

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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August 3, 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 a Distribution System  
Improvement Charge  
Docket No. P-2015-2508948

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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

Attachment

cc: Honorable Joel H. Cheskis  
Certificate of Service

224460

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, Office of Consumer Advocate's Prehearing Memorandum, 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 3<sup>rd</sup> day of August, 2016.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

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

SERVICE BY E-MAIL & FIRST CLASS MAIL

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

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

Charis Mincavage, Esquire  
Alessandra L. Hylander, Esquire  
Susan E. Bruce, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
*Representing West Penn Power  
Industrial Intervenors*

Thomas J. Sniscak, Esquire  
Christopher M. Arfaa, Esquire  
William E. Lehman, Esquire  
Hawke McKeon and Sniscak LLP  
100 N. Tenth Street  
Harrisburg, PA 17101  
*Representing Penn State University*

David F. Boehm, Esquire  
Boehm Kurtz & Lowry  
36 E. Seventh Street  
Suite 1510  
Cincinnati, Oh 45202  
*Representing AK Steel*

/s/ Darryl Lawrence  
Darryl Lawrence  
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\*224468

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 :

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PREHEARING MEMORANDUM  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. Section 333 and the Prehearing Conference Order issued by Administrative Law Judge Joel Cheskis on July 21, 2016, the Office of Consumer Advocate (OCA) provides the following:

I. BACKGROUND

On February 16, 2016 West Penn Power Company (West Penn or Company) filed a Petition for Approval of a Distribution System Improvement Charge (DSIC) for its electric operations and 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). On February 26, 2016, the OCA filed a Formal Complaint, Public Statement and Answer to West Penn's Petition.

On March 7, 2016, Citizens for Pennsylvania's Future (CPF) and Environmental Defense Fund (EDF) filed a joint Petition to Intervene, Motion for Admission *Pro Hac Vice*, and Notice of Appearance. On that same day, West Penn Power Industrial Intervenors (WPPII) filed a Petition to Intervene and Answer to West Penn's Petition. On March 9, 2016, The Pennsylvania State University (PSU) filed a Petition to Intervene. The Office of Small Business Advocate (OSBA) filed a Notice of Appearance, Notice of Intervention, Answer and Public Statement on

March 9, 2016. On July 25, 2016, CPF and EDF filed a Notice of Withdraw from the proceeding.

The OCA now files this Prehearing Memorandum to set forth the procedure and issues that the OCA submits are relevant to this proceeding.

## II. ISSUES

In its June 9, 2016 Order, the Commission directed that the following issues be assigned to the OALJ for hearing and preparation of a Recommended Decision:

- a. Whether certain customers should or should not be included under the distribution system improvement charge;
- b. Whether other customers should also be exempt from the DSIC;
- c. If revenues associated with the riders in West Penn Power Company's tariff are properly included as distribution revenues.
- d. The Petition for Intervention of West Penn Power Industrial Intervenors;
- e. The Joint Petition for Intervention of the Citizen's for Pennsylvania's Future and the Environmental Defense Fund; and,
- f. The Joint Motion to Compel of the Citizen's for Pennsylvania's Future and the Environmental Defense Fund and the Commission waives the fifteen (15) day timeframe restriction set forth in 52 Pa. Code § .5.342.

The OCA also reserves the right to raise additional issues as discovery and review of additional Company testimony continues.

## III. WITNESSES

The OCA intends to present the Direct, Rebuttal and Surrebuttal testimony, as may be necessary, of Jerome D. Mierzwa regarding the accounting and policy issues identified above. Mr. Mierzwa will present testimony in written form and will also attach various exhibits,

documents, and explanatory information, which will assist in the presentation of the OCA's case.

His contact information is as follows:

Jerome D. Mierzwa  
Exeter Associates, Inc.  
10480 Little Patuxent Parkway, Ste. 300  
Columbia, MD 21044  
Telephone: (410) 992-7500  
Email: [jmierzwa@exeterassociates.com](mailto:jmierzwa@exeterassociates.com)

The OCA specifically reserves the right to call additional witnesses and to expand the issues addressed in testimony, as necessary. If the OCA determines that an additional witness is necessary for any portion of its case, it will notify all parties of record immediately.

