reliability report.
- j) West Penn will contract with a third party independent contractor of the Company's choice, with the choice to be agreed to by the Commission's technical staff, to perform within one year, a review of its inspection and maintenance procedures.

- k) West Penn agrees to submit to the Pennsylvania General Fund, the payment of a civil penalty in the amount of \$86,000.00.

The Agreement of the parties to settle this case is made without any admission or prejudice to any position that the parties might adopt during subsequent litigation in the event that this Settlement is rejected by the Commission or otherwise properly withdrawn by any of the parties.

I&E would have alleged that West Penn committed various violations of the Public Utility Code, as set forth in paragraph 12 of the Settlement Agreement, had this matter proceeded to hearing. Specifically, I&E would have contended that West Penn violated certain provisions of the Public Utility Code in that:

- a) West Penn failed to ensure the integrity of the subject splice.
If proven, this is a violation of section 1102(a)(3) of the Public Utility Code, 66 Pa. C.S. § 1501.
- b) West Penn failed to properly monitor, supervise and train of its employees regarding the preparation and cleaning of connections and/or splices; and installation of the subject automatic splice.
If proven, this is a violation of section 1102(a)(3) of the Public Utility Code, 66 Pa. C.S. § 1501.
- c) West Penn failed to ensure that the splice at issue was free from oxidizing agents.
If proven, this is a violation of section 1102(a)(3) of the Public Utility Code, 66 Pa. C.S. § 1501.

- d) West Penn failed to properly secure the electric distribution line in the automatic splice used to hold the line.

If proven, this is a violation of section 1102(a)(3) of the Public Utility Code, 66 Pa. C.S. § 1501.

- e) West Penn failed to furnish the Commission staff information requested to assist in its investigation.

If proven, each failure to provide such information constitutes a separate violation of section 505 of the Public Utility Code, 66 Pa. C.S. § 505.

I&E would have also countered West Penn's jurisdictional argument with the assertion that the issues raised in I&E's Complaint address only violations of the Public Utility Code, not negligence or related issues. I&E would have asserted that these violations of the Public Utility Code were not separately litigated before the Allegheny County Court of Common Pleas and that therefore, the Commission is not intruding upon the jurisdiction of the Allegheny County Court of Common Pleas.

Likewise, had this matter proceeded to hearing, West Penn would have denied and defended against I&E's allegations, as set forth in West Penn's Statement in Support of Full Settlement of Proceeding.

Rosi Standards and Policy Statement re Settled Proceedings

In *Joseph A. Rosi v. Bell Atlantic Pennsylvania, Inc. and Sprint Communications Co., L.P.*, Docket No. C-00992409 (Order entered March 16, 2000), as set forth in *Pa. Public Utility Commission v. NCIC Operator Services*, Docket No. M-00001440 (December 20, 2000), the Commission adopted and utilized standards for determining whether a

particular enforcement outcome is in the public interest. I&E reviewed the standards set forth in *Rosi*. I&E submits that the terms of the Agreement are in the public interest.

I&E further asserts that approval of this Agreement is consistent with the Commission's Policy Statement that delineates factors and standards for evaluating litigated and settled proceedings before the Commission. *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*, 52 Pa. Code § 69.1201 (Policy Statement). Under the Policy Statement, while many of the *Rosi* standards may still be applied, the Commission specifically recognized that in settled cases the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b).

The Commission's Policy Statement provides for ten factors to be considered by the Commission. The application of these standards and support for the Agreement is set forth below.

The first standard addresses whether the conduct at issue was of a serious nature. 52 Pa. Code § 69.1201(c)(1). The conduct alleged in this complaint is of a serious nature. First, any conduct involving hanging overhead power lines is serious because of the inherent potential for danger should the lines overheat, fall, or otherwise fail. Second, conduct involving allegations of a failure to provide the Commission with requested information is serious because the Commission cannot fully complete any investigations without first obtaining the necessary information. The seriousness of the conduct at issue is addressed in the costly and extensive educational, training, and practical measures that the company has agreed to undertake, as well as the payment in full of the requested civil penalty.

