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April 19, 2016

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

VIA ELECTRONIC FILING

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


Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission the Motion for Leave to Amend Answer and Petition to Intervene and Answer on behalf of the West Penn Power Industrial Intervenors ("WPPII") in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to these proceedings are being duly served.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Alessandra L. Hylander

Counsel to the West Penn Power Industrial Intervenors

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Enclosures

c: Administrative Law Judge Charles E. Rainey, Jr. (via e-mail and First-Class Mail)
Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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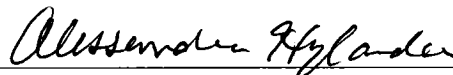
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Alessandra L. Hylander

Counsel to the West Penn Power Industrial
Intervenors

Dated this 19th day of April, 2016, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION FOR LEAVE TO AMEND THE ANSWER OF
THE WEST PENN POWER INDUSTRIAL INTERVENORS**

TO THE HONORABLE, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 5.61(a) of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Regulations, 52 Pa. Code § 5.61(a), West Penn Power Industrial Intervenors ("WPPII") filed an Answer in response to the above-captioned Petition of West Penn Power Company (the "Company"). Pursuant to Sections 5.103(a)-(b) and 5.91 of the PUC's Regulations, 52 Pa. Code §§ 5.103(a)-(b), 5.91(c), WPPII hereby files this Motion for Leave to Amend its Answer submitted in response to the above-captioned Petition of the Company. In support thereof, WPPII avers as follows:

1. The Company filed the above-captioned Petition on February 16, 2016, requesting that the Commission approve establishment and implementation of a Distribution System Improvement Charge ("DSIC") on certain customers within the Company's service territory.
2. In response to the Company's Petition, WPPII filed a Petition to Intervene and Answer on March 7, 2016.
3. On March 24, 2016, the Company filed its Answer and Reply to New Matter, respectively, to WPPII's Petition to Intervene and Answer.
4. At this time, WPPII would like to amend its Answer to address additional facts within the Company's filing. The Company requested approval of its proposed DSIC without the

benefit of a hearing, and thus WPPII is compelled to ensure that the record is clear. Therefore, WPPII moves to amend its Answer to fully address crucial issues in this proceeding.

5. A motion for leave to amend a pleading is only required under certain limited circumstances (which do not apply here). 52 Pa. Code § 5.92(b). Otherwise, a party may amend its pleadings at any time during a proceeding. *See* 52 Pa. Code § 1.81(a); *see also* 1 Pa. Code § 33.41; 52 Pa. Code § 5.91. Thus, while WPPII has the discretion to amend its pleading at any time during the course of this proceeding, WPPII submits this Motion out of an abundance of caution.

6. Section 5.91 of the Commission's regulations allow for the "modification of or supplement to an application, complaint, petition or other pleading." 52 Pa. Code § 5.91(a). Further, Section 1.81 of the PUC's Rules of Administrative Practice and Procedure states, "[a]n amendment to a submittal or pleading may be tendered for filing at any time and will be deemed filed in accordance with § 1.11 (relating to date of filing) unless the Commission otherwise orders." 52 Pa. Code § 1.81(a); *see also* 1 Pa. Code § 33.41. Under these regulations, WPPII's right to amend its Answer at this time is indisputable.

7. Section 5.91(c) of the Commission's regulations notes that a party may amend its pleading unless it is "within 5 days preceding the commencement of or during a hearing" and that party lacks permission to amend from the Commission or the presiding officer. 52 Pa. Code § 5.91(c). No presiding officer has been assigned to this proceeding, and therefore no hearing date is established. As a hearing date is not established in this proceeding, WPPII's Motion is not impacted by this provision.

8. In general, the Commission's regulations do not require parties to file motions to amend their pleadings. The only circumstances under which the Commission specifically

requires a motion to amend pleadings is described within Section 5.92(b) of the Commission's regulations: "[a]mendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise new issues may be made upon motion of a party at any time during the hearing as set forth in § 5.102 [of the Commission's Regulations] (relating to motions for summary judgment and judgment on the pleadings)." 52 Pa. Code § 5.92(b). This regulation only requires a motion to amend pleadings where new evidence is raised during the course of a hearing that a party would like to include within its pleading. WPPII does not raise new evidence, but rather clarifies why existing evidence in the Company's Petition warrants further inquiry by the Commission into the Company's filing. Although WPPII is not required to submit a motion to amend its Answer, and, therefore, could amend its Answer without such Motion, WPPII is submitting this Motion to resolve any doubt regarding its authority to amend.

