



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

March 26, 2021

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
West Penn Power Company
Docket No. C-2021-
Formal Complaint

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the following **Non-Proprietary Formal Complaint** for the above-referenced case on behalf of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission. *The Proprietary version of the Formal Complaint has been processed per the instructions of the PUC Secretary's Bureau.*

Copies are being served on parties per the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic service.* Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Myers', written over a white background.

Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494
(717) 705-4366
komyers@pa.gov

KLM/jfm
Enclosure

cc: Per Certificate of Service

NOTICE

A. You must file an Answer within 20 days of the date of service of this Complaint.

The date of service is the date as indicated at the top of the Secretarial Letter. *See* 52 Pa. Code §1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Or, you may eFile your Answer using the Commission's website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, please serve a copy on:

Kourtney L. Myers, Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120
komyers@pa.gov

B. If you fail to answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the requested relief.

C. You may elect not to contest this Complaint by paying the civil penalty within 20 days. Send only a certified check or money order made payable to the "Commonwealth of Pennsylvania," with the docket number indicated, and mailed to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request that the Commission to issue an Order imposing the requested relief set forth in this Complaint.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint, and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code § 1.21.

G. Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at 717-787-8714.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	Docket No. C-2021-
v.	:	
	:	
West Penn Power Company,	:	
Respondent	:	

FORMAL COMPLAINT

NOW COMES the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by its prosecuting attorneys, pursuant to Section 701 of the Public Utility Code, 66 Pa.C.S. § 701 and files this Formal Complaint (“Complaint”) against West Penn Power Company (“West Penn Power” or “Respondent”) alleging violations of the Pennsylvania Code, National Electric Safety Code, and Public Utility Code in connection with a fatal electrocution that occurred on April 12, 2018 in Tarentum, Pennsylvania. In support of its Complaint, I&E avers as follows:

I. Commission Jurisdiction and Authority

1. The Pennsylvania Public Utility Commission, with a mailing address of 400 North Street, Harrisburg, PA 17120, 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. Complainant is the Commission's Bureau of Investigation and Enforcement, which is the bureau established to take enforcement actions against public utilities and other entities subject to the Commission's jurisdiction 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 (Order entered August 11, 2011) at 5 (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

3. Complainant's prosecuting attorneys are as follows:

Kourtney L. Myers
Prosecutor
komyers@pa.gov
717.705.4366

Michael L. Swindler
Deputy Chief Prosecutor
mwindler@pa.gov

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120

4. Respondent is West Penn Power Company,¹ an electric distribution company ("EDC") with a main mailing address of 2800 Pottsville Pike, Reading, PA 19612, Attention: Tori L. Giesler, Esquire.

¹ West Penn Power is a wholly-owned subsidiary of FirstEnergy Corp. ("FirstEnergy").

5. West Penn Power is a “public utility” as that term is defined at 66 Pa.C.S. § 102,² as it is engaged in providing public utility service as an EDC in the Commonwealth of Pennsylvania to the public for compensation.

6. Section 501(a) of the Public Utility Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Public Utility Code.

7. Section 2804(1)(ii) of the Public Utility Code, 66 Pa.C.S. § 2804(1)(ii), requires the Commission “to ensure the continuation of safe and reliable electric service to all consumers in the Commonwealth, including . . . [t]he installation and maintenance of transmission and distribution facilities in conformity with established industry standards and practices, including the standards set forth in the National Electric Safety Code [“NESC”].” *See also* 52 Pa. Code §§ 57.193-194.

8. Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints against public utilities for violations of any law or regulation that the Commission has jurisdiction to administer or enforce.

9. Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or any other person or corporation subject to the Commission’s authority for violation(s) of the Public Utility

² At 66 Pa.C.S. § 102, “Public utility” is defined under that term at subsection (1)(i) as:

- (1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:
 - (i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.

Code and/or Commission regulations. Section 3301(a)-(b) of the Public Utility Code, 66 Pa.C.S. § 3301(a)-(b), allows for the imposition of a separate civil penalty for each violation and each day's continuance of such violation(s).

10. Respondent, in providing electric distribution service to the public for compensation, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission regulations and orders.

11. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter of this Complaint and the actions of Respondent related thereto.

II. Factual Background

12. On April 12, 2018, a conductor owned and operated by West Penn Power fell into the wooded property of Terry and Frances Colton at 203 McKrell Road, Tarentum, Pennsylvania 15084 ("Colton Property").

