



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

July 13, 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-2021-3024913
I&E Prehearing Conference Memorandum

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's ("I&E") **Prehearing Conference Memorandum** in the above-referenced matter.

Copies have been served on the parties of record in accordance with the Certificate of 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 in a cursive style.

Kourtney L. Myers
Prosecutor
Bureau of Investigation & Enforcement
PA Attorney ID No. 316494
komyers@pa.gov

KLM/ac
Enclosures

cc: Honorable Mary D. Long
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2021-3024913
	:	
West Penn Power Company,	:	
Respondent	:	

**PREHEARING CONFERENCE MEMORANDUM
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO ADMINISTRATIVE LAW JUDGE MARY D. LONG:

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) respectfully submits the following Prehearing Conference Memorandum in the above-captioned proceeding pursuant to the Prehearing Conference Order dated June 11, 2021 of the presiding Administrative Law Judge (“ALJ”).

I. BACKGROUND

On March 26, 2021, I&E filed a Formal Complaint (“Complaint”) against West Penn Power Company (“Respondent” or “West Penn”) at Docket No. C-2021-3024913, alleging that Respondent violated the National Electric Safety Code (the “NESC”), Pennsylvania Code, and Public Utility Code in connection with a right-of-way (“ROW”) that was not properly inspected or maintained by West Penn. The ROW contains West Penn Pole Nos. 146791, 146792, and 146793 and Phases A and B, which are part of a

two-phase primary distribution system (hereinafter referred to as the “Millerstown Circuit”). On April 12, 2018, Phase A fell into the property of Terry and Frances Colton and caused a brushfire. After the fire was extinguished, Terry Colton came into contact with Phase A, which was still energized, was electrocuted, and killed.

I&E initiated an informal investigation of West Penn as a result of the fatal electrocution. I&E avers that its investigation determined that West Penn did not check for conditions that could adversely affect the operation of its overhead distribution lines during its alleged visual overhead distribution line inspection of the ROW in 2016 and that 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. I&E alleges that Respondent failed to perform vegetation management work on the ROW on the Colton Property for the 2010-2011 and 2015-2016 vegetation management cycles and that Respondent failed to remove Phases A and B or maintain Phases A and B in a safe condition by failing to perform vegetation management on the ROW on the Colton Property from April 12, 2018 to the present. I&E further alleges that West Penn failed to timely de-energize its facilities, including Phase A, on the day of the fatal electrocution.

I&E seeks appropriate relief, including that the Commission: (1) find Respondent to be in violation of the National Electric Safety Code, Pennsylvania Code, and Public Utility Code for each of the counts set forth in I&E’s Complaint; (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 I&E’s Complaint; and (4) order such other remedies as the Commission may deem appropriate.

On May 17, 2021, Respondent, through counsel, filed an Answer with New Matter and Preliminary Objections to I&E's Complaint at the above docket.¹ In its Answer and Preliminary Objections, Respondent asserts that some of the averments of I&E's Complaint are barred by the statute of limitations at 66 Pa. C.S. § 3314. Respondent disagrees with the civil penalty that I&E seeks to impose.

On May 27, 2021, the Commission's Office of Administrative Law Judge ("OALJ") issued a Motion Judge Assignment Notice notifying I&E and West Penn (the "Parties") that ALJ Mary D. Long was assigned as the Presiding Officer in the above-docketed matter. On June 7, 2021, I&E replied to West Penn's Preliminary Objections asserting that the relief sought in I&E's Complaint is not barred by the statute of limitations and New Matter denying the material averments made therein.²

By Interim Order dated June 11, 2021, West Penn's Preliminary Objections were dismissed. By notice dated June 11, 2021, this matter was scheduled for a Prehearing Conference on July 14, 2021 before ALJ Mary D. Long. A Prehearing Conference Order dated June 11, 2021 was also issued.

¹ By Secretarial Letter dated April 19, 2021, Respondent was granted an extension of time until May 10, 2021 to respond to I&E's Complaint. By Secretarial Letter dated May 12, 2021, the Commission granted Respondent's second request for an extension of time to respond to I&E's Complaint by May 17, 2021.

² On June 2, 2021, ALJ Long issued an Interim Order granting I&E's request for an extension of time until June 7, 2021 to file an Answer to West Penn's Preliminary Objections.

