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July 30, 2014

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

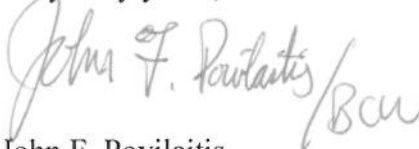
Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v.
West Penn Power Company; Docket No. C-2014-2417325

Dear Secretary Chiavetta:

On behalf of West Penn Power Company, Bureau of Investigation & Enforcement, and the Office of Consumer Advocate, I have enclosed for electronic filing the Joint Petition for Approval of Unanimous Settlement of All Issues and Stipulation of Facts with respect to the above-captioned proceedings.

Please contact me if you have any questions regarding the forgoing matters. Copies have been served as indicated in the attached certificate of service.

Very truly yours,



John F. Povilaitis

JFP/kra
Enclosure

cc: Chairman Robert F. Powelson
Commissioner James H. Cawley
Commissioner Gladys M. Brown
Bohdan Pankiw, Law Bureau
Dan Asmus, OSBA
Certificate of Service

Vice-Chairman John F. Coleman, Jr.
Commissioner Pamela A. Witmer
Kriss Brown, Law Bureau
Cheryl Walker Davis, OSA

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**JOINT PETITION FOR APPROVAL OF UNANIMOUS SETTLEMENT OF ALL
ISSUES AND STIPULATION OF FACTS**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE MARY D. LONG:

I. INTRODUCTION

West Penn Power Company (“West Penn” or the “Company”), the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), and the Office of Consumer Advocate (“OCA”) (collectively the “Joint Petitioners”) hereby file this Joint Petition for Approval of Unanimous Settlement of All Issues and Stipulation of Facts (“Settlement” or “Joint Petition”) and respectfully request that the Administrative Law Judge (“ALJ”) and the Commission approve the above-captioned Joint Petition consistent with the terms and conditions set forth in this Settlement.¹ The Settlement represents a full and unanimous settlement of all issues raised in the above captioned proceeding, as well as those raised in Petition of West Penn Power Company Challenging an Initial Determination of Non-Compliance with Section 2806.1(c) of Act 129, Docket No. P-2014-

¹ The Company believes that the caption of this Joint Petition should also include Docket No. P2014-2415521 based upon the Commission’s March 20, 2014 Order (at page 10) entered in *Energy Efficiency and Conservation Program*, Docket Nos. M-2008-2069887, M-2012-2289411, Order adopted and entered March 20, 2014 (“March 20 Order”). This Order provided for consolidation of any Petition filed by the Company with any action brought by the I&E pursuant to said Order. However, in order to reach a settlement, the Company agreed to only list Docket No. C-2014-2417325 in the actual caption.

2415521 (the “Petition”). The Settlement includes a provision that West Penn will withdraw the appeal of the Commission’s March 20, 2014 Order currently pending before the Commonwealth Court of Pennsylvania at No. 656 C.D. 2014 (the “Appeal”) and the Petition upon approval of this Joint Petition. Therefore the Joint Petitioners respectfully request that the Commission approve the Settlement, without modification, no later than the Public Meeting of August 21, 2014 to allow sufficient time for the period for reconsideration of the Commission’s action to expire and for West Penn to file a withdrawal of the appeal prior to the Commonwealth Court’s due date of September 15, 2014 for submission of initial briefs. In support of the Settlement, the Joint Petitioners state the following:

II. BACKGROUND

1. Act 129 of 2008 (the “Act” or “Act 129”) became effective on November 14, 2008. The Act, among other things, required the establishment of Energy Efficiency and Conservation Programs (“EE&C Plans”) filed by electric distribution companies (“EDCs”) with at least 100,000 customers and reviewed and approved in advance of implementation by the Commission.

2. The EE&C Plans were to be designed to reduce each EDC’s electricity consumption by a minimum of 1% by May 31, 2011 and by a minimum of 3% by May 31, 2013, compared to the same benchmark year and adjusted for weather and extraordinary loads, so that the 1% goal represents an initial number of MWh reductions that must be achieved. In addition, by May 31, 2013, peak demand was to be reduced by a minimum of 4.5% of the EDC’s annual system peak demand in the 100 hours of highest demand measured against the EDC’s peak demand during the period June 1, 2007 through May 31, 2008.

3. West Penn submitted an EE&C Plan on July 1, 2009 (“Phase I”) that was approved by the Commission in Docket No. M-2009-2093218 in an Order dated October 23,

2009. After this approval, and the merger of West Penn's parent company, Allegheny Energy, Inc., with FirstEnergy Corp., the Company requested an amendment of its EE&C Plan. The Company's amended EE&C Plan was approved by the Commission on October 28, 2011 in Docket No. M-2009-2093218. Under Act 129, West Penn's budget to accomplish compliance was the lowest of all EDCs subject to the Act on a dollars per MWh basis.

4. The Commission's March 20 Order examined whether the EDCs were in compliance with the electricity and peak load reductions specified in 66 Pa.C.S. §§2806.1(b), (c) and (d) and assessed whether the EDCs were in compliance with these targets.²

5. Both the EDCs and the Commission's Statewide Evaluator ("SWE") were required to submit annual reports on the accomplishment of Phase I goals. West Penn's May 31, 2011 electric consumption goal was a reduction of 209,387 MWh.

6. West Penn reported, in its PY2 Final Annual Report, it attained a TRM-verified reduction of 90,520 MWh in electric consumption as of May 31, 2011.³

7. In its Phase I Final Annual Report, the SWE verified and reported a West Penn reduction of 90,520 MWh or 43% of the goal.⁴

8. West Penn's May 31, 2013 goal was to reduce electric consumption in its service territory by 628,160 MWh, which included the 1% MWh reductions. The Company reported and the SWE validated a reduction of 688,089 MWh as of May 31, 2013, which represents 110% of West Penn's May 31, 2013 energy reduction requirement.

² March 20 Order at 2.

³ See *Annual Report to the Pennsylvania Public Utility Commission: For the period June 2010 to May 2011-Program Year 2*, at Docket Nos. M-2008-2069887 and M-2009-2093218, ("West Penn PY2 Final Annual Report"), at 1.

⁴ March 20 Order at 9. See also, *Act 129 State Wide Evaluator Final Annual Report, Phase I: June 1, 2009 – May 31, 2013*, at Docket No. M-2008-2069887, ("SWE Phase I Final Annual Report"), dated March 4, 2014.

9. With respect to West Penn's 4.5% peak demand reduction goal of 157 MW over the highest 100 hours, the Company accomplished 119% of this amount.⁵ In addition, with respect to the Government/Educational/Non-Profit category of reductions, West Penn achieved 240% of the Company's electric consumption reduction goal and 246% of the peak demand reduction requirement.⁶ Finally, the Company offered 23.8% of its EE&C Plan measures to low-income customers in comparison to the 8.5% that was required.

