

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITION TO INTERVENE AND ANSWER OF
THE WEST PENN POWER INDUSTRIAL INTERVENORS¹**

TO THE HONORABLE, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to Sections 5.71 through 5.74 of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Regulations, 52 Pa. Code §§ 5.71 - 5.74, West Penn Power Industrial Users Group ("WPPII") hereby files this Petition to Intervene in response to the above-captioned Petition of West Penn Power Company (the "Company"). Furthermore, pursuant to Section 5.61(a) of the Commission's Regulations, 52 Pa. Code § 5.61(a), WPPII hereby files this Answer in response to the above-captioned Petition of the Company.

Act 11 of 2012 ("Act 11") provides utilities with the opportunity to implement a Distribution System Improvement Charge ("DSIC") to recover reasonable and prudent costs incurred to repair, improve, or replace eligible distribution system property as defined in 66 Pa. C.S. § 1351(1). In order to recover costs through a DSIC, the utility must first file a Long Term Infrastructure Improvement Plan ("LTIIP") and obtain the Commission's approval in accordance with 66 Pa. C.S. § 1352 and 52 Pa. Code §§ 121.7(a)-(d).

¹ On March 7, 2016, WPPII filed a Petition to Intervene and Answer in response to the Company's Petition. This filing, which includes WPPII's Amended Answer, replaces WPPII's March 7, 2016, filing. For ease of Commission review, only WPPII's Answer has been substantially amended from the March 7, 2016, filing. The Petition to Intervene remains unchanged with the limited exception of the removal of an attorney name from Paragraph 4.

On October 19, 2015, the Company filed with the Commission its Petition for approval of its LTIP, which proposed \$88.34 million in upgrades for facilities and equipment within the Company's distribution system.

On November 18, 2015, WPPII filed Comments on the Company's LTIP. WPPII's comments did not oppose the LTIP, but requested further review of the LTIP to ensure it was fair, just, and reasonable.

On February 11, 2016, the Commission approved the Company's LTIP.

On February 16, 2016, the Company filed with the Commission its Petition requesting approval to establish a DSIC that would take effect on July 1, 2016.

In response to the Company's filing, WPPII now submits this Petition to Intervene and amended Answer. In support of its Petition to Intervene and amended Answer, WPPII asserts the following:

I. PETITION TO INTERVENE

1. WPPII is an ad hoc group of energy-intensive large commercial and industrial ("Large C&I") customers receiving electric service from the Company primarily under Rate Schedules 35, 40, 44, and 46, as well as available riders. WPPII members annually consume approximately 456,046,925 kWh of electricity in their manufacturing and operational processes, and electricity costs comprise a significant element of their respective costs of operation.

2. WPPII has been actively involved in many proceedings related to the introduction of electric generation supply choice in the Company's service territory. WPPII consistently participates in, *inter alia*, the Company's base rate case proceedings and Default Service Plan proceedings. WPPII also submitted Comments on the Company's recent LTIP proceeding at Docket No. P-2015-2508948.

3. The PUC's disposition of the Company's Petition in this instance may impact the rates WPPII members pay for electric service.

4. The names and address of WPPII's attorneys are:

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5. For purposes of this proceeding, WPPII includes the companies listed in Appendix A hereto. WPPII will update Appendix A during the course of this proceeding as needed to reflect changes in its membership.

6. The Company's Petition requests implementation of an initial DSIC rate of 0.062% to become effective on July 1, 2016. The Company proposes to allocate this DSIC across all customer classes with the exception of customers served on Rate Schedule 40, over 100,000 volts, and Rate Schedules 44 and 46.

7. Therefore, consistent with 52 Pa. Code § 5.72(a), WPPII has a significant interest in this proceeding that is not represented by any other party of record. Consequently, WPPII should be granted full-party status in this proceeding.

II. ANSWER

A. *Introduction*

8. This answer identifies specific issues impacting WPPII. WPPII reserves the right, however, to raise and address additional issues of concern during the course of the proceeding based on further review of the Petition, the Company's Direct Testimony, and discovery.

9. As filed, the Company's Petition proposes to increase revenues available to fund distribution system improvements by instituting a DSIC at an initial rate of 0.062%, with the DSIC ultimately capped at 5% of billed distribution revenues. However, the Company's Petition contains numerous ambiguities that warrant further review by the parties and the Commission. Specifically, although WPPII does not oppose the Company's implementation of a DSIC, WPPII requests that the Commission carefully consider whether the Company's proposed eligible property and cost recovery methods are reasonable, prudent, and compliant with Act 11 and applicable Commission rules, regulations and precedent.

10. Thus, for the reasons set forth above and further discussed below, the PUC should require the Company to produce evidence demonstrating that the Company's proposed DSIC is reasonable, fair, and compliant with Act 11 and applicable Commission rules, regulations and precedent before granting the Company's request.