The second standard addresses whether the resulting consequences of the conduct in question were of a serious nature. 52 Pa. Code § 69.1201(c)(2). The resulting consequences in this case were of a very serious nature. It is an extremely serious matter any time human life is lost. I&E submits that the \$2.5 million dollars of additional measures set forth in the Agreement reflect the seriousness of the incident.

The third standard addresses whether the conduct was intentional or unintentional. 52 Pa. Code § 69.1201(c)(3). This standard is to be applied to all litigated matters. Because this matter is being resolved via settlement by the parties, this standard is not relevant here.

The fourth standard addresses whether the Company made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Immediately following the incident, West Penn compiled a team of experts to study the failure of the line to attempt to understand the nature and cause of the failure and to implement a corrective response. West Penn also has stressed to its employees the importance of adherence to and continued review of automatic splice installation standards, which will be updated following the finalization of the Settlement Agreement. In addition, West Penn referred this matter to local counsel, who have worked cooperatively with the Commission to provide information and resolve this matter.

The fifth standard in the Policy Statement deals with the number of customers affected and the duration of the violation. In this case, in addition to the Goretzkas, seventy customers experienced an outage that lasted approximately four and a half hours.

The Policy Statement's sixth standard is a consideration of the compliance

history of the entity. West Penn has been a certificated utility since 1916. I&E is not aware of any other complaints involving failure of automatic splices, or similar incidents, against West Penn. In the past five years, West Penn has had approximately 20 reliability complaints against it, of which most of which were resolved through customer settlements for nominal amounts, four were withdrawn, and four received favorable ALJ decisions.

The seventh standard in the Policy Statement is whether the regulated entity cooperated with the Commission's investigation. After the initial difficulties in obtaining information, Respondent has cooperated throughout this investigation. West Penn has fully cooperated throughout the formal complaint and settlement process.

The amount of the civil penalty or fine necessary to deter future violations is the eighth standard in the Policy Statement. The additional education, inspection, training, and review procedures that West Penn has agreed to are collectively estimated to cost in excess of \$2.5 million. I&E submits that a civil penalty in the amount of \$86,000, in conjunction with these additional measures, is sufficient to deter any future conduct that violates the Public Utility Code and regulations.

The ninth standard examines past Commission decisions in similar situations. Counsel is not aware of any decisions with this precise fact pattern. However, when all relevant factors are taken into account, this settlement is consistent with past Commission actions. Moreover, since this is a settled matter, it should be considered on its own merits.

I&E submits that an additional relevant factor – whether the case was

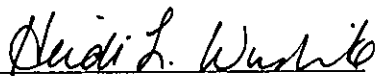
settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the prosecuting agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty. Both parties negotiate from their initial litigation positions. The fines and penalties in a litigated proceeding have always been different from those that result from a settlement.

I&E submits that a settlement avoids the necessity for the prosecuting agency to continue its investigation and to prove elements of each violation. In return, the opposing party in a settlement agrees to a specific fine or penalty. The fines and penalties in a litigated proceeding, such as *Rosi*, have always been different from those that result from a settlement. However, in light of the seriousness of this incident, the parties reached a settlement in which West Penn has agreed to pay the full requested civil penalty, in addition to the previously mentioned additional measures.

I&E asserts that the Agreement is in the public interest because it effectively addresses the issues identified in I&E's Complaint and avoids the time and expense of litigation including hearings, filing of briefs, exceptions, reply exceptions, and possible appeals. I&E submits that it is in the public interest to settle this matter so that West Penn may begin the additional measures agree upon, rather than delay or possibly forgo such measures through litigation. Moreover, the Agreement clearly meets the standards set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201.

WHEREFORE, I&E represents that it supports the settlement of this matter, as set forth in the Agreement, as being in the public interest and respectfully requests that the Commission adopt an order approving the terms and conditions of the foregoing Agreement, including all terms and conditions contained therein.