10. In the March 20 Order, the Commission reviewed the results of these reports, initially deemed that West Penn was not in compliance with the May 31, 2011 1% consumption reduction requirement and indicated that if no petition challenging this initial determination was filed, a proceeding initiated by I&E no later than May 30, 2014 would be limited to determining the amount of penalty West Penn would pay under Section 2806.1(f)(2), 66 Pa.C.S. §2806.1(f)(2).⁷

11. On April 9, 2014, West Penn filed a Petition at the Commission challenging the legality of the Commission's initial determination of non-compliance with the Section 2806.1(c) of the Act. The OCA filed an Answer to this Petition and a Notice of Intervention and Public Statement on April 29, 2014. OSBA filed a Notice of Intervention on May 2, 2014.⁸ I&E has not entered an appearance regarding West Penn's Petition.

12. On April 21, 2014, I&E filed with the Commission and served on West Penn a formal complaint seeking payment of a civil penalty of \$11.4 million for violation of the statutory requirements of Section 2806.1(c)(1) of Act 129 ("I&E Complaint"). I&E's Complaint relies on West Penn's PYS Final Annual Report and the SWE Phase I Final Annual Report.

⁵ March 20 Order at 19.

⁶ March 20 Order at 27-28.

⁷ March 20 Order at 9-10.

⁸ While not a party to this proceeding, as a party to the Company's Petition proceeding, OSBA does not oppose the Company's withdrawal of said Petition upon approval of this Joint Petition.

13. Subsequently, the Company filed an appeal of the March 20 Order with the Commonwealth Court challenging the Commission's initial determination that West Penn violated the Act without the Company being given an opportunity to submit evidence, participate in a hearing or submit legal argument on the issue.

14. On May 12, 2014, West Penn filed an Answer and New Matter to I&E's Complaint. On May 19, 2014, the OCA filed a Notice of Intervention and Public Statement in the complaint proceeding.

15. I&E Answered the Company's New Matter on June 2, 2014.

16. The Commission scheduled a Prehearing Conference on May 9, 2014 before ALJ Mary D. Long on the Company's Petition at Docket No. P-2014-2415521.

17. After the Prehearing Conference, the ALJ issued an Interim Order on Prehearing Proceedings that granted West Penn's request for a procedural interval during which settlement discussions could take place, provided those discussions included I&E and its' Complaint proceeding. The ALJ also ordered that the Parties to the Petition proceeding and I&E submit a joint status report detailing the status of settlement negotiations on or before June 30, 2014. Subsequently, the ALJ granted extensions of the period for settlement discussions to July 18, 2014.

18. On June 30, 2014, in response to an Application for an extension of the due date for initial briefs in the Appeal, Judge Mary Hannah Leavitt issued an Order dated June 27, 2014 that granted an extension for initial briefs to September 15, 2014, but directed that if Petitioner's brief was not submitted by that date, the petition for review would be dismissed as of course.

Appendix A.

19. The Joint Petitioners continued settlement discussions and on July 18, 2014 reported to the ALJ that they had reached unanimous agreement on a settlement term sheet. On July 22, 2014 the Joint Petitioners participated in a conference call before the ALJ to discuss the schedule for submission of the Settlement. The ALJ concurred in the Joint Petitioners' proposal to submit a Joint Petition for Settlement, Stipulation of Facts and Statements in Support on or before July 29, 2014.⁹

III. STIPULATION OF FACTS

20. The Joint Petitioners stipulate to the following facts in support of the Settlement.

21. West Penn's Act 129 May 31, 2011 1% electric consumption goal was a reduction of 209,387 MWh. In its Phase I Final Annual Report, the SWE reported a West Penn reduction of 90,520 MWh or 43% of the goal.

22. West Penn's 3% May 31, 2013 goal, which included the MWhs to be reduced by May 31, 2011, was to reduce electric consumption in its service territory by 628,160 MWh. The Company reported and the SWE validated a reduction of 688,089 MWh as of May 31, 2013, which represents 110% of West Penn's reduction requirement.

23. West Penn's July 15, 2011 preliminary report and its subsequent annual report filed with the Commission on November 30, 2011 indicated that the Company reached its 1% energy reduction target in November 2011.

24. The Company achieved 119% of West Penn's 4.5% peak demand reduction goal of 157 MW over the highest 100 hours.

25. With respect to the Government/Educational/Non-Profit category of reductions, West Penn achieved 240% of the Company's electric consumption reduction goal and 246% of the peak demand reduction requirement.

⁹ On July 29, 2014, the ALJ approved a one-day filing extension.

26. The Company offered 23.8% of its EE&C Plan measures to low-income customers in comparison to the 8.5% of its measures that was required.

27. Under Act 129, West Penn's budget to accomplish compliance was the lowest of all EDCs subject to the Act on a dollars per MWh basis.

IV. SETTLEMENT TERMS

28. The following terms of this Settlement reflect a compromise of the interests of all of the Joint Petitioners in these proceedings. The Joint Petitioners unanimously agree that the Settlement, which resolves all the issues, is in the public interest.

29. West Penn shall make a payment of \$1.3 million by certified check, payable to the Commonwealth of Pennsylvania, in satisfaction of I&E's allegations and the Commission's initial determination that the Company violated the statutory requirements of Act 129. This payment shall be made within thirty (30) days of the Commission's approval of the Settlement without further condition or modification. The Company shall promptly notify all Joint Petitioners when payment has been made. West Penn will not seek to recover any portion of the \$1.3 million payment from ratepayers or in rates.

30. West Penn makes no admission of liability with respect to violation of Act 129 in this Settlement.

31. West Penn, upon Commission approval of the settlement without condition or modification and provided the period for seeking reconsideration of the Commission's order approving the Settlement has expired without the filing of any petition for reconsideration, shall file to withdraw the appeal pending before Commonwealth Court at No. 656 CD 2014, and West Penn's Petition pending before the Commission at Docket No. P-2014-2415521.

V. **THE SETTLEMENT IS IN THE PUBLIC INTEREST**

32. Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements reduce the time and expense the parties must expend litigating a case and conserve limited administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

33. As will be detailed in the Joint Petitioners' Statements in Support, the Settlement is in the public interest because its terms are lawful and it resolves legal and factual issues of limited if any precedential value regarding Act 129's electricity consumption reduction goal for May 31, 2011 without the expenditure of significant resources before the Commission and Commonwealth Court, and thus allows those resources to be directed toward more productive and beneficial endeavors. The Settlement is also in the public interest because the diverse interests represented by the Joint Petitioners have been satisfied and because the settlement amount is within the penalty range deemed acceptable by the Pennsylvania legislature.