#### IV. PROPOSED SCHEDULE

The OCA will work with the parties to develop a litigation schedule that is acceptable to the ALJ and parties. The OCA's proposed litigation schedule is attached hereto as Appendix A.

#### V. SETTLEMENT

The OCA is willing to participate in settlement discussions, to the extent possible within the litigation timeframe.

#### VI. PROPOSED REVISED RULES FOR DISCOVERY

The OCA proposes that the Commission's rules and regulations, 52 Pa. Code §5.321, *et seq.*, be modified as follows:

1. Answers to written interrogatories will be served in-hand within ten (10) calendar days of service of the interrogatories except that service of interrogatories on a Friday shall be deemed service on the following business day;
2. Objections to interrogatories will be communicated orally within three (3) business days of service; unresolved objections shall be served on the parties in writing within five (5) business days of service of the interrogatories;

3. Motions to dismiss objections and/or direct the answering of interrogatories will be filed within three (3) business days of service of written objections;

4. Answers to motions to dismiss objections and/or direct the answering of interrogatories will be filed within three (3) business days of service of such motions;

5. Responses to requests for document production, entry for inspection, or other purposes will be served in-hand within ten (10) calendar days;

6. Requests for admission will be deemed admitted unless answered within ten (10) calendar days or objected to within five (5) business days of service;

7. Rulings over motions shall be issued, if possible, within seven (7) calendar days of the filing of the motion;

8. Any discovery or discovery related pleadings such as objections, motions, answers to motions served on a Friday or on any business day preceding a state holiday shall be deemed to have been served on the following business day for purposes of tracking responsive due dates; and

9. Due dates will be “in-hand” with electronic service on the due date satisfying the “in-hand” requirement and where such service is immediately followed by a hard copy sent by first-class mail.

## VII. SERVICE ON THE OCA

The OCA will be represented in this proceeding by Senior Assistant Consumer Advocates Erin L. Gannon and Darryl A. Lawrence. Two copies of all documents should be served on the OCA as follows:

Erin L. Gannon  
Senior Assistant Consumer Advocate  
Office of Consumer Advocate  
5<sup>th</sup> Floor, Forum Place  
555 Walnut Street  
Harrisburg, Pa. 17101-1923  
Telephone: 717-783-5048  
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Darryl A. Lawrence  
Senior Assistant Consumer Advocate  
Office of Consumer Advocate  
5<sup>th</sup> Floor, Forum Place  
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Harrisburg, Pa. 17101-1923  
Telephone: 717-783-5048  
Fax: 717-783-7152  
E-mail: [dlawrence@paoca.org](mailto:dlawrence@paoca.org)

In order to expedite the resolution of this proceeding, the OCA requests that copies of all interrogatories, testimony, and answers to interrogatories be mailed directly to the expert witness(es) responsible for the area of the case, as well as mailing a copy to counsel for the OCA. The OCA also requests that emails containing any interrogatory responses be emailed directly to the expert witness(es) and to the OCA's support person, Valerie Hironimus.

Jerome Mierzwa      [jmierzwa@exeterassociates.com](mailto:jmierzwa@exeterassociates.com)  
Valerie Hironimus      [vhironimus@paoca.org](mailto:vhironimus@paoca.org).

Respectfully Submitted,



Darryl A. Lawrence  
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Counsel for:  
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Acting Consumer Advocate

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DATE:            August 3, 2016

224432

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 :

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OFFICE OF CONSUMER ADVOCATE  
PROPOSED LITIGATION SCHEDULE

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Prehearing Conference	August 10, 2016
Non-Company Direct	September 6, 2016
Rebuttal	October 5, 2016
Surrebuttal	October 26, 2016
Written Rejoinder	November 9, 2016
Hearings in Harrisburg	November 17-18, 2016
Main Brief	December 15, 2016
Reply Brief	January 5, 2016