Respectfully submitted,



Heidi L. Wushinske, Prosecutor
Bureau of Investigation and Enforcement

Dated: February 13, 2013

provision of service now, rather than later. This avoidance of delay is an important benefit of the Settlement. Adoption of these terms through a Settlement will allow these service enhancements to more quickly benefit the public and West Penn's customers as compared to the path of full litigation. The Settlement is supportive of I&E's objectives in this proceeding and consistent with the interests of West Penn's customers and the communities West Penn serves. *The Settlement is fair, just and reasonable, is in the public interest, and meets all legal requirements.* Therefore, it should be approved without modification.

I. BACKGROUND

1. The background of this proceeding is sufficiently set forth in Paragraphs 3-8 of the Joint Petition and is incorporated by reference herein.

2. As referenced in Paragraph 13 of the Joint Petition, West Penn was prepared to dispute and defend each of the allegations raised in the Formal Complaint and outlined in Paragraph 12 of the Joint Petition in litigation. It was prepared to present a case refuting the claim that the Company had committed any act or omission in violation of the Public Utility Code or the Commission's regulations as follows:

a. The Company assigned qualified, well-experienced, and well-trained linemen to conduct the repair and reinstallation of the primary electric conductor located on the Goretzka Property on June 23, 2004, approximately five years before the June 2, 2009 incident;

b. The June 23, 2004 repair and reinstallation was effected properly and carefully;

c. The linemen who effected the repair in June 2004 properly cleaned each conductor which parted with wire brushes, and properly and securely installed the

conductor in an appropriate automatic splice in accordance with the manufacturer's installation instructions;

d. A number of factors could have contributed to the unusual and unexpected failure of a line component;

e. To the extent the Complaint seeks an adjudication by the Commission of West Penn's negligence and damages relating to the June 2, 2009 incident, those issues are beyond the Commission's jurisdiction and have been separately litigated in an ongoing proceeding before the Allegheny County Court of Common Pleas, therefore any Commission involvement on these issues would intrude upon the jurisdiction of the Allegheny County Court of Common Pleas; and

f. West Penn provided reasonable responses to the Commission staff's request for information relating to the June 2, 2009 fatality when those requests were made, given that: (i) related civil litigation was filed almost immediately after the 2009 incident; and (ii) the expert technical investigation of the cause of the June 2, 2009 accident was complex and lengthy.

3. West Penn maintains that its conduct that is the subject of this proceeding was lawful, appropriate and in compliance with the Public Utility Code, the Commission's regulations, and applicable orders. Notwithstanding, the Joint Petitioners acknowledge that the issues raised in this matter are subject to both factual and legal dispute, and West Penn recognizes that all aspects of its operations are subject to potential and continued enhancement. In an effort to realize these enhancements and both achieve public benefit and ensure the public's safety with regard to the issues raised in this matter, the Joint Petitioners have agreed to the

following terms, which will be implemented once the Settlement is approved by the Commission and a final and unappealable order is entered:

a. West Penn will modify its training program to ensure that its linemen and line supervisors are properly trained in automatic splice installations, to include preparation of the conductor, in accordance with the Company's Transmission and Distribution Standards and the manufacturer's instructions.

b. West Penn will complete the modifications to its training procedures and training programs identified in paragraph 2a, above, within three months of the date of this settlement. Upon finalization of these training modifications, Commission technical staff will be given the opportunity to review and accept the training module.

c. West Penn will train all linemen and line supervisors on the updated procedures identified in paragraph 2a, above, and such training shall be completed within one calendar year from the date of this settlement.

d. West Penn will: (i) invite Commission technical staff to observe any training session held in furtherance of paragraph 2c, above; (ii) verify that the training as required by paragraph 2c was completed; (iii) maintain records of the completed employee training; and (iv) hold quarterly discussions about progress related to paragraphs 2a through 2c with Commission technical staff for a period of eighteen months from the start of implementation.