34. As requested by ALJ Long, and because the Settlement involves a payment in satisfaction of a penalty amount sought by I&E, the Joint Petitioners will address in their individual Statements in Support the *Rosi* Factors¹⁰ that have been incorporated into a Policy

¹⁰ *Rosi v. Bell Atlantic Pennsylvania Inc., et al.*, 94 Pa. P.U.C. 103 (Order entered March 16, 2000).

Statement¹¹ by the Commission as a guide for evaluating whether a proposed settlement of an alleged violation is reasonable and in the public interest.

35. The Joint Petitioners submit that the Settlement is consistent with the *Rosi* Factors and the Commission's Policy Statement on evaluating settlements.

36. The Joint Petitioners will further supplement the reasons that the Settlement is in the public interest in their Statements in Support, which are attached hereto as Appendices B through D.

VI. CONDITIONS OF THE SETTLEMENT

37. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition without modification or conditions. If the Commission modifies the Settlement, any Joint Petitioner may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Signatory Parties within five (5) business days after the entry of an Order modifying or conditioning the Settlement.

38. This Settlement is proposed by the Joint Petitioners to settle all issues in both the instant proceeding and the Company's Petition at P-2014-2415521. If the Commission does not approve the Settlement and the proceedings continue, the Joint Petitioners reserve their respective procedural rights to discovery, evidentiary hearings, submission of testimony and exhibits, cross-examination of witnesses, briefing, and argument of their respective positions before the Commission, as well as continued litigation of the Appeal before the Commonwealth Court. The Settlement is made without any admission against, or prejudice to, any position that

¹¹ 52 Pa. Code § 69.1201 Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations – statement of policy.

any Joint Petitioner may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

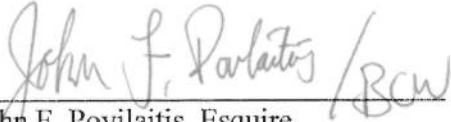
39. The Joint Petitioners acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any Joint Petitioner's position with respect to any issues raised in this proceeding. This Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

40. If the ALJ adopts the Settlement without modification or condition, the Joint Petitioners waive their right to file Exceptions on the issues that are resolved by this Settlement.

VII. CONCLUSION

WHEREFORE, the Joint Petitioners, West Penn, I&E, OCA and OSBA, by their respective counsel, respectfully request That the Honorable Administrative Law Judge Mary D. Long recommend approval of, and the Commission approve, this Joint Petition for Approval of Unanimous Settlement of All Issues and Stipulation of Facts, including all terms and conditions thereof, without modification or condition.

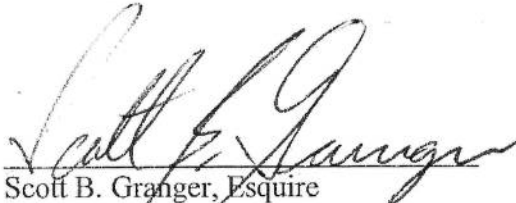
Respectfully submitted,



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Respectfully submitted,

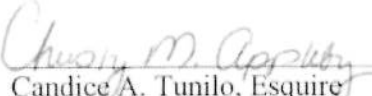
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Counsel for the Office of Consumer Advocate

Date: July 30, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

WEST PENN POWER COMPANY’S STATEMENT IN SUPPORT OF SETTLEMENT

TO ADMINISTRATIVE LAW JUDGE MARY D. LONG AND THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION:

West Penn Power Company (“West Penn” or the “Company”) hereby files this Statement in Support of the Joint Petition For Approval of Unanimous Settlement of All Issues and Stipulation of Facts (“Joint Petition” or “Settlement”) entered into by West Penn and the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), and the Office of Consumer Advocate (“OCA”) (collectively, “Joint Petitioners”) in the above-captioned proceeding. West Penn submits that the Settlement balances the duty of the Commission to protect the public interest, and the interests of the Joint Petitioners by resolving all of the issues in the Petition of West Penn Power Company Challenging an Initial Determination of Non-Compliance with Section 2806.1(c) of Act 129 (“Challenge Petition”), the Formal Complaint filed by I&E in this proceeding (“Formal Complaint”), as well as an appeal pending against the Commission in Commonwealth Court at docket No. 656 C.D. 2014 (the “Appeal”). This full and unanimous settlement is in the public interest because its’ terms are lawful and it resolves legal and factual issues that are at best of limited precedential value regarding Act 129’s electricity consumption reduction goal for May 31, 2011 without the

expenditure of significant resources before the Commission and Commonwealth Court, and thus allows those resources to be directed toward more productive and beneficial endeavors. The Settlement is also in the public interest because the diverse interests represented by the Joint Petitioners have been satisfied. The Settlement avoid delay in achieving a final result as well as the expense of unnecessary litigation, including but not limited to, formal discovery, testimony, hearings, briefs, exceptions and appeals in two matters before the Commission, as well as litigation of the Appeal pending before Commonwealth Court. Rather than engage in months or years of litigation that would delay final resolution of the issues in these matters, West Penn has focused its efforts on negotiating a compromise of the individual objectives of the Joint Petitioners. The Settlement is fair, just and reasonable, is in the public interest, and meets all Public Utility Code (“Code”) legal requirements. Therefore, it should be approved without modification or condition.

I. BACKGROUND

1. The background of this proceeding is sufficiently set forth in the Introduction and Background sections of the Joint Petition and is incorporated by reference herein.

2. As referenced in Paragraphs 13 through 15 of the Joint Petition, West Penn has agreed to make a payment in satisfaction of I&E’s allegation in the Formal Complaint that the Company violated the an Act 129 electricity consumption reduction requirement by customers that warranted imposition of a penalty ranging from \$1 million to \$20 million. As explained in the Challenge Petition, West Penn does not agree that failure to meet the 1% energy consumption goal by May 31, 2011 requires imposition of a penalty between 1 to 20 million dollars because this goal was directory rather than mandatory under the statute and the Code Section 2806.1(c)(1) 1% reduction objective was merely an interim goal in the overall goal to reduce

electricity consumption by 3% by May 31, 2013 pursuant to Code Section 2806.1(c)(2). Moreover, insofar as Act 129 is construed to mandate financial penalties where the electric distribution company (“EDC”) has followed its Commission-approved energy efficiency and conservation plan (“EE&C Plan”), its budget to achieve reductions is capped and the EDCs that have the lowest rates are given the least amount of funds to incent customers to conserve electricity usage, the Act is likely to be deemed unconstitutional by a reviewing court.

