



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

IN REPLY PLEASE
REFER TO OUR FILE

June 2, 2014

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation & Enforcement
v. West Penn Power Company
Docket No. C-2014-2417325

Dear Secretary Chiavetta:

On behalf of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission, enclosed for filing please find I&E's Reply to New Matter of West Penn Power Company in the above referenced case. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

Scott B. Granger
Prosecutor

PA Attorney ID No. 63641

SBG/sea
Enclosures

cc: As per Certificate of Service
Johnnie Simms, I&E

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C- 2014-2417325
	:	
West Penn Power Company	:	
Respondent	:	

**REPLY TO NEW MATTER
OF WEST PENN POWER COMPANY**

NOW COMES the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorneys, pursuant to Section 701 of the Public Utility Code, 66 Pa. C.S. § 701, and files this Reply to New Matter of West Penn Power Company (“West Penn” or “Company” or “Respondent”) responding to the averments set forth in the Company’s Answer and New Matter of West Penn Power Company to the Complaint of the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (“Answer and New Matter”). In support thereof, I&E respectfully represents the following:

Reply to New Matter

29. Incorporation paragraph. No response required.
30. Denied. To the extent the averments set forth in this paragraph attempt to paraphrase the Company’s November 15, 2011 annual report (referenced as “filed on

November 30, 2011”) and the State Wide Evaluator ‘s March 2012 report, they are denied. As written documents, both the Company’s November 15, 2011 annual report (referenced as “filed on November 30, 2011”) and the State Wide Evaluator March 2012 report speak for themselves and both must be read in the context of the entire document. Furthermore, to the extent that the Company referenced a March 2012 State Wide Evaluator (“SWE”) report, I&E relied on the SWE’s March 4, 2014 Phase I Final Annual Report as referenced in I&E’s Complaint. *See*, I&E Complaint, ¶23.

By way of further response, to the extent that the Company refers to “[c]ontrary to the direction of Act 129”, said averment is a conclusion of law to which no response is required, and is therefore deemed denied. Furthermore, regarding allegations pertaining to the actions or inactions of a non-party (the Commission), I&E has no direct knowledge regarding the action or inactions of the non-party and is unable to respond. *These averments are therefore denied and strict proof thereof is demanded.*

Finally, and by way of further response, the Company admits in its Answer and New Matter that it did not achieve the required 1% reduction in energy consumption by May 31, 2011. *See*, Answer and New Matter, ¶30 and ¶38. *See also*, Answer and New Matter, ¶26. The Company also admits that the State Wide Evaluator concluded, after reviewing all Act 129 data, including the Company’s own annual report and supporting documentation, that West Penn did not achieve the required 1% energy reduction by May 31, 2011. *See*, Answer and New Matter, ¶30. *See also*, Answer and New Matter, ¶27.

31. Denied. To the extent the averments set forth in this paragraph are conclusions of law with regard to the “statutory mandate” and “EE&C Plan budget”, no response is required and they are therefore deemed denied. The Act 129 statute speaks for itself. Furthermore, after a reasonable investigation I&E without sufficient knowledge or information to form a belief as to the truth of the averments regarding the Company’s “low customers’ rates” and that “West Penn had the customer base with the least financial incentive to conserve energy consumption” and they are therefore denied. Strict proof thereof is demanded.

32. Denied. After a reasonable investigation I&E is without sufficient knowledge or information to form a belief as to the truth of the lengthy averments in this paragraph regarding Company’s perceived “funding limitations” and they are therefore denied. Strict proof thereof is demanded. By way of further response, and to the extent this paragraph attempts to interpret the intent behind the Commission’s Phase I Implementation Order, and the Phase II reduction targets, these averments are denied. The Phase I Implementation Oder and the Phase II reduction targets speak for themselves, and must be interpreted in the context of their entirety. Therefore no response is required and these averments are deemed denied.

33. Denied. After a reasonable investigation I&E is without sufficient knowledge or information to form a belief as to the truth of the lengthy averments set forth in this paragraph and they are therefore denied. Strict proof thereof is demanded.

34. Denied. To the extent the averments set forth in this paragraph are conclusions of law, no response is required, and they are therefore deemed denied. To

the extent the averments set forth in this paragraph are factual, after a reasonable investigation, I&E is without sufficient knowledge or information to form a belief as to the truth of these averments and they are therefore denied. Strict proof thereof is demanded.

35. Denied. To the extent the averments set forth in this paragraph are conclusions of law, no response is required, and they are therefore deemed denied. To the extent the averments set forth in this paragraph are factual, after a reasonable investigation, I&E is without sufficient knowledge or information to form a belief as to the truth of these averments and they are therefore denied. Strict proof thereof is demanded.

By way of further response, Act 129 states very clearly that “[b]y May 31, 2011, total annual weather-normalized consumption of the retail customers of each electric distribution company shall be reduced by a minimum of 1%.” *See*, 66 Pa. C.S. §2806.1(c)(1) (*emphasis added*).

36. Denied. To the extent the averments set forth in this paragraph are conclusions of law, no response is required, and they are therefore deemed denied. To the extent the averments set forth in this paragraph are factual, after a reasonable investigation, I&E is without sufficient knowledge or information to form a belief as to the truth of these averments and they are therefore denied. Strict proof thereof is demanded.

37. Denied. To the extent the averments set forth in this paragraph are conclusions of law, no response is required, and they are therefore deemed denied. To

the extent the averments set forth in this paragraph are factual; after a reasonable investigation, I&E is without sufficient knowledge or information to form a belief as to the truth of these averments and they are therefore denied. Strict proof thereof is demanded.

Furthermore, to the extent the Company attempts to interpret the intent of a non-party (the General Assembly), I&E has no direct knowledge regarding the intent of the General Assembly and is unable to respond. Therefore, these averments are denied. Strict proof thereof is demanded.