e. West Penn will conduct refresher training at regular intervals with regard to techniques of properly preparing conductors for automatic splice installation.

f. West Penn will conduct an inspection, to be completed within three years, using infrared technology, of automatic splices on its primary distribution system. The

Company will remove and replace automatic splices identified through infrared inspection as being at risk of failure.

g. West Penn will maintain records of the automatic splice inspection and replacements undertaken in 2f, above.

h. West Penn will perform spot checks of 5% of the installations per year (up to a cap of 100 installations per year) of those automatic splices identified as requiring replacement on a non-immediate basis following the inspection in item 2f, above, which spot checks may be attended by Commission technical staff.

i. West Penn will track automatic splice failures and will report, for a period of three years, on the frequency of automatic splice failures as part of its annual reliability report.

j. West Penn will contract with a third party independent contractor of the Company's choice, with the choice to be agreed to by the Commission's technical staff, to perform, within one year, a review of its inspection and maintenance procedures.

4. In addition, West Penn has agreed to submit to the Pennsylvania General Fund payment of a civil penalty in the amount of \$86,000.00.

II. PUBLIC INTEREST ANALYSIS

5. It is well-established that Commission policy promotes settlements.¹ The public benefits from settlements in that settlements reduce the time and expense the parties must expend in litigating a case while simultaneously conserving important administrative resources. Also, settlement results are preferable because they are more predictable than those achieved in full

¹ See 52 Pa. Code § 5.231.

litigation. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest.²

6. The Commission has established standards to be applied in determining whether a particular enforcement outcome is in the public interest in *Rosi v. Bell Atlantic Pennsylvania Inc., et al.*, 94 Pa.P.U.C. 103 (Order entered March 16, 2000), which standards were specifically enumerated in *Pennsylvania Public Utility Commission v. NCIC Operator Services*, M-00001440 (Tentative Order entered December 20, 2000 outlining the “Rosi Standards”). These standards have been reviewed by the Joint Petitioners and compared against the proposed outcome in this case. This Settlement meets the standards outlined by *Rosi* as being in the public interest, as further discussed in paragraphs 8 through 18, *infra*.

7. Further, approval of this Settlement is consistent with the Policy Statement promulgated by the Commission establishing the ten *Rosi* factors it may consider in evaluating whether a civil penalty for violating a Commission order, regulation or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest.³ The Policy Statement, by its own language, is only considered a “guide” to the Commission in evaluating these types of matters. Moreover, the Commission has recognized that “the parties in settled cases should be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.”⁴ The factors and standards used by the Commission under the Policy Statement are as follows:

² *Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, Docket No. C-2010-2071433, 2012 Pa. PUC LEXIS 1377 at *6 (Order Adopted August 30, 2012; Final Order Entered August 31, 2012).

³ See 52 Pa. Code § 69.1201.

⁴ *Pennsylvania Public Utility Commission Law Bureau Prosecutory Staff v. UGI Utilities, Inc.*, 2009 Pa. PUC LEXIS 1867, M-2009-2031571 (Order Adopted September 10, 2009; Final Order Entered October 1, 2009).

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
- (5) The number of customers affected and the duration of the violation.
- (6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.
- (7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.
- (8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.
- (9) Past Commission decisions in similar situations.
- (10) Other relevant factors.⁵

The substantial public benefits of the Settlement, as well as the ten factors the Commission evaluates in reviewing a settlement of an alleged violation, are addressed in paragraphs 8 through 18, *infra*.

⁵See 52 Pa. Code § 69.1201(c).

8. The first factor to be considered when reviewing this settlement is whether the *conduct at issue was of a serious nature. As stated earlier, it is not clear that any specific conduct* by the Company caused the June 2, 2009 incident and fatality. Through a review of its practices, additional education and training with regard to automatic splice installation, quality control measures, targeted inspection steps and a new tracking protocol, West Penn's customers, the Company and the public will benefit from enhancements gained to its operations, as well as a better understanding by both the Company and the Commission of the scope and nature of automatic splice failures and the potential risk, if any, such failures pose to West Penn's service, customers and communities.