3. West Penn maintains that its conduct that is the subject of these proceedings was lawful, appropriate and in compliance with the Public Utility Code, the Commission’s regulations, and applicable orders. However, the Company acknowledges that the issues raised in this matter are subject to both factual and legal dispute, and therefore it is reasonable to conclude these cases on the basis of a payment that is towards the lower end of potential penalty amounts that could be ordered by the Commission. Specifically, West Penn has agreed to make a payment of \$1.3 million to conclude the currently pending litigation before the Commission and the Commonwealth Court.

II. PUBLIC INTEREST ANALYSIS

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

¹ See 52 Pa. Code § 5.231.

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).

5. 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 West Penn and compared to the Settlement terms proposed outcome in this case. This Settlement meets the standards outlined by *Rosi* as being in the public interest, as further discussed in paragraphs 7 through 16, *infra*.

6. 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 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:

- (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 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).

- (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 ten factors the Commission evaluates in reviewing a settlement of an alleged violation, are addressed as follows.

7. The first factor to be considered when reviewing this settlement is whether the conduct at issue was of a serious nature such as willful fraud or misrepresentation or whether it is of a technical nature meriting a lower penalty. In this case, no willful conduct is involved and Act 129's 1% reduction goal is certainly of a "technical" nature. On this factor, a lower penalty is appropriate.

⁵See 52 Pa. Code § 69.1201(c).

8. The second factor to be considered is whether the resulting consequences of West Penn's conduct were of a "serious nature" such as personal injury or property damage. In this case there is no personal injury or property damage to customers or the public which merit a penalty at the higher end of the scale. Moreover, as the facts stipulated to in the Joint Petition demonstrate, West Penn exceeded by significant margins all other goals and objectives in their Phase I EE&C Plan, including the 3% reduction goal which was achieved by May 31, 2013.

9. The third factor is whether West Penn's conduct was intentional or negligent. Clearly the Company did its utmost to meet the obligation and did in fact meet the 1% reduction goal less than a year after the May 31, 2011 deadline for the 1% reduction. Again, a penalty at the low end of the range is justified.

10. 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. Indeed, West Penn amended its EE&C Plan and modified its programs and costs to eventually meet the interim goal and exceeded it when measured at the end of May 2013.

11. The fifth factor to be considered is the number of customers affected and the duration of the violation. Not all customers were expected to achieve energy reductions and only the interim 1% goal was missed was not achieved. The 1% goal was in fact achieved in November 2011. These facts merit a lower penalty.

12. The sixth factor is West Penn's compliance history. West Penn has an excellent Act 129 compliance history and significantly exceeded all goals in a timely fashion with the exception of the 1% reduction goal.

13. The seventh factor to be considered is whether the regulated entity cooperated with the Commission. Here, the Company was forthright and timely with its reports on the progress of its energy reduction programs. West Penn has never been penalized for not submitting EE&C/DR Plan filings or meeting reporting requirements. Looking at the full scope of Act 129 programs, West Penn has provided full cooperation with the Act requirements.

14. The eighth factor is whether the amount of the civil penalty or fine will deter future violations. No deterrent is needed in this case. The alleged violation cannot reoccur because the statute does not require penalties for conduct after May 2013.

15. The ninth factor looks at past Commission decisions in similar situations. There are no other Act 129 penalty cases which show a penalty at the low end for West Penn is inappropriate.

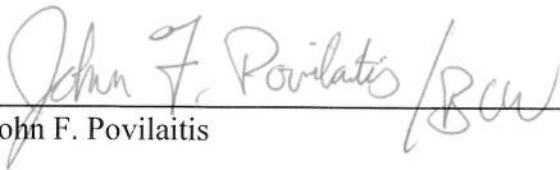
16. The tenth factor consists of all other relevant factors. West Penn's excellent performance on the 3% energy reduction goal and the 4.5% demand reduction goal is relevant to how the Commission should view the Company's Phase I performance and that performance warrants a payment at the lower end of the penalty range.

III. CONCLUSION

West Penn, I&E, OCA and OSBA have crafted a comprehensive settlement of the issues in these matters that is in the public interest. The Settlement resolves all issues related to I&E's Formal Complaint, the Challenge Petition and the Appeal. 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 condition or modification.

Respectfully submitted,

Dated: July 30, 2014



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Counsel for West Penn Power Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**BUREAU OF INVESTIGATION AND ENFORCEMENT
STATEMENT IN SUPPORT OF
JOINT PETITION FOR SETTLEMENT**

TO ADMINISTRATIVE LAW JUDGE MARY D. LONG:

The Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E"), by and through its Prosecutors Scott B. Granger and Johnnie E. Simms, hereby respectfully submits this Statement in Support of the Joint Petition for Approval of Unanimous Settlement of All Issues and Stipulation of Facts ("Joint Petition for Settlement" or "Settlement") that was entered into by I&E, West Penn Power Company ("West Penn" or "Company"), the Office of Consumer Advocate ("OCA"), and the Office of Small Business Advocate ("OSBA") in the above-captioned matter. The proposed Settlement fully resolves all issues related to I&E's Complaint ("I&E Complaint") in the above-captioned matter, and West Penn's Petition at Docket No. P-2014-2417325 ("Petition"). Furthermore, I&E respectfully submits that the terms

and conditions of the foregoing Joint Petition for Settlement are in the public interest and represent a fair, just, and reasonable balance of the interests of I&E, West Penn, OCA and OSBA. I&E respectfully requests that the Commission approve the Settlement, including the terms and conditions thereof, without modification.

I. BACKGROUND

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

2. The Commission's Bureau of Investigation and Enforcement and is the entity established to prosecute complaints against public utilities pursuant to 66 Pa. C.S. § 308.2(a)(11); *See also, Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011) (delegating authority to initiate proceedings that are prosecutorial in nature to I&E).

3. It is the Commission's policy to promote settlements. *See, 52 Pa. Code § 5.231.* Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *See, Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004). Furthermore, in negotiated settlements, it is incumbent upon I&E to ensure that the proposed Settlement is in the public interest and represents a fair, just, and

reasonable balance of the interests of the parties and affected stakeholders. Based upon I&E's analysis of the proposed negotiated Settlement, acceptance of this proposed Settlement is in the public interest and I&E recommends that the Administrative Law Judge and the Commission approve the Settlement in its entirety.

II. HISTORY

4. Act 2008-129 ("Act 129") was signed into law on October 15, 2008, and became effective on November 14, 2008. *See*, 66 Pa. C.S. §§2806.1 and 2806.2.

5. By and through Act 129, the Commission has been charged by the Pennsylvania General Assembly ("General Assembly") with establishing an energy efficiency and conservation program ("EE&C Program"). *See*, 66 Pa. C.S. §2806.1(a).