13. The failed conductor caused a brush fire.

14. The West Deer Township Police Department and West Deer Volunteer Fire Department responded to an emergency call from the Colton Property regarding the brush fire and extinguished the fire.

15. After the fire was extinguished, Terry Colton walked through the wooded area of the Colton Property.

16. Terry Colton came into contact with the failed conductor that was still energized, was electrocuted, and caught fire.

17. At approximately 7:13 PM on April 12, 2018, West Penn Power received a life and limb call from 911 reporting an electrocution at the Colton Property.

18. The energized conductor prevented first responders from providing aid and resuscitative measures to Terry Colton, who was engulfed by fire from the energized conductor.

19. Terry Colton was continuously electrocuted until West Penn Power deenergized the conductor at 8:15 PM, which was over an hour after West Penn Power received the life and limb call from 911.

20. Terry Colton died of electrocution in the wooded area of the Colton Property.

21. The same day, on April 12, 2018, I&E's Safety Division responded to the scene and initiated an investigation. The following background consists of a summary of the findings of I&E Safety Division's investigation:

A. Conductor

22. The failed conductor (hereinafter referred to as "Phase A") was a 7.2kV (phase-to-ground) primary distribution line.³

23. Phase A and Phase B were part of a two-phase⁴ 12.5kV (phase-to-phase) primary distribution system (hereinafter referred to as the "Millerstown Circuit").

24. Respondent does not know the date on which it deenergized Phase B, but claims that Phase B was deenergized before April 12, 2018.

³ Although the Commission's regulations do not define a "distribution line," 52 Pa. Code § 57.1 defines a "transmission line" as "[a]n overhead electric supply line with a design voltage greater than 35,000 volts."

⁴ "Two-phase" means two (2) conductors, Phases A and B.

25. Post incident, on May 18, 2018, West Penn Power removed and restrung Phase A, which has remained de-energized since the incident on April 12, 2018.

B. Poles

26. Phases A and B were suspended, in part, by West Penn Power Pole Nos. 146791, 146792, and 146793.

27. Phase A fell between West Penn Power Pole Nos. 146791 and 146792.

C. Fault Detection Devices

28. Three (3) fuse locations and two (2) reclosers were installed on the Millerstown Circuit to protect the conductors on Pole Nos. 146791, 146792, and 146793.

29. The purpose of these fault detection devices is to see a fault occurring at the aforementioned poles.

30. On the day of the incident, the three (3) fuse locations failed to detect a fault or otherwise effectively deenergize Phase A upon Phase A's failure.

D. 2010-2011 Vegetation Management Cycle

31. West Penn Power has a right of way ("ROW") or easement that runs through the Colton Property.

32. The ROW contains West Penn Power Pole Nos. 146791, 146792, and 146793, which run beyond the Colton's residence and into the wooded area in the rear of the Colton Property and cover a span of approximately 200 yards.

33. Pursuant to the ROW, West Penn Power has the right to enter upon the Colton Property for the purpose of maintaining Pole Nos. 146791, 146792, and 146793

and to cut and trim any trees whenever necessary to keep the conductors on the aforementioned poles free from any obstructions.

34. Prior to the incident, West Penn Power contracted with Asplundh Tree Experts, LLC (“Asplundh”) to provide vegetation management services on the Millerstown Circuit, including the ROW on the Colton Property for the 2010-2011 and 2015-2016 vegetation management cycles.

35. Throughout the course of I&E’s investigation in this matter, West Penn Power maintained the position that Asplundh performed vegetation management services on the ROW on the Colton Property for the 2010-2011 vegetation management cycle.

36. According to the “Vegetation – Purpose and Objectives” Section of the Construction, Operation and Maintenance Manual of Allegheny Power⁵ (“Allegheny Power Manual”), which was in effect during the 2010-2011 vegetation management cycle, “[o]verhead conductors and associated rights-of-way must be free of vegetation which interferes with or has the potential to interfere with electric service, or creates a condition hazardous to company facilities, customer facilities, and the public at large” and that “[r]ight-of-way vegetation management on Distribution lines shall be performed as required on a circuit basis a minimum of once every six (6) years in rural areas and once every three (3) years in urban/suburban areas”

⁵ In 2011, Allegheny Power merged with FirstEnergy.