The other "conduct" at issue in this proceeding is West Penn's alleged failure to provide timely information to I&E in its investigation of West Penn's conduct with respect to the failed splice leading to the Goretzka Action. While West Penn fully understands the need to cooperate with the Commission and I&E in its investigations of any utility conduct within its jurisdiction, any delays in providing information were not intentional, but rather arose from the unusual circumstance of being requested to provide information before West Penn's investigation was complete and within the context of a pending civil lawsuit that was filed shortly following the incident, which raised waiver of privilege and other confidentiality concerns that would not otherwise be extant. West Penn has worked diligently in providing information to I&E under the unusual circumstances presented by this proceeding and in a timely fashion once the Company itself had this information, and has remedied any tardiness that may have existed immediately following this incident with respect to the provision of data and information requested by I&E.

Irrespective of the specific analysis of West Penn's conduct giving rise to the Formal Complaint, the terms and conditions of the Settlement fully take the alleged conduct into account, as well as West Penn's response under the circumstances.

9. The second factor to be considered is whether the resulting consequences of West Penn's conduct were of a "serious nature." It goes without saying that the death of a young wife and mother is a very serious and tragic incident, regardless of causation. Although it is not clear that any specific conduct by the Company caused the June 2, 2009 incident, the terms and conditions of the Settlement acknowledge the seriousness of the incident and are designed to allow West Penn to continue to enhance its practices as they relate to the equipment at issue in the fatality, while also gaining a better understanding of any frequency of such equipment failures. By implementing steps to ensure the safety of its system and quantifying the type of automatic splice failures, West Penn intends to gain a better understanding of the frequency and causes of automatic splice failures in order to enhance future reliability *and* safety for all customers, employees and the public in general.

10. The third factor, whether West Penn's conduct was intentional or negligent, does not apply here because this proceeding is not a litigated case. There has been no finding in any Commission proceeding that West Penn's conduct was either intentional or negligent in nature.

11. The fourth factor to be considered is whether West Penn made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. Immediately following the incident, West Penn collected a team of experts to study the failure that occurred in an effort to come to an understanding of the nature and cause of the failure and to implement an appropriate corrective response. In addition, the Company has underscored the importance of adherence to and continued review of existing automatic splice

installation standards. In an effort to further mitigate the risk of potential automatic splice issues prospectively, the Company has, with the help of I&E, incorporated numerous terms expressly related to such matters into the Settlement. The Settlement reflects a detailed protocol to be implemented, in coordination with the Commission's Bureau of Technical staff, to educate and train employees about splices, inspect West Penn facilities to ascertain the condition of existing and installed splices, to provide quality assurance in these measures, and to review its existing inspection and maintenance practices – all with the intent to bring enhancements to West Penn's treatment and use of automatic splices.

12. The fifth factor to be considered is the number of customers affected and the duration of the violation. Putting aside the issue of causation, the impact of the failed splice on the Goretzka family is obvious and palpable. However, to the best of the Company's knowledge, failed automatic splices have not posed a safety threat to other West Penn customers, although nearby customers did experience a temporary outage as a result of this incident.⁶ Despite the isolated nature of the impact across West Penn's system resulting from this incident and the unusual nature of this type of failure, West Penn has proposed to closely monitor any such future failures through the implementation of the terms, conditions and protocols specified in the Settlement.

13. The sixth factor is West Penn's compliance history. The Company is unaware of splice failures of the nature experienced during the relevant instance occurring with any frequency on its system, regardless of any cause. The Company also does not have a relevant history of non-compliance with the Public Utility Code or Commission regulations with regard to this matter. At a broader level, West Penn consistently complies with applicable Commission

⁶ West Penn's records indicate that seventy customers experienced sustained outages ranging between four and five hours following this incident.

orders and regulations and the Public Utility Code in the conduct of its public utility business and the provision of service and will comply with the terms of this Settlement as well.