6. Act 129 requires that each electric distribution company ("EDC") shall develop and file an energy efficiency and conservation plan ("EE&C Plan") with the Commission for approval. *See*, 66 Pa. C.S. §2806.1(b)(1)(i).

7. Act 129 requires that the EE&C Plans developed and filed by the EDCs reduce electric consumption by at least 1% of the EDC's expected consumption for June 1, 2009 through May 31, 2010, adjusted for weather and extraordinary loads; and, that this 1% reduction was to be accomplished by May 31, 2011. *See*, 66 Pa. C.S. §2806.1(c)(1).

8. West Penn was required to reduce, by May 31, 2011, electric consumption in its service territory by 209,387 MWh.¹

9. Act 129 requires that if an EDC fails to achieve the required reductions in electric consumption or in peak demand, that EDC shall be subject to a civil penalty of

¹ *See Energy Consumption and Peak Demand Reduction Targets Order*, at Docket No. M-2008-2069887, ("Phase I Targets Order"), dated March 26, 2009, at 3.

not less than \$1,000,000 and not greater than \$20,000,000; and, such penalties may not be recovered from ratepayers. *See*, 66 Pa. C.S. §2806.1(f)(2)(i).

10. On January 15, 2009, the Commission adopted an Implementation Order at Docket No. M-2008-2069887 establishing the standards each plan must meet and providing guidance on the procedures to be followed for submittal, review and approval of all aspects of the EDCs' EE&C plans.²

11. Act 129 also required the Commission to establish an evaluation process that monitored and verified data collection, quality assurance and the results of each EDC plan and the program as a whole. 66 Pa. C.S. § 2806.1(a)(2). The Commission elected to utilize a Statewide Evaluator ("SWE") to monitor and verify the results of each EE&C Plan and the program as a whole.

12. The Commission also required the EDCs to file three quarterly reports, a preliminary annual report and a final annual report due November 15. The final annual reports were to provide verified savings for the EDC's EE&C portfolio for that program year, the cost-effectiveness evaluation, the process evaluation, as well as items required by Act 129 and Commission Orders.

13. West Penn filed its Annual Report to the Pennsylvania PUC for the Period June 2010 to May 2011, Program Year 2 on November 15, 2011 and reported that it attained a TRM-verified reduction of 90,520 MWh in electric consumption as of May 31, 2011³, or 43% of its 209,387 MWh goal.

² *See Implementation Order* at Docket No. M-2008-2069887 ("Implementation Order"), dated January 15, 2009.

³ *See Annual Report to the Pennsylvania Public Utility Commission: For the Period June 2010 to May 2011-Program Year 2*, at Docket Nos. M-2008-2069887 and M-2009-2093218, ("West Penn PY2 Final Annual Report"), at 1.

14. Additionally, the SWE was required to provide timely reports to the Commission that set forth the results of its independent evaluations of the EDCs' EE&C programs and claimed energy efficiency savings.

15. The SWE's Final Annual Report for Phase I: June 1, 2009 through May 31, 2013 was filed with the Commission on March 4, 2014.⁴ In its Phase I Final Annual Report, the SWE validates West Penn's reported TRM-verified savings of 90,520 MWh, and also verified that this equals 43% of West Penn's 1% reduction requirement of 209,387 MWh⁵.

16. Following receipt of the SWE Phase I Final Annual Report, the Commission issued an Order on March 20, 2014⁶.

17. On April 9, 2014, West Penn filed a Petition with the Commission, at Docket No. P-2014-2415521, challenging the legality of the Commission's initial determination of West Penn's non-compliance with the Section 2806.1(c) of Act 129. OCA filed an Answer to this Petition on April 29, 2014. To date, I&E has not entered an appearance regarding West Penn's Petition.

18. Instead, and upon completion of its investigation, I&E filed the instant Complaint against West Penn on April 21, 2014. I&E alleged that West Penn violated Section 2806.1(c)(1) of Act 129 and relied on the SWE Phase I Final Annual Report and

⁴ See *Act 129 State Wide Evaluator Final Annual Report, Phase I: June 1, 2009 – May 31, 2013*, at Docket No. M-2008-2069887, ("SWE Phase I Final Annual Report"), dated March 4, 2014.

⁵ See SWE Phase I Final Annual Report, at Table V: Summary of Phase I EDC Targets and Compliance for 1% Energy Consumption Reduction by May 2011, at xviii, and, Table 1-3: 2011 1% Energy Reduction Target – Compliance Summary by EDC, TRM Verified Energy Savings, at p. 17.

⁶ *Energy Efficiency and Conservation Program*, Docket Nos. M-2008-2069887, M-2012-2289411, Order adopted and entered March 20, 2014 ("March 20 Order").

the West Penn PYS Final Annual Report. *See*, 66 Pa. C.S. § 2806.1(c)(1). *See also*, I&E Complaint, ¶¶ 26-27.

19. West Penn filed an 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 of West Penn”) on May 12, 2014.

20. I&E filed its Reply to New Matter of West Penn Power Company (“I&E Reply to New Matter”) on June 2, 2014.

21. ALJ Long held an initial prehearing conference on May 9, 2014, regarding West Penn’s Petition at Docket No. P-2014-2415521.

22. Subsequently, and in accordance with Commission policy favoring settlements at 52 Pa. Code § 5.231, I&E participated multiple in-person and telephonic settlement discussions with the Company and the other statutory advocates. Following extensive settlement negotiations, the parties have reached a full and complete settlement of all issues. Also, and in deference to the settlement negotiations, no discovery was undertaken by the parties and no testimony was submitted.

III. TERMS AND CONDITIONS OF SETTLEMENT

23. I&E respectfully submits that the terms and conditions of the foregoing Joint Petition for Settlement are in the public interest and represent a fair, just, and reasonable balance of the interests of I&E, West Penn, OCA and OSBA. Accordingly, and for the specific reasons articulated below in order to achieve the full scope of benefits addressed in the Settlement, I&E requests that the Settlement be approved by the ALJ and the Commission without modification.

24. Act 129 sets forth a minimum civil penalty of \$1,000,000 and a maximum civil penalty of \$20,000,000. *See*, 66 Pa. C.S. §2806.1(f)(2)(i). In the Settlement, the Joint Petitioners agree to a civil penalty of \$1,300,000 payable within 30 days after the Settlement is approved by the Commission. ALJ Long specifically requested a discussion of the *Rosi* standards as they relate to the civil penalty, and I&E will respectfully provide a *Rosi* standards discussion.

25. I&E submits that approval of the agreed upon civil penalty in this matter is consistent with the Commission's Policy for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten factors that the Commission 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. *See*, 52 Pa. Code § 69.1201(c).