37. Per the “Vegetation – Purpose and Objectives” Section of the Allegheny Power Manual, “Allegheny Power employees ensure contractor adheres to all specifications promulgated by Allegheny Power.”

38. West Penn Power claims that the vegetation management work completed for the 2010-2011 vegetation management cycle is reflected in a circuit map of the Millerstown Circuit (hereinafter referred to as “Circuit Map”).

39. Per the “Vegetation – Vegetation Management Inspection” Section of the Allegheny Power Manual, “[w]here work involving line or circuit jobs is designated on maps, inspector marks maps showing inspected areas and either writes inspection results upon maps or attaches applicable notes.”

40. The Circuit Map contains a note in the area of the ROW on the Colton property stating, “OWNER WOULD LIKE LINE CUT DEAD, DOESN’T FEED ANYTHING” and indicates the need for rework or more tree cutting and/or trimming by way of the note “HAVE R/W ON.”

41. Another area on the Circuit Map to the left of the ROW on the Colton Property indicates the need for rework by way of the note “HAVE R/W ON” and below that note, FirstEnergy Forestry Representative, Charles G. Sarver wrote “CLEARANCE” with his initials “CGS,” directly below.

42. Respondent claims that the “CLEARANCE” note and initials represent Mr. Sarver’s decision that the current clearance in that specific location was sufficient until the next cycle trimming and that no follow up work was required.

43. A “CLEARANCE” note and initials do not appear near the “HAVE R/W ON” note on the Circuit Map in the area of the ROW on the Colton Property.

44. No applicable notes were attached to the Circuit Map.

45. According to the “Vegetation – Vegetation Management Inspection” Section of the Allegheny Power Manual, “[i]nspectors perform in-field inspection(s) as required to ensure crews fulfill contract requirements” and “[i]f deficiencies are discovered, inspectors schedule additional inspections sufficient to ensure deficiencies are corrected.”

46. Respondent has no records of the specific work that was allegedly performed between Pole Nos. 146791 and 146793 for the 2010-2011 vegetation management cycle work.

47. West Penn Power has no records demonstrating that an inspector performed inspections on the alleged 2010-2011 vegetation management cycle work.

48. Respondent has no records demonstrating that the areas identified as requiring rework on the Circuit Map were in fact reworked or that an inspector scheduled additional inspections to ensure that those areas were corrected.

E. 2016 Overhead Inspection

49. According to the “Distribution Overhead Line Inspections” Section of the Biennial Inspection, Maintenance, Repair and Replacement Plan of West Penn Power for the period of January 1, 2015 through December 31, 2016 (“2015-2016 West Penn Power Plan”), “the purpose for inspecting overhead lines and equipment is to identify and repair unsafe conditions or conditions that may adversely affect service reliability, and to

comply with the requirements of state regulatory agencies and the National Electric Safety Code.”

50. After the alleged 2010-2011 vegetation management cycle work, West Penn Power claims that it performed visual overhead inspections of the equipment and facilities between Pole Nos. 146791, 146792, and 146793, including Phases A and B, on April 1, 2016.

51. During this alleged inspection, West Penn Power did not identify any conditions that adversely affected the operation of the overhead distribution lines on Pole Nos. 146791, 146792, and 146793, including Phases A and B.

F. 2015-2016 Vegetation Management Cycle

52. Throughout the course of I&E’s investigation in this matter, West Penn Power has maintained the position that Asplundh performed and completed vegetation management services on the ROW on Colton Property for the 2015-2016 vegetation management cycle.

53. According to the “Vegetation Management” Section of the 2015-2016 West Penn Power Plan, “West Penn Power performs vegetation management in order to promote the continued safe and reliable operation of the distribution system” and the “[s]tandard vegetation specification provides vegetation to be pruned to achieve five (5) years of clearance, removal of selected incompatible trees within the clearing zone corridor, removal of certain defective limbs that are overhanging primary conductors, controlling selected incompatible brush mechanically and/or using herbicide, and

removal of off-corridor priority trees that are dead, dying, diseased, and leaning or significantly encroaching the corridor.”

54. According to the “Distribution Primary Voltage Clearance Requirements” Section of the FirstEnergy Vegetation Management Distribution Specifications (“FirstEnergy Specifications”), which was in effect during the 2015-2016 vegetation management cycle, “[a]ll vegetation management activities shall be performed in such a manner as to achieve a minimum of cycle length clearance from FirstEnergy primary conductors based on tree species and growing conditions” and “[c]ycle lengths for . . . West Penn Power is five (5) years.”