B. *Argument*

11. An initial review of the Company's Petition indicates that some parameters the Company is proposing with respect to implementation of its proposed DSIC may not be compliant with the requirements of Act 11. The Company has not fully demonstrated that full allocation of the DSIC among customers in all rate classes with the exception of Rate Schedule 40, over 100,000 volts, and Rate Schedules 44 and 46 (the "Exempt Classes") is just and

reasonable. Some customers outside of the Exempt Classes only use a small portion of distribution infrastructure and therefore it is unjust and unreasonable to impose a DSIC on these customers. The Company's Petition excludes the Exempt Classes from DSIC-eligibility because the LTIIP "does not contain any infrastructure improvement projects for distribution facilities operating at transmission-level voltages." West Penn Statement No. 1, p. 6. As a result, the Company has not identified within its filing a rule for determining whether or not a customer is DSIC eligible. Additional fact finding is necessary to determine which customers should be eligible for the DSIC based on both the current and future LTIIPs. Moreover, a hearing is necessary in order to review the facts and ensure that cost causation principles are followed in application of the DSIC to current and future customers. WPPII questions whether the imposition of DSIC costs on those customers that have only *de minimis* distribution plant can survive a challenge under *Lloyd v. Pa. PUC*, 904 A.2d 1010 (Pa. Commw. 2006), *appeal denied*, 916 A.2d 1104 (Pa. 2007). A hearing will ensure that all customers receive just and reasonable treatment with regard to the Company's proposed DSIC, and specifically, that customers on the Company's system have certainty regarding whether they are DSIC-eligible or not.

12. Furthermore, WPPII is concerned with the Company's method of calculating the DSIC cap of 5% of billed distribution revenues. The Company has not demonstrated which clauses and riders will be included in calculating the 5% DSIC cap. The Company only states that "the DSIC is capped at 5% of the amount billed to customers for distribution service (including all applicable clauses and riders) as determined on an annualized basis." *See* West Penn Exhibit KMS-2, p. 4. Without further information as to which clauses and riders are included for calculating the 5% cap on distribution revenue, WPPII remains concerned that this ambiguous language would permit the Company to include revenue from non-distribution based

sources, such as Act 129 Energy Efficiency and Conservation ("EE&C") or Non-Market Based Transmission charges), for purposes of calculating the 5% cap. As referenced earlier, a utility can only recover costs for distribution system improvements via a DSIC. *See* 66 Pa. C.S. §§ 1351(1), 1352, and 1353. A grant of the Company's Petition in its current form, absent more thorough review of its DSIC cap calculation methods through a hearing process, would be inadvisable from a policy standpoint and inconsistent with the Commission's Regulations. *See id.* A hearing is necessary in order to identify the clauses and riders that comprise the 5% DSIC cap. While the Company's Petition notes that the Company will abide by a DSIC cap equal to 5% of billed distribution revenues, the Petition fails to clarify whether the Company's distribution revenues will include any revenues coming from the Company's EE&C Plan or any revenues related to collection of Non-Market Based Transmission charges pursuant to the Default Service Support Rider ("DSSR"). *See* West Penn Exhibit KMS-2, page 4. A hearing is necessary to ensure that the DSIC is calculated properly.²

13. Further analysis by the parties through a hearing process is warranted regarding the foregoing issues to ensure that the DSIC is properly and lawfully calculated. Where the Company has not sufficiently shown that its DSIC is proper, reasonable, and fairly allocated among customers after consideration at hearings and by an Administrative Law Judge, the PUC should modify these aspects of the Petition.

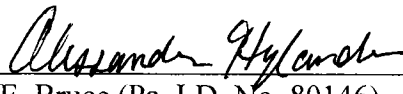
² Before permitting PPL Electric Utilities to include its Act 129 Compliance Rider charges within its distribution revenues for the 5% DSIC calculation, the PUC assigned the proceeding to an Administrative Law Judge for evidentiary hearings to review whether such inclusion was proper. *Petition of PPL Elec. Utils. Corp. for Approval of a Distribution Sys. Improvement Charge*, Docket Nos. P-2012-2325034 *et al.*, p. 4 (Final Order entered Apr. 9, 2015). More recently, in PECO Energy Company's request to implement a DSIC for its electric customers, the Commission assigned to the Office of Administrative Law Judge the issue of determining whether "revenues associated with the riders in PECO's tariff are properly included as distribution revenues." *Petition of PECO Energy Co. for Approval of their Electric Distrib. Sys. Improvement Charge*, Docket Nos. P-2015-2471423, *et al.*, p. 29 (Opinion and Order entered Oct. 22, 2015).

III. CONCLUSION

WHEREFORE, for the reasons stated above, the West Penn Power Industrial Intervenors respectfully requests that the Pennsylvania Public Utility Commission (1) grant this Petition to Intervene and Answer; (2) provide the West Penn Power Industrial Intervenors with full-party status in this proceeding; and (3) initiate hearings to evaluate the issues discussed herein.

Respectfully submitted,

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APPENDIX A

WEST PENN POWER INDUSTRIAL INTERVENORS

Air Liquide Industrial U.S. LP
Air Products & Chemicals, Inc.
Carpenter Technology Corporation/Latrobe Specialty Metals
Ervin Industries
INDSPEC Chemical Corporation
Lehigh Specialty Melting Inc. (Whemco)
MERSEN USA St Marys-PA Corp.