1. The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, and, if so, whether the conduct may warrant a higher penalty. I&E can confidently state that there was no conduct of a serious nature, and that West Penn's conduct was in no way willful, fraudulent, or a misrepresentation. West Penn filed its EE&C Plan for Phase I with the Commission on July 1, 2009, and received Commission approval on October 23, 2009 at Docket No. M-2009-2093218. *See*, Answer and New Matter

of West Penn, ¶ 13. The fact that West Penn's EE&C Plan failed to achieve the 1% consumption reduction goal is not evidence of willful or fraudulent conduct; or misrepresentation.

2. The second factor considered is whether the resulting consequences of the conduct in question 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. 52 Pa. Code § 69.1201(c)(2). I&E can confidently state that the resulting consequences were not of a serious nature and that there was no personal injury or property damage involved that would warrant a higher penalty. In fact, as I&E sets forth in response to factor five *infra*, the resulting consequences of West Penn's conduct were negligible.

3. The third factor considers whether the conduct at issue was deemed intentional or negligent. This factor is only to be considered when evaluating litigated cases. *See*, 52 Pa. Code § 69.1201(c)(3). Therefore, this factor does not apply to the present case because this proceeding is a settled matter.

4. The fourth factor to be considered is whether West Penn made efforts to modify internal practices and procedures to address the conduct at issue and to prevent similar conduct in the future. Also, 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. *See*, 52 Pa. Code §69.1201(c)(4). I&E can confidently state that West Penn (and First Energy) acted quickly and decisively in their efforts to meet the 1% requirement of Act 129

Phase I upon First Energy's acquisition of West Penn's parent company, Allegheny Energy, Inc., in February of 2011. *See*, Answer and New Matter of West Penn, ¶33. Even though West Penn fell 57% short of the 1% goal as of May 31, 2011, by the end of November 2011 West Penn, through First Energy's efforts, had exceeded the 1% goal.

5. The fifth factor considers the number of customers affected and the duration of the violation. I&E submits that even though it can be argued that all of West Penn's customers may have been affected by the failure of West Penn to meet the 1% reduction in consumption requirement; the net effect on each individual customer was negligible. West Penn's expected consumption as forecasted and approved by the Commission for June 1, 2009 through May 31, 2010 was 20,938,650 MWh⁷. The Act 129 1% reduction requirement was 209,387 MWh. West Penn only achieved 90,520 MWh of the 209,387 MWh Act 129 required consumption reduction. In other words, the West Penn system which had a forecasted total usage of 20,938,650 MWh was only impacted by 118,867 MWh. Stated another way, West Penn's system only experienced a 0.57% impact spread across West Penn's entire customer base. Therefore, I&E submits that the impact on West Penn's customers was negligible. Also, West Penn (through First Energy's efforts) rebounded quickly and achieved their 1% consumption reduction goal by November 2011. This represents a duration of only five (5) months as

⁷ *See*, Commission Order dated October 15, 2009 at *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan ...*, at Docket No. M-2009-2093218, p. 16.

measured from the May 31, 2011 deadline. *See*, Answer and New Matter of West Penn, ¶¶ 30, 33.

6. The sixth factor considers the compliance history of the company. With regard to this factor I&E points out that West Penn cooperated fully with I&E's investigation in this matter as set forth in I&E's response to factor 7, *infra*. Having said that, I&E is also aware that back in 2012 I&E filed a complaint against West Penn seeking information regarding the investigation of a serious incident involving a downed power line. *See*, Pa. PUC I&E v. West Penn Power Company, Docket No. C-2012-2307244. In that instance, and upon the filing of I&E's complaint, West Penn's response was timely and West Penn fully cooperated through the conclusion of that matter.

7. The seventh factor to be considered is whether the regulated entity cooperated with the Commission's investigation in the instant matter. With regard to this seventh factor, the instant matter required limited investigation on the part of I&E. To summarize, the EE&C Plans were submitted to and approved by the Commission. *See*, I&E Complaint, ¶ 19. West Penn was required by Act 129 to submit quarterly and annual reports. *See*, I&E Complaint, ¶¶ 21, 22 and 26. Additionally, the SWE conducted a comprehensive review of West Penn's claimed Act 129 consumption reduction results. *See*, I&E Complaint, ¶¶ 20, 23 and 27. Furthermore, the SWE submitted its Act 129 Phase I Final Report to the Commission detailing its Act 129 Phase I findings for all EDCs, including West

Penn. *See*, I&E Complaint, ¶ 27. To the extent that an I&E investigation was necessary, I&E submits that West Penn fully cooperated.

8. The eighth factor is the amount of the civil penalty or fine necessary to deter future violations. I&E submits that a civil penalty in the amount of \$1,300,000 is substantial and sufficient in this instance. As stated herein and in the Joint Petition for Settlement, West Penn (after First Energy acquired West Penn's parent company, Allegheny Energy) met the May 31, 2011 1% goal by November of 2011, and West Penn met and exceeded the 3% goal by May 31, 2013 statutory deadline. *See*, SWE Act 129 Phase I Final Report, p. 17. *See also*, the discussion regarding factor nine, *infra*.

9. The ninth factor examines past Commission decisions in similar situations. Act 129 was a new and novel initiative in the Commonwealth of Pennsylvania when the legislature enacted it in 2008. As such, this is the first and only instance in which a Pennsylvania EDC has been exposed to the statutory civil penalties set forth in Act 129. Therefore, this is a case of first impression and I&E submits that the negotiated civil penalty of \$1,300,000 is just and reasonable, in the public interest, and sets a fair and reasonable precedent in the event any future energy efficiency and conservation statutory requirement is violated by a Pennsylvania EDC.

10. The tenth and final factor is other relevant factors. The parties submit 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 parties in the settlement agree to a negotiated fine or penalty. All parties negotiated from their initial litigation positions. The fines, penalties and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise, while also allowing the parties to move forward.

IV. THE SETTLEMENT SATISFIES THE PUBLIC INTEREST

26. Based upon I&E's analysis of the position espoused by the parties, I&E represents that acceptance of this Settlement is in the public interest. Resolution of this case by settlement rather than litigation avoids the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense and uncertainty.

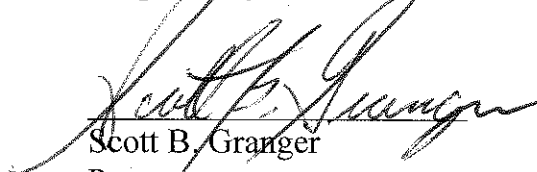
27. The Settlement is conditioned upon the Commission's approval of all terms without modification. Should the Commission fail to grant such approval or otherwise modify the terms and conditions of the Settlement, it may be withdrawn by the Company, I&E, or any other Joint Petitioner.