55. Per the “Work Inspection Process” Section of the FirstEnergy Specifications, “FirstEnergy has the responsibility for inspecting and approving work performed under this Specification” and “FirstEnergy will inspect and approve all planned work performed by the Contractor to ensure compliance with this Specification.”

56. On West Penn Power’s “Work Inspection Sheet” for the alleged 2015-2016 vegetation management cycle work, Respondent claims that the vegetation management work for this cycle was completed by Asplundh on September 12, 2016 and that a final inspection was completed by FirstEnergy Forestry Representative Charles G. Sarver on September 21, 2016.

57. I&E’s Safety Division took photographs of the ROW on the Colton Property, including Pole Nos. 146791, 146792, and 146793 and Phases A and B, on April 13, 2018, which is only one (1) year and seven (7) months after the alleged, 2015-2016

vegetation management cycle work was completed. The photographs are attached as I&E Exhibits 1A-C.

58. These photographs depict trees and underbrush along the ROW on the Colton Property that have clearly surpassed the approximately 26-foot-height of Phases A and B.

59. A photograph of a portion of Phase A was taken by I&E's Safety Division on April 13, 2018 and depicts arc marks on Phase A consistent with contact with tree branches. This photograph is attached as I&E Exhibit 2A.

60. In its responses to I&E's data requests on December 8, 2020, Respondent informed I&E for the first time that Asplundh had taken a "contradictory position with regard to the work they performed for West Penn between poles 146791 and 146793 on both [2010-2011 and 2015-2016] trimming cycles prior to the incident."

BEGIN PROPRIETARY

END PROPRIETARY

66. The lack of vegetation management on the ROW on the Colton Property from the time of the 2010-2011 vegetation management cycle to the date of the incident on April 12, 2018 allowed the trees to grow into and past Phases A and B, which created an ongoing, unsafe, and hazardous condition and placed the public safety in danger.

G. Post Incident

67. Although Phase B was allegedly deenergized some time prior to April 12, 2018 and Phase A has been deenergized since April 12, 2018, West Penn Power is still required to maintain the ROW on the Colton Property, including Pole Nos. 146791, 146792, and 146793 and Phases A and B, in a safe condition.

68. According to the “Vegetation Management” Section of the Biennial Inspection, Maintenance, Repair and Replacement Plan of West Penn Power for the periods of January 1, 2017 through December 31, 2018, January 1, 2019 through December 31, 2020, and January 1, 2021 through December 31, 2022, “West Penn Power performs vegetation management on its distribution circuits in order to promote the continued safe and reliable operation of the distribution system” and the vegetation management program “specification prunes vegetation to achieve five (5) years of clearance and includes the removal of selected incompatible trees within the clearing zone corridor, removal of certain defective limbs that are overhanging primary conductors, controlling selected incompatible brush mechanically and/or using herbicide,

and removal of off-corridor priority trees that are dead, dying, diseased, and leaning or significantly encroaching the corridor.”

69. On March 15, 2021, I&E’s Safety Division returned to the Colton Property and took photographs of the ROW on the Colton Property, including Pole Nos. 146791, 146792, and 146793 and Phases A and B. The photographs are attached as I&E Exhibits 3A-C.

70. These photographs depict trees and underbrush along the ROW on the Colton Property that have clearly surpassed the approximately 26-foot-height of Phases A and B.

71. To date, West Penn Power has failed to perform vegetation management on and maintain the ROW on the Colton Property, including Pole Nos. 146791, 146792, and 146793 and Phases A and B, in a safe condition, creating an ongoing, unsafe, and hazardous condition and placing the public safety in danger.

III. Violations

72. All allegations set forth above are incorporated as if fully set forth herein. West Penn Power failed to check for conditions that could adversely affect the operation of overhead distribution lines in that during its alleged visual overhead distribution line inspection of its equipment and facilities located between West Penn Power Pole Nos. 146791, 146792, and 146793, including Phases A and B, in 2016, Respondent did not identify the overgrown vegetation in that area that had the potential to adversely affect the operation of Phases A and B, thereby placing the public safety in danger.