II. I&E PREHEARING CONFERENCE MEMORANDUM

A. Service List and Distribution List

The following prosecutor should be entered on the service list for I&E:

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

B. Statement Regarding Possible Settlement Of Case

On May 17, 2021, West Penn provided its settlement proposal to I&E for review. On May 21, 2021, the Parties conducted a telephonic settlement conference. On May 24, 2021 and June 3, 2021, West Penn provided I&E with additional information related to West Penn's settlement proposal. On June 25, 2021, I&E provided its response to West Penn's May 17, 2021 settlement proposal for review. I&E awaits West Penn's response to I&E's June 25, 2021 settlement proposal. To date, the settlement negotiations have resulted in narrowing the differences between the Parties. I&E intends to continue to work with West Penn to reach a possible resolution of this matter. In the event that such a resolution cannot be reached, I&E is prepared to fully litigate this matter.

C. Proposed Modifications to the Commission's Discovery Regulations

I&E does not propose any modifications to the Commission's regulations pertaining to discovery at 52 Pa. Code §§ 5.321 *et seq.*

D. Proposed Schedule for Litigation

The Parties have agreed to the following litigation schedule:

Direct Testimony	Friday, November 12, 2021
Rebuttal Testimony	Friday, December 17, 2021
Surrebuttal Testimony	Tuesday, January 18, 2022
Evidentiary Hearings (2-3 days)	January 25-26, 2022

E. I&E Witnesses

I&E expects to present the testimony of the following witness:

James D. Campbell
Electric Safety Engineer
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 585-1951
jdcampbell@pa.gov

Mr. Campbell is expected to testify about I&E's informal investigation, including the documents and records provided by West Penn in response to I&E's Data Requests, that demonstrates West Penn's failure to check for conditions that could adversely affect the operation of its overhead distribution lines during its alleged visual overhead distribution line inspection of the ROW in 2016, the failure of West Penn's three (3) fuse locations on the Millerstown Circuit to detect a fault or otherwise effectively deenergize Phase A upon Phase A's failure, Respondent's failure to perform vegetation management work on the ROW on the Colton Property for the 2010-2011 and 2015-2016 vegetation management cycles, West Penn's continuing failure to remove Phases A and B or

maintain Phases A and B in a safe condition by failing to perform vegetation management on the ROW on the Colton Property from April 12, 2018 to the present. It is expected that Mr. Campbell's testimony will support the relief that I&E seeks. I&E reserves the right to call additional witnesses and will advise accordingly.

F. Issues

The following is a list of issues that I&E intends to address in this proceeding. I&E reserves the right to address other issues, as it deems appropriate, if any such relevant issues arise.

1. West Penn's failure to check for conditions that could adversely affect the operation of overhead distribution lines 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, thereby placing the public safety in danger, which constitutes a violation of 52 Pa. Code §§ 57.194(a) and 57.198(n)(4)(iii) and 66 Pa.C.S. § 1501.
2. The failure of West Penn's three (3) fuse locations on the Millerstown Circuit to detect a fault or otherwise effectively deenergize Phase A upon Phase A's failure, thereby placing the public safety in danger, which constitutes a violation of 52 Pa. Code § 57.194(a) and 66 Pa.C.S. § 1501.
3. West Penn's failure to perform vegetation management work 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 and placing the public safety in danger, which constitutes a violation of 52 Pa. Code §§ 57.28(a)(1) and 57.194(a) and 66 Pa.C.S. § 1501.
4. West Penn's continuing failure to remove Phases A and B or maintain Phases A and B in a safe condition 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 from April 12, 2018 to the present, thereby placing the public safety in danger, which constitutes a violation of NESC § 214(B)(2)-(3), 52 Pa. Code §§ 57.28(a)(1) and 57.194(a)-(b), and 66 Pa.C.S. § 1501.
 5. West Penn's failure to timely de-energize Phase A, thereby enabling the continuation of an unsafe and hazardous condition and preventing first responders from providing aid and resuscitative measures to Terry Colton,

which constitutes a violation of 52 Pa. Code § 57.194(a) and 66 Pa.C.S. § 1501.

6. I&E's requested relief in the form of a civil penalty of Three Million, Three Hundred Seventy-Six Thousand Dollars (\$3,376,000) and the numerous corrective actions detailed in I&E's Complaint.

Respectfully submitted,



Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 705-4366
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Date: July 13, 2021

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Complainant	:	
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v.	:	Docket No. C-2021-3024913
	:	
West Penn Power Company,	:	
Respondent	:	

CERTIFICATE OF SERVICE

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

Notification by Electronic Mail:

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

Attorney for West Penn Power Company



Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

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Date: July 13, 2021