38. Denied. To the extent the averments set forth in this paragraph are conclusions of law, no response is required, and they are therefore deemed denied. To the extent the averments set forth in this paragraph are factual; after a reasonable investigation, I&E is without sufficient knowledge or information to form a belief as to the truth of these averments and they are therefore denied. Strict proof thereof is demanded. Furthermore, to the extent the Company attempts to interpret the intent of a non-party (the Commission) regarding the non-party's actions and in-actions, I&E has no direct knowledge regarding the intent of the non-party and is unable to respond. Therefore, these averments are denied. Strict proof thereof is demanded.

39. Denied. To the extent the averments set forth in this paragraph are conclusions of law, no response is required, and they are therefore deemed denied. To the extent the averments set forth in this paragraph are factual; after a reasonable investigation, I&E is without sufficient knowledge or information to form a belief as to the truth of these averments and they are therefore denied. Strict proof thereof is

demanded. Furthermore, to the extent the Company attempts to interpret the intent of a non-party (the Commission) regarding the non-party's actions and in-actions, I&E has no direct knowledge regarding the intent of the non-party and is unable to respond.

Therefore, these averments are denied. Strict proof thereof is demanded.

40. Denied. To the extent the averments set forth in this paragraph are conclusions of law, no response is required, and they are therefore deemed denied. To the extent the averments set forth in this paragraph are factual; after a reasonable investigation, I&E is without sufficient knowledge or information to form a belief as to the truth of these averments and they are therefore denied. Strict proof thereof is demanded. Furthermore, to the extent the Company attempts to interpret the intent of a non-party (the Commission) regarding the non-party's actions and in-actions, I&E has no direct knowledge regarding the intent of the non-party and is unable to respond.

Therefore, these averments are denied. Strict proof thereof is demanded.

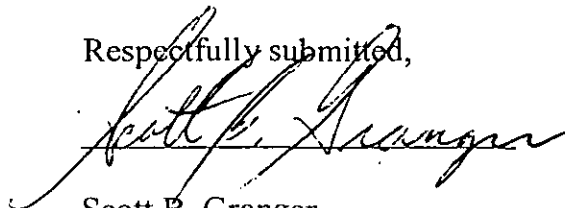
WHEREFORE, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that, after consideration of the pleadings and the record, the Office of Administrative Law Judge find West Penn Power Company in violation of each and every count as set forth in I&E's Complaint, and grant the following relief:

- a. West Penn Power Company be ordered to pay a civil penalty for violating the statutory requirements of Act 129 in the amount of \$11,400,000 pursuant to 66 Pa. C.S. §2806.1(f)(2)(i). Said payment shall be made by

certified check payable to the Commonwealth of Pennsylvania and presented to the undersigned prosecutors within twenty (20) days of the date of the Commission's order sustaining this complaint; and,

- b. West Penn Power Company not be permitted to recover any portion of the civil penalty from ratepayers; and,
- c. Grant such other relief as the Commission deems just and reasonable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott B. Granger", written over a horizontal line.

Scott B. Granger
Prosecutor
PA Attorney ID No. 63641

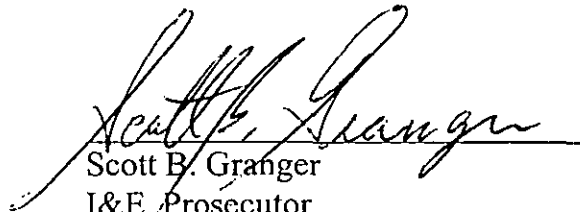
Johnnie Simms
Chief Prosecutor
PA Attorney ID No. 33911

Date: June 2, 2014

VERIFICATION

I, Scott B. Granger, Bureau of Investigation and Enforcement, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief. 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: June 2, 2014

A handwritten signature in black ink, appearing to read "Scott B. Granger", written over a horizontal line.

Scott B. Granger
I&E, Prosecutor
Keystone Building
400 North Street
Harrisburg, PA 17120

(717) 425-7593

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
Complainant :
v. : Docket No. C- 2014-2417325
West Penn Power Company :
Respondent :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Reply to New Matter of West Penn Power Company upon the parties listed below in accordance with the requirements of 52 Pa Code §1.54 (relating to service by a party).

VIA First Class Mail and Electronic Mail:

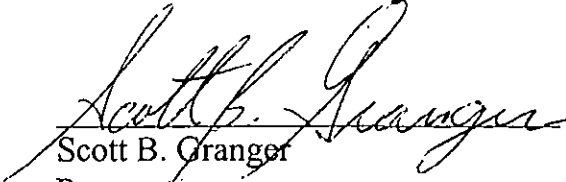
West Penn Power Company
Kathy Jo Kolich, Esquire
FirstEnergy
76 South Main Street
Akron, OH 44309
kjkolich@firstenergycorp.com

West Penn Power Company
John F. Povilaitis, Esquire
Buchanan Ingersoll & Rooney PC
409 N. Second Street
Harrisburg, PA 17101-1357
John.Povilaitis@bipc.com

Candis A. Tunilo, Esquire
Christy M. Appleby, Esquire
Pennsylvania Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101-1923
ctunilo@paoca.org
cappleby@paoca.org

Daniel G. Asmus, Esquire
Office of Small Business Advocate
Suite 1102 Commerce Bldg.
300 North Second Street
Harrisburg, PA 17101
jdasmus@pa.gov

Administrative Law Judge Mary D. Long
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
Suite 220, Piatt Place
301 Fifth Avenue
Pittsburgh, PA 15222


Scott B. Granger
Prosecutor
PA Attorney ID No. 63641

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17102-3265

Dated: June 2, 2014