If proven, this is a violation of 52 Pa. Code § 57.198(n)(4)(iii) (requiring an EDC to perform a visual inspection that checks for “conditions that may adversely affect operation of the overhead distribution line”), 52 Pa. Code § 57.194(a) (requiring an EDC to “furnish and maintain adequate, efficient, safe and reasonable service and facilities” and “to make repairs, changes, alterations, substitutions, extensions and improvements in or to the service and facilities necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public”), and 66 Pa.C.S. § 1501 (requiring a public utility to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities” and to “make all such repairs, changes, . . . and improvements in or to such service and facilities” for the “safety of its patrons, employees, and the public” and requiring that such service and facilities “be in conformity with the regulations and orders of the Commission”).

The Bureau of Investigation and Enforcement’s proposed civil penalty for these violations is \$1,000.

73. All allegations set forth above are incorporated as if fully set forth herein. West Penn Power failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in that on the day of the incident, the three (3) fuse locations on the Millerstown Circuit failed to detect a fault or otherwise effectively deenergize Phase A upon Phase A’s failure, thereby placing the public safety in danger.

If proven, this is a violation of 52 Pa. Code § 57.194(a) (requiring an EDC to “furnish and maintain adequate, efficient, safe and reasonable service and facilities” and “to make repairs, changes, alterations, substitutions, extensions and improvements in or

to the service and facilities necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public”), and 66 Pa.C.S. § 1501 (requiring a public utility to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities” and to “make all such repairs, changes, . . . and improvements in or to such service and facilities” for the “safety of its patrons, employees, and the public” and requiring that such service and facilities “be in conformity with the regulations and orders of the Commission”).

The Bureau of Investigation and Enforcement’s proposed civil penalty for these violations is \$1,000.

74. All allegations set forth above are incorporated as if fully set forth herein. West Penn Power failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in that Respondent and/or its contractors failed to perform vegetation management on the ROW on the Colton Property, including Pole Nos. 146791, 146792, and 146793 and Phases A and B, for the 2010-2011 and 2015-2016 vegetation management cycles consistent with the Construction, Operation and Maintenance Manual of Allegheny Power, which was in effect during the 2010-2011 vegetation management cycle, the Biennial Inspection, Maintenance, Repair and Replacement Plan of West Penn Power for the period of January 1, 2015 through December 31, 2016, and the FirstEnergy Vegetation Management Distribution Specifications, which was in effect during the 2015-2016 vegetation management cycle, thereby creating an ongoing, unsafe, and hazardous condition, which placed the public safety in danger.

If proven, this is a violation of 52 Pa. Code § 57.28(a)(1)⁶ (requiring an electric utility to “use reasonable effort to properly warn and protect the public from danger” and to “exercise reasonable care to reduce the hazards to which employees, customers, the public and others may be subjected to by reason of its provision of electric utility services and its associated equipment and facilities”), 52 Pa. Code § 57.194(a) (requiring an EDC to “furnish and maintain adequate, efficient, safe and reasonable service and facilities” and “to make repairs, changes, alterations, substitutions, extensions and improvements in or to the service and facilities necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public”), and 66 Pa.C.S. § 1501 (requiring a public utility to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities” and to “make all such repairs, changes, . . . and improvements in or to such service and facilities” for the “safety of its patrons, employees, and the public”).

The Bureau of Investigation and Enforcement’s proposed civil penalty for these violations is \$1,000 and \$1,000 for each day’s continuance of such violations, for a total civil penalty of \$2,294,000.⁷

75. All allegations set forth above are incorporated as if fully set forth herein. West Penn Power failed to maintain its distribution facilities in conformity with NESC § 214(B)(2)-(3) (requiring that an EDC maintain lines and equipment temporarily out of service in a safe condition and to remove or maintain lines and equipment permanently

⁶ As this regulation was not adopted until July 29, 2017, I&E alleges that Respondent was in violation of such regulation from July 29, 2017 to the day of the incident on April 12, 2018.

⁷ This civil penalty is based on ongoing violations from December 31, 2011, the last day of the 2010-2011 vegetation management cycle to April 12, 2018, the date of the incident. The duration of time between such dates is 2,294 days.

abandoned in a safe condition) and failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in that from April 12, 2018 to the present, Respondent has failed to remove or maintain in a safe condition Phases A and B (which have been temporarily out of service or permanently abandoned since April 12, 2018) by failing to perform vegetation management on the ROW on the Colton Property, including Pole Nos. 146791, 146792, and 146793 and Phases A and B, consistent with the Biennial Inspection, Maintenance, Repair and Replacement Plan of West Penn Power for the periods of January 1, 2017 through December 31, 2018, January 1, 2019 through December 31, 2020, and January 1, 2021 through December 31, 2022, thereby placing the public safety in danger.