28. I&E's agreement to settle this case is made without any admission or prejudice to any position that I&E might adopt during subsequent litigation in the event that the Settlement is rejected by the Commission or otherwise properly withdrawn by any other parties to the Settlement.

29. If the ALJs recommend that the Commission adopt the Settlement as proposed, I&E agrees to waive the filing of Exceptions. However, I&E also does not waive the right to file Replies in the event *any* party files Exceptions.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement fully supports the Joint Petition for Settlement and respectfully requests that Administrative Law Judge Mary D. Long recommends and the Commission approves, the terms and conditions contained in the Settlement.

Respectfully submitted,



Scott B. Granger

Prosecutor

PA Attorney ID No. 63641

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
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Dated: July 30, 2014

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

STATEMENT
OF THE
OFFICE OF CONSUMER ADOCCATE
IN SUPPORT OF SETTLEMENT

The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Approval of Unanimous Settlement of all Issues and Stipulation of Facts (Settlement), finds the terms and conditions of the Settlement to be in the public interest for the following reasons:

I. INTRODUCTION

On March 20, 2014, the Pennsylvania Public Utility Commission issued an Order in the matter of Energy Efficiency and Conservation Program at Docket Nos. M-2008-2069887, M-2012-2289411 (March 20 Order). In its March 20 Order, the Commission reviewed the Statewide Evaluator's (SWE) Phase I Final Annual Report to determine whether the electric distribution companies (EDCs) were in compliance with the targets established at 66 Pa. C.S. §§ 2806.1(b), (c), and (d). March 20 Order at 2, 10. The Commission determined that West Penn Company (West Penn or Company) was in compliance with its three percent (3%) electric

consumption reduction target and its four and a half percent (4.5%) demand reduction target. March 20 Order at 10, Ordering ¶ 4.

West Penn also had a separate 1% electric consumption reduction target to be achieved by May 31, 2011. As to the 1% consumption reduction target, the Commission initially determined that West Penn was not in compliance with its 1% consumption reduction requirement pursuant to Section 2806.1(c)(1) of the Public Utility Code. The Commission ordered that the determination would become final unless a Petition contesting the determination was filed within twenty (20) days of the date of the Order. The Commission ordered that the Bureau of Investigation and Enforcement (BI&E) should determine: (1) whether West Penn was in compliance with Section 2806.1(c) of the Public Utility Code and (2) whether West Penn should be subject to the penalties contained in Section 2806.1(f)(2) of the Public Utility Code. Id. at 10, Ordering ¶ 4. On April 9, 2014, West Penn filed its Petition of West Penn Power Company Challenging an Initial Determination of Non-Compliance with Section 2806.1(c) of Act 129. On April 29, 2014, the OCA filed an Answer and Notice of Intervention and Public Statement in the Petition proceeding. On May 2, 2014, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Notice of Appearance in the Petition proceeding.

As directed by the March 20 Order, on April 21, 2014, BI&E filed a Complaint which was separately docketed at C-2014-2417325. BI&E's Complaint alleged that West Penn failed to meet the required 1% consumption reduction target by May 31, 2011 as required by Section 2806.1(c)(1) of the Public Utility Code. BI&E Complaint at 5-7. BI&E requested that West Penn be ordered to pay a civil penalty in the amount of \$11.4 million pursuant to 66 Pa. C.S. § 2806.1(f)(2)(i) and that no portion of the civil penalty be recovered from ratepayers. BI&E Complaint at 8.

The Company filed an appeal of the March 20 Order with the Commonwealth Court challenging the Commission's initial determination that West Penn violated the Act. The appeal is pending in the Commonwealth Court at Docket No. 656 CD 2014. The OCA has filed a Notice of Intervention in the matter.

West Penn Power's Petition was referred to the Office of Administrative Law Judge and ALJ Mary D. Long has been assigned to the Petition proceeding. A Prehearing Conference was held on May 9, 2014. After the Prehearing, ALJ Long issued an Interim Order that granted West Penn's request for a stay in the matter to discuss settlement. The ALJ ordered that the parties to the Petition proceeding and the parties to the Complaint proceeding submit a Joint Status Report on or before June 30, 2014. The ALJ granted a further extension until July 18, 2014.

As a result of these settlement discussions, on July 18, 2014, the parties reported to the ALJ that they had reached a settlement in principle. On July 22, 2014, the parties participated in a call with ALJ Long to discuss the schedule for submitting a Joint Petition for Settlement for both the Complaint and the Petition proceedings. ALJ Long approved the proposal to submit a Joint Petition for Settlement, Stipulation of Facts and Statement in Support on or before July 29, 2014.

As set forth below, the terms and conditions of the Settlement are in the public interest and should be approved.

II. SETTLEMENT

The Settlement provides that West Penn shall make a payment of \$1.3 million to the Commonwealth of Pennsylvania "in satisfaction of I&E's allegations and the Commission's initial determination that the Company violated the statutory requirements of Act 129." Settlement at ¶ 29. West Penn will not seek to recover any portion of the \$1.3 million from its

ratepayers. Id. After Commission approval of the Settlement, the Settlement provides that the Company will withdraw its appeal at the Commonwealth Court at Docket No. 656 CD 2014 and its Petition pending before the Commission at Docket No. P-2014-2415521. Settlement at ¶ 31.

Section 2806.1(c) of Act 129 required:

(1) By 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%.

(2) By May 31, 2013, the total annual weather-normalized consumption of the retail customers of each electric distribution company shall be reduced by a minimum of 3%.

66 Pa. C.S. § 2806.1(c). The General Assembly required the imposition of penalties in the range of \$1,000,000 to \$20,000,000 for failure to achieve the required reductions under subsection (c) or (d). 66 Pa. C.S. § 2806.1(f).

West Penn's Act 129 May 31, 2011 electric consumption reduction target of 1% was equivalent to a reduction of 209,387 MWh. Settlement at ¶ 21. West Penn achieved a reduction of 90,520 MWh as of May 31, 2011, or 43% of its electric consumption reduction target that was validated by the Statewide Evaluator. Id. West Penn's Act 129 May 31, 2013 electric consumption reduction target of 3% was equivalent to 628,160 MWh. Id. at ¶ 22. The Company reported and the Statewide Evaluator validated a reduction of 688,089 MWh as of May 31, 2013, or 110% of the May 31, 2013 electric consumption reduction target. Id. The Company also achieved 119% of West Penn's 4.5% peak demand reduction goal. Id. at ¶ 24. The Commission's March 20 Order found that West Penn was in compliance with its 3% electric consumption reduction target and its 4.5% demand reduction target. March 20 Order at 10, Ordering ¶ 4.