14. The seventh factor to be considered is whether the regulated entity cooperated with the Commission's investigation. West Penn supported and fully cooperated with the Commission and I&E staff throughout its investigation, as well as the Formal Complaint and settlement process, subject to the unusual circumstance of being requested to provide information before West Penn's investigation was complete and within the context of a pending civil lawsuit that was filed shortly following the incident occurred, which raised privilege and other confidentiality concerns that would not have otherwise been extant. To the best of its ability, all incident reports requested by the Commission were timely provided as the Company itself received them.

15. The eighth factor is whether the amount of the civil penalty or fine will deter future violations. The full civil penalty requested by I&E in the Formal Complaint in the amount of \$86,000, which may not be recovered through rates regulated by the Commission, together with the detailed education, training, inspection and review protocols contained in the Settlement, which are collectively estimated to cost in excess of \$2.5 million, is quite substantial and sufficient to reinforce conduct consistent with the Public Utility Code and the Commission's regulations, and to deter any violations such as have been alleged in I&E's Formal Complaint.

16. The ninth factor looks at past Commission decisions in similar situations. To the best of the Company's knowledge, the Commission has never dealt previously with an issue relating to alleged automatic splice failures. However, when all relevant factors are considered, the Settlement is not inconsistent with past Commission actions. Moreover, because this case

has been settled and not litigated, it should be considered on its own unique merits and circumstances.

17. The tenth factor is a catch-all for other relevant factors. In this regard, West Penn notes that the Settlement obviates the need for I&E as the prosecuting agency to prove elements of each allegation. Regardless of where the ultimate burden of proof lies, the Settlement eliminates any risk to I&E of not being able to meet its burden of persuasion on matters pertinent to its Formal Complaint. In exchange for this minimized risk and in a good faith effort to mitigate any potential threat of similar future incidents, West Penn has agreed to pay the full civil penalty requested by I&E, in addition to implementing responsive measures beyond those identified in I&E's litigation position. Outcomes resulting from a fully litigated case are difficult to predict and can differ substantially from a settlement. On the other hand, reasonable settlement terms agreed to by the parties allow them to refocus their energy from *proving* their cases to *implementing* and enhancing through important responsive measures. This important refocusing is precisely what has occurred here.

18. Based on the above analysis, the Settlement is consistent with the Commission's ten-factor Policy Statement, has been designed to provide a thorough and appropriate response to the public safety concerns that have been raised by this proceeding, and is therefore in the public interest. The Company has endeavored to work with I&E to prepare a settlement package that represents a thoughtful and thorough response to what it recognizes as a very serious accident, which extends beyond that which was requested by I&E in litigation. This comprehensive set of measures is intended to address all facets of concern raised during this proceeding and is evidence of West Penn's commitment to ensure the safety of its system for the benefit of its

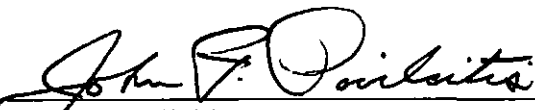
customers and the public. In addition, the Settlement will eliminate the possibility of further Commission litigation and appeals, along with their attendant costs.

III. CONCLUSION

West Penn and I&E have worked diligently and cooperatively to craft a fair, balanced and comprehensive settlement of the issues raised by I&E's Formal Complaint that is in the public interest. The Settlement resolves all issues related to I&E's Formal Complaint, provides significant benefits to West Penn's customers and the service territory in which the Company operates, and contains procedures and protocols designed to increase West Penn's and the Commission's knowledge and understanding of automatic splice failures and potential impacts on service reliability and damage to persons and property. The Settlement terms and conditions should be expressly found to satisfy the ten factors in the Commission's Policy Statement at 52 Pa. Code § 69.1201(c) as being in the public interest. West Penn fully supports the Settlement and respectfully requests that the Commission approve it in its entirety without modification.

Respectfully submitted,

Dated: February 13, 2013


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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Complaint upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Dated: February 13, 2013

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