If proven, this is a violation of NESC § 214(B)(2)-(3) (requiring that an EDC maintain lines and equipment temporarily out of service in a safe condition and to remove or maintain lines and equipment permanently abandoned in a safe condition), 52 Pa. Code § 57.194(b) (requiring an EDC to “install, maintain and operate its distribution system in conformity with the applicable requirements of the [NESC]”), 52 Pa. Code § 57.28(a)(1) (requiring an electric utility to “use reasonable effort to properly warn and protect the public from danger” and to “exercise reasonable care to reduce the hazards to which employees, customers, the public and others may be subjected to by reason of its provision of electric utility services and its associated equipment and facilities”), 52 Pa. Code § 57.194(a) (requiring an EDC to “furnish and maintain adequate, efficient, safe and reasonable service and facilities” and “to make repairs, changes, alterations, substitutions, extensions and improvements in or to the service and facilities necessary or

proper for the accommodation, convenience and safety of its patrons, employees and the public”), and 66 Pa.C.S. § 1501 (requiring a public utility to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities” and to “make all such repairs, changes, . . . and improvements in or to such service and facilities” for the “safety of its patrons, employees, and the public” and requiring that such service and facilities “be in conformity with the regulations and orders of the Commission”).

The Bureau of Investigation and Enforcement’s proposed civil penalty for these violations is \$1,000 and \$1,000 for each day’s continuance of such violations for a total civil penalty of \$1,079,000.⁸

76. All allegations set forth above are incorporated as if fully set forth herein. West Penn Power failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in that Respondent did not timely de-energize Phase A on April 12, 2018, which enabled the continuation of an unsafe and hazardous condition and prevented first responders from providing aid and resuscitative measures to Terry Colton.

If proven, this is a violation of 52 Pa. Code § 57.194(a) (requiring an EDC to “furnish and maintain adequate, efficient, safe and reasonable service and facilities” and “to make repairs, changes, alterations, substitutions, extensions and improvements in or to the service and facilities necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public”) and 66 Pa.C.S. § 1501 (requiring a public utility to “furnish and maintain adequate, efficient, safe, and reasonable service

⁸ This civil penalty is based on continuing violations from April 12, 2018, the day of the incident and the day that Phases A and B were abandoned or placed temporarily out of service to the present. The duration of time between such dates is 1,079 days.

and facilities” and to “make all such repairs, changes, . . . and improvements in or to such service and facilities” for the “safety of its patrons, employees, and the public”).

The Bureau of Investigation and Enforcement’s proposed civil penalty for these violations is \$1,000.

IV. Requested Relief

77. I&E proposes that West Penn Power pay a total civil penalty of Three Million, Three Hundred Seventy-Six Thousand Dollars (\$3,376,000).

78. In addition to payment of the civil penalty, I&E proposes that West Penn Power be ordered by the Commission, pursuant to Section 57.197(a)(1) of the Commission’s regulations, 52 Pa. Code § 57.197(a)(1), to take the following corrective actions:

- (a) To immediately maintain the ROW on the Colton Property, including Phases A and B, in a safe condition by performing vegetation management on the ROW or to immediately remove Phases A and B;
- (b) When performing vegetation management on its distribution facilities, to follow a table of defined clearances (in feet or inches) for each tree species that meets the NESC clearance specifications for a five-year trimming cycle;
- (c) To maintain detailed vegetation management records for at least three (3) cycles. Such records shall include the following information, *inter alia*:
 - 1. The name of the company performing the vegetation management work;
 - 2. The beginning and ending dates of the vegetation management work;
 - 3. The exact locations of the vegetation management work, including the pole numbers of the starting and finishing locations;
 - 4. The number of manhours to perform such work;