9. Section 5.92(c) of the Commission's regulations indicates that when a pleading is amended to conform to evidence, the Commission will consider whether the amendment would prejudice "the public interest or the rights of a party." 52 Pa. Code § 5.92(c). WPPII submits that the Commission is not required to engage in this analysis at this early stage in the proceeding. WPPII nonetheless avers that its proposed amended Answer in this proceeding would not prejudice the Company, as this proceeding is still in its initial stage (in fact, parties just began exchanging discovery), and the Company will have an opportunity to respond to the additional facts contained herein.

10. Pennsylvania court precedent also supports permitting WPPII to amend its Answer at this time. The Commonwealth Court will generally grant leave to amend pleadings absent surprise or prejudice to the nonmoving party. *Weaver v. Franklin Cnty.*, 918 A.2d 194, 203 (Pa. Commw. Ct. 2007) ("Amendments are liberally permitted in order to allow full

development of a party's theories and averments"), *appeal denied*, 931 A.2d 660, 660 (Pa. 2007); *see also Unified Sportsmen of Pa. v. Pa. Game Comm'n.*, 903 A.2d 117, 127 (Pa. Commw. Ct. 2006) ("Where the law may permit recovery under some theory, leave to amend should be liberally granted"); *Piehl v. City of Phila.*, 601 Pa. 658, 672 (2009) (citing *Connor v. Allegheny Gen. Hosp.*, 461 A.2d 600, 602 (Pa. 1983) (Amendments are "liberally granted at any stage of the proceedings unless there is an error of law or resulting prejudice to an adverse party"))).

11. Prejudice "must be more than a mere detriment to the other party because any amendment requested certainly will be designed to strengthen the legal position of the amending party and correspondingly weaken the position of the adverse party." *Id.* (citing *MacGregor v. Medig Inc.*, 576 A.2d 1123, 1126 (Pa. Super. Ct. 1990)). Prejudice to the opposing party, "to be sufficient to warrant a court denying a party leave to amend a pleading, must stem from the delay in raising the defense and prejudice to the substantive position of the adverse party." *James A. Mann, Inc. v. Upper Darby School Dist.*, 513 A.2d 528, 531 (Pa. Commw. Ct. 1986). The "mere fact that the adverse party has expended time and effort in preparing to try a case against the amending party is not such prejudice as to justify denying the amending party leave to amend." *Capobianchi v. BIC Corp.*, 666 A.2d 344, 346 (Pa. Super. Ct. 1995).

12. The Company is neither "surprised nor prejudiced" by WPPII's amended Answer. *See, e.g., Weaver*, 918 A.2d at 203. WPPII is raising additional probative facts that WPPII submits are necessary for the Commission to resolve the Company's Petition. WPPII is amending its Answer at an early stage of the proceeding, before an initial prehearing conference and only at the beginning of the discovery phase. Therefore, WPPII's amended Answer would cause no prejudice to the Company and is consistent with Commonwealth Court precedent.

13. The Pennsylvania Rules of Civil Procedure also support WPPII's Motion in the

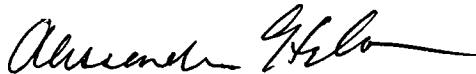
above-referenced proceeding. While the Pennsylvania Rules of Civil Procedure are not binding upon the Commission, WPPII recognizes that the Commission "can and [has] found reference to them helpful for guidance." *AT&T Comm. of Pa. v. Armstrong Tel. Co.*, 2009 Pa. PUC LEXIS 1752, *18; *see also Farrugio's Bristol and Phila. Auto Express, Inc. v. St. Johnsbury Trucking Co., Inc.*, 1989 Pa PUC LEXIS 73, *19. Under Rule 1033 of the Pennsylvania Rules of Civil Procedure, "[a] party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, correct the name of a party or amend his pleading." Pa. R. Civ. P. 1033. Therefore, WPPII's amended Answer would be appropriate pursuant to the Pennsylvania Rules of Civil Procedure.

14. As there is no justification for refusing amendment of WPPII's Answer, the Commission should permit WPPII to amend its Answer.

WHEREFORE, in the interests of justice and the absence of prejudice or surprise to the Company, WPPII respectfully requests that the Commission grant its Motion for Leave to Amend its Answer and accept WPPII's amended Answer submitted herewith.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 
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Counsel to West Penn Power Industrial Intervenors

Dated: April 19, 2016

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.