The OCA submits that the Settlement is in the public interest. In early 2011, West Penn merged with the FirstEnergy Companies. Subsequent to the merger, in April 2011, the FirstEnergy Companies met with the Commission to discuss its plan to move to an outsourced model and created a strategy for making up the shortfall that would occur in May 2011. West Penn stated in its Answer to New Matter in the Complaint proceeding that:

This strategy included: (1) leveraging the success of other cost-effective programs already in place at the other FE Companies; (2) transitioning program implementation and administration to experienced energy efficiency vendors; and (3) filing proposed changes to West Penn's current EE&C Plan that reflected changed FirstEnergy believed were necessary in order to maximize opportunities in the near future.

Answer to New Matter at 8. The strategy achieved the remaining portion of the 1% electric consumption reduction target within six months of May 31, 2011. Settlement at ¶ 23.

The ALJ requested that the parties evaluate in the Statements in Support whether the Settlement meets the Rosi v. Bell Atlantic standards. Settlement at ¶ 34. The Rosi v. Bell Atlantic case established standards for evaluating whether and how much of a civil penalty should be assessed. Rosi v. Bell Atlantic Pennsylvania Inc., et al., 2000 Pa. PUC LEXIS 5 (March 16, 2000). These 10 factors set forth in Rosi include: (1) whether the violation was intentional or negligent; (2) whether the regulated entity promptly and voluntarily took steps to return the customer to the appropriate carrier and credited the customer's account, or as applicable to this case, whether the regulated entity promptly and voluntarily took corrective actions; (3) whether the regulated entity initiated procedures to prevent future slamming; (4) the number of customers affected and the duration of the violation; (5) whether the penalty arises from a settlement or a litigated proceeding; (6) the compliance history; (7) whether the regulated entity cooperated with the Commission; (8) the amount necessary to deter future violations; (9) past Commission decisions in similar situations; and (10) other relevant factors. Id. at *30.

Factor 1 asked whether the Company's actions were intentional or negligent. The Company submitted its Energy Efficiency and Conservation (EE&C) plan to the Commission as required to attempt to achieve the statutory requirements. In approving the Company's plan, which was the subject of contention in a litigated proceeding, the Commission put the Company on notice that it would impose penalties if both the 2011 and 2013 consumption reduction targets were not met. Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs Through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan, Docket No. M-2009-2093218, Order at 17 (June 23, 2010). The 1% consumption reduction target was not achieved, and therefore, Section 2806.1(f) of Act 129 requires that a penalty be imposed.

Factor 2 relates to whether the Company promptly and voluntarily took corrective actions. The Company moved to correct the deficiency in meeting the 1% consumption reduction target and met the target within 6 months of May 31, 2011. West Penn made up the amount that it missed by November 2011 and exceeded the 3% consumption reduction target in May 31, 2013. Settlement at ¶¶ 22-23. The Company also met with the Commission in advance of the deficiency to discuss its plans to address the issue.

Factor 3 on whether the regulated entity initiated procedures to prevent future "slamming" or future violation would in this case be the same as Factor 2. The Company took steps to implement an EE&C Plan to reach the 1% reduction target and to achieve the other required targets by the statutory date.

Factor 4 relates to the number of customers affected and the duration of the violation. As to factor 4, the issue affected all of West Penn's ratepayers as they would be beneficiaries of the

EE&C programs and the reduced consumption. As discussed above regarding Factor 2, however, the Company moved quickly to correct the deficiency in meeting the 1% consumption reduction target and met the target within 6 months of the consumption reduction target date of May 31, 2011. The Company also exceeded the 3% consumption reduction target of May 31, 2013 and achieved the other requirements of the Act and the Commission's Act 129 Implementation Order which benefitted ratepayers.

Factor 5 asks whether the penalties evolved from a settlement or litigation. The Company has cooperated with the settlement discussions and avoided the cost of litigation through achieving the settlement in this case. Further, the Settlement provides the additional benefit of addressing the Complaint proceeding and the withdrawal of the Petition proceeding and the pending appeal before Commonwealth Court.

Factor 6 evaluates the impact of the Company's compliance history. The Company did not achieve the 1% consumption reduction target by May 31, 2013, but West Penn did achieve the remaining 57% within 6 months. Settlement at ¶ 23. West Penn later met and exceeded its May 31, 2013 consumption reduction target of 3% and its May 31, 2013 demand reduction target of 4.5%. Settlement at ¶¶ 22, 24.

Factor 7 examines whether the regulated entity cooperated with the Commission. The Company stated in its Answer to New Matter in the Complaint proceeding that West Penn met with the Commission in April 2011 and set forth a plan about how it would catch up on the 1% consumption reduction target. Answer to New Matter at 8.

Factor 8 relates to the amount necessary to deter future violations. The OCA submits that the penalty is reasonably set to address the missed 1% consumption reduction target and to deter future violations of statutory requirements.

Factor 9 evaluates the impact of past Commission decisions on this matter. The consumption reduction target of May 31, 2011 was a single target date to be achieved, and there have not been past decisions in similar situations.

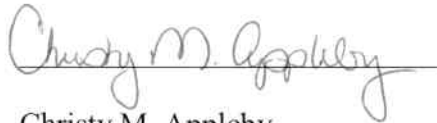
Factor 10 concerns other relevant factors. The OCA has no additional considerations.

The statute requires that a minimum of a \$1 million fine be imposed with a maximum of \$20 million. 66 Pa. C.S. § 2806.1(f). The Settlement provides for a \$1.3 million penalty. Settlement at ¶ 29. The OCA submits that the negotiated penalty is reasonable in these circumstances. The OCA submits that the proposed Settlement meets the applicable Rosi standards, meets the requirements of Act 129, and is overall in the public interest. Therefore, the OCA recommends that the Settlement be approved.

III. CONCLUSION

The OCA submits that the terms of the Settlement are in the public interest and in the interest of West Penn's ratepayers. Based on the above reasons, the Office of Consumer Advocate submits that the proposed Settlement should be approved.

Respectfully Submitted,



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DATE: July 30, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT	: : : : : : :	Docket No. C-2014-2417325
v.		
WEST PENN POWER COMPANY		

CERTIFICATE OF SERVICE

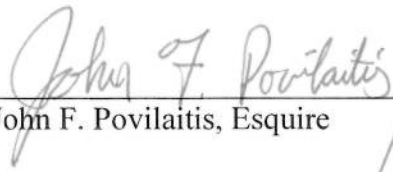
I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via E-Mail and First Class Mail

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Dated this 30th day of July, 2014.



John F. Povilaitis, Esquire */ Ben*