5. A reference to the standard to which Respondent performed the vegetation management work; and
 6. A legend explaining any code references;
- (d) To maintain detailed records of any areas that have been identified as requiring additional rework and inspection for at least three (3) cycles;
 - (e) To maintain detailed records of rework that was performed and inspected for at least three (3) cycles;
 - (f) To immediately begin a program to inspect and rework any and all other areas on circuit schematics or circuit maps containing notes and recommendations that have not been reworked and bring those areas into compliance with the standard vegetation specification, which provides vegetation to be pruned to achieve five (5) years of clearance. Such program shall be completed in one (1) year;
 - (g) To require a FirstEnergy forestry representative to thoroughly inspect the vegetation management work completed by Respondent's employees and contractors and to maintain detailed records of such inspections for at least three (3) cycles;
 - (h) To conduct its distribution overhead line inspections a minimum of once every 1-2 years in accordance with 52 Pa. Code § 57.198(n)(4);
 - (i) To make the aforementioned vegetation management and inspection records available to I&E's Safety Division for review;
 - (j) To modify its training program so that its employees and contractors are properly trained in proper circuit map and schematic update instructions;
 - (k) To improve its procedures to respond effectively and efficiently to 911 dispatches and requests to de-energize its equipment and facilities; and
 - (l) Grant such other further relief as the Commission deems just and reasonable.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement hereby requests that the Commission: (1) find Respondent to be in violation of the Pennsylvania Code, National Electric Safety Code, and/or Public

Utility Code for each of the counts set forth herein; (2) impose a cumulative civil penalty upon Respondent in the amount of Three Million, Three Hundred Seventy-Six Thousand Dollars (\$3,376,000); (3) direct Respondent to perform each of the corrective actions detailed in this Complaint; and (4) order such other remedies as the Commission may deem appropriate.

Respectfully submitted,



Kourtney L. Myers

Prosecutor

PA Attorney ID No. 316494

Michael L. Swindler

Deputy Chief Prosecutor

PA Attorney ID No. 43319

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265
717.705.4366
komyers@pa.gov

Date: March 26, 2021

I&E
EXHIBIT 1A



I&E
EXHIBIT 1B



4/13/2018

I&E
EXHIBIT 1C



I&E
EXHIBIT 2A



I&E
EXHIBIT 3A



I&E
EXHIBIT 3B



I&E
EXHIBIT 3C



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	Docket No. C-2021-
v.	:	
	:	
West Penn Power Company,	:	
Respondent	:	

VERIFICATION

I, Brent W. Killian, Supervisor, Electric Safety Division, Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: March 26, 2021



Brent W. Killian
Supervisor, Electric Safety Division
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	Docket No. C-2021-
v.	:	
	:	
West Penn Power Company,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Formal Complaint** in the manner and upon the parties listed below, in accordance with the requirements of 52 Pa. Code §§ 1.54 (relating to service by a party).

Served via Electronic Mail

PROPRIETARY VERSION

Tori L. Giesler, Esquire
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
tgiesler@firstenergycorp.com



Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 705-4366
komyers@pa.gov

Date: March 26, 2021



Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Harrisburg, PA 17105-3265
EFILING - FILING DETAIL

Date Created	Filing Number
3/26/2021	2076623

Your filing has been electronically received. Upon review of the filing for conformity with the Commission's filing requirements, a notice will be issued acknowledging acceptance or rejection (with reason) of the filing. The matter will receive the attention of the Commission and you will be advised if any further action is required on your part.

The date filed on will be the current day if the filing occurs on a business day before or at 4:30 p.m. (EST). It will be the next business day if the filing occurs after 4:30 p.m. (EST) or on weekends or holidays.

Representing: Bureau of Investigation and Enforcement

Case Description: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v West Penn Power Company

Transmission Date: 3/26/2021 4:07 PM

Filed On: 3/26/2021 4:07 PM

eFiling Confirmation Number: 2076623

File Name	Document Type	Upload Date
(West Penn Power Company) IE Formal Complaint - NON-PROPRIETARY.pdf	Formal Complaint	3/26/2021 4:06:34 PM
(West Penn Power Company) IE Formal Complaint - NON-PROPRIETARY.pdf	Formal Complaint	3/26/2021 4:06:49 PM

For filings exceeding 250 pages, the PUC is requiring that filers submit one paper copy to the Secretary's Bureau within three business days of submitting the electronic filing online. Please mail the paper copy along with copy of this confirmation page to Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg PA 17120 a copy of the filing confirmation page or reference the filing confirmation number on the first page of the paper copy.

No paper submission is necessary for filings under 250 pages.

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