

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

February 26, 2016

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: Petition of West Penn Power
Company for Approval of its
Long-Term Infrastructure
Improvement Plan
Docket No. P-2015-2508948

Dear Secretary Chiavetta:

Attached for electronic filing is the Office of Consumer Advocate's Answer in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink that reads "Erin L. Gannon".

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Attachment

cc: Office of Administrative Law Judge
Office of Special Assistants
Certificate of Service

*217721

CERTIFICATE OF SERVICE

Petition of West Penn Power Company for :
Approval of its Long Term Infrastructure : Docket No. P-2015-2508948
Improvement Plan :

I hereby certify that I have this day served a true copy of the following document, Office of Consumer Advocate's Answer, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 26th day of January, 2016.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Johnnie E. Simms, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

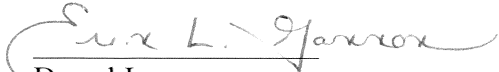
Daniel G. Asmus
Small Business Advocate
Office of Small Business Advocate
300 North Second Street
Harrisburg, P A 17101

SERVICE BY E-MAIL & FIRST CLASS MAIL

Susan E. Bruce
Vasiliki Karandrikas
Teresa K. Schmittberger
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
*Counsel for West Penn Power Industrial
Intervenors*

John L. Munsch
Pennsylvania Power Company
800 Cabin Hill Drive
Greensburg, PA 15601
*Counsel for West Penn
Power Company*

Anthony C. DeCusatis
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
*Counsel for West Penn
Power Company*



Darryl Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Counsel for Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048

*217722

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of West Penn Power Company :
for Approval of a Distribution System : Docket No. P-2015-2508948
Improvement Charge :

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
TO THE
PETITION OF WEST PENN POWER COMPANY

I. INTRODUCTION

Pursuant to Section 5.61 of the Pennsylvania Code, 52 Pa. Code § 5.61, the Office of Consumer Advocate (OCA) provides the following Answer to the Petition of West Penn Power Company (West Penn or Company) for Approval of a Distribution System Improvement Charge (DSIC) for its electric operations. Through its Petition, West Penn seeks permission to implement a surcharge of up to 5% on all customers under Section 1353 of the Public Utility Code, 66 Pa. C.S. § 1353. This surcharge would recover return and depreciation on certain plant placed in service between base rate filings. As set forth more fully below, the Company's Tariff Supplement attached to the Petition may be contrary to Pennsylvania statute, case law, and established Public Utility Commission policy. The Commission should deny West Penn's Petition and proposed Tariff Supplement as filed. The OCA requests that the Commission refer the matter to the Office of Administrative Law Judge for development of an evidentiary record, pursuant to the OCA complaint filed at this docket against the Petition and Tariff Supplement.

II. THE OCA'S ANSWER

This is a request by a utility to implement a DSIC under a new statute and the Commission's Final Implementation Order.¹ While the OCA continues to review West Penn's filing, the OCA has identified the following preliminary concern with the proposed surcharge: West Penn proposes that the DSIC will not apply to customers receiving service under Rate Schedule 40, over 100,000 volts, and Rate Schedules 44 and 46. Petition at 6; West Penn St. 1 at 6. The Company bases this exclusion on its assertion that its Long Term Infrastructure Improvement Plan (LTIP) does not contain any infrastructure improvement projects for distribution facilities operating at transmission-level voltages and, therefore the DSIC rates during the term of the current LTIP will not include any additions to such plant.

The OCA submits, first, that it is not sufficient basis to exempt customers from the DSIC because the current LTIP does not include additions to the specific distribution facilities serving customers. Under this theory, application of the DSIC would be dictated by the specific projects funded by the DSIC (as determined by a particular 5-year LTIP), which is not consistent with Act 11. Rather, the Act requires all customers served by eligible categories of distribution facilities to contribute to the improvement of those facilities by paying a DSIC. Act 11 provides that the DSIC "shall be applied equally to all customer classes as a percentage of each customer's billed revenue." 66 Pa. C.S. § 1358(d)(1).

In its April 9, 2015 Order in Docket No. P-2012-2325034, wherein PPL Electric Utilities filed a Petition for Approval of a DSIC, the Commission determined that it was permissible for PPL to exempt certain customers taking service at transmission voltage rates from the DSIC. It stated:

¹ Implementation of Act 11 of 2012, Docket No. M-2012-2293611, Order (Aug. 2, 2012) (Final Implementation Order).

After reviewing this record, we concur with the ALJ that PPL has failed to rebut PPLICA's evidence that the LP-5 class does not utilize the facilities repaired, improved or replaced through the DSIC, and that these costs are generally not otherwise allocated to that class. Since PPL has not rebutted this evidence, it has not met its burden of proof as to the justness and reasonableness of this rate as applied to LP-5 customers.

PPL Order at 66. West Penn has not provided sufficient information to determine if the DSIC should apply to Rate Schedule 40, over 100,000 volts, and Rate Schedules 44 and 46. For example, West Penn follows the Commission's model tariff in identifying costs from Accounts 362, 364, 365, 366, 367 and 368 in its proposed DSIC. See West Penn Exh. KMS-2. The filing does not indicate whether, in the Company's most recent cost of service study, the Rate Schedules 40, over 100,000 volts, 44 and 46 customers were allocated costs for distribution plant that is recoverable through the Company's proposed DSIC.

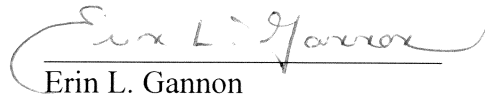
Second, West Penn's currently approved tariff indicates that each of the rate schedules at issue are available to customers receiving service at less than 100,000 volts. Supplement 10 to Electric Pa. P.U.C. No. 40 at 76, 79, 83. It is the OCA's understanding that customers receiving service above 100,000 volts are defined by the Company as "transmission" customers. The Company's filing does not explain the basis for distinguishing these customers from the other customers served under Rate Schedules 40, 44 and 46 for DSIC purposes, however. For example, does West Penn's current LTIP include additions to plant that serves the other customers served under these rate schedules?

The OCA submits that additional information is necessary for West Penn to show that exemption for these Rate Schedules 40, 44 and 46 customers is warranted, in the public interest and consistent with Act 11 and prior Commission Orders.

III. CONCLUSION

The surcharge proposed by West Penn may be contrary to Pennsylvania case law and well-established principles of sound ratemaking and regulatory policy. The OCA respectfully requests that the Commission deny the Company's Petition as filed, suspend the proposed tariff and refer the matter to the Office of Administrative Law Judge for development of an evidentiary record, pursuant to the OCA complaint filed at this docket.

Respectfully submitted,



Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. No. 83487
EGannon@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

Dated: February 26, 2016