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July 13, 2021

**VIA ELECTRONIC FILING**

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

**Re: Pennsylvania Public Utility Commission, Bureau of Investigation &  
Enforcement; Docket No. C-2021-3024913**

Dear Secretary Chiavetta:

Enclosed for filing please find the Prehearing Conference Memorandum of West Penn Power Company the in the above-referenced matter.

As indicated on the attached Certificate of Service, copies have been served on the parties in the manner indicated.

Please contact me with any questions regarding this matter.

Very truly yours,



Tori L. Giesler

kbw  
Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**PREHEARING CONFERENCE MEMORANDUM OF  
WEST PENN POWER COMPANY**

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Pursuant to the June 11, 2021 Prehearing Conference Order issued by Administrative Law Judge Mary D. Long (“ALJ Long”) and the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code § 5.222(d), West Penn Power Company (“West Penn”) hereby submits its Prehearing Conference Memorandum in the above-captioned proceeding.

**I. PROCEDURAL HISTORY**

1. This proceeding was initiated on March 26, 2021, when the Bureau of Investigation and Enforcement (“I&E”) of the Commission filed the above-captioned Formal Complaint against West Penn. The Formal Complaint, among other things, seeks a finding by the Commission that West Penn violated the National Electrical Safety Code (“NESC”), the Commission’s regulations and Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, when a 34.5 kilovolt (“kV”) sub-transmission line owned and operated by Met-Ed contacted the ground behind the house located at 250 Royal Manor Road, Easton, Pennsylvania 18042 on July 26, 2016, resulting in a fatal electrocution and property investigation.

2. West Penn filed its Answer and New Matter responding to the Formal Complaint on May 17, 2021, and also filed Preliminary Objections to the Formal Complaint that same day. West Penn denied the materials allegations of the Formal Complaint, and argued that: (a) a

number of I&E's allegations and requests for relief were time-barred and/or limited under Section 3314(a) of the Public Utility Code, 66 Pa.C.S. § 3314(a); (b) the civil penalty proposed by I&E violated the Excessive Fines clauses of the Pennsylvania Constitution and the United States Constitutes; (c) a number of I&E's claims and requests for relief are barred and/or limited by the doctrine of laches; and (d) I&E's alleged violations of Section 57.193(a) of the Commission's regulations, 52 Pa. Codd § 57.193(a), did not apply to the alleged 34.5kV sub-transmission lines at issues owned by Met-Ed.

3. I&E filed an Answer to West Penn's New Matter and an Answer to West Penn's Preliminary Objections on June 8, 2021.

4. On June 11, 2021, the Commission issued a Call-In Telephone Pre-Hearing Conference Notice, which scheduled a telephonic Prehearing Conference for July 14, 2021, and assigned the Administrative Law Judge Mary D. Long (the "ALJ") to this proceeding.

5. On June 11, 2021, the ALJ issued an Interim Order Dismissing Preliminary Objections. Also, on June 11, 2021, the ALJ issued a Prehearing Conference Order.

6. On June 11, 2021, a Telephonic Pre-Hearing Conference Notice was issued which scheduled an initial telephonic pre-hearing conference for July 14, 2021. That same day, ALJ Long issued a Prehearing Conference Order.

## **II. SERVICE OF DOCUMENTS**

7. West Penn requests that all documents be served on:

Tori L. Giesler (ID # 207742)  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001  
Phone: 610-921-6658  
E-mail: [tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

West Penn agrees to receive service of documents electronically in this proceeding.

### III. ISSUES

8. West Penn intends to demonstrate that I&E has failed to carry its burden of proof that West Penn has violated applicable NESC standards, Section 1501 of the Public Utility Code, the Commission's regulations, and/or any Commission order. While West Penn has preliminarily identified the following issues, it reserves the right to raise and/or respond to further issues asserted by I&E in any testimony presented in this proceeding.

9. Importantly, West Penn intends to demonstrate that I&E's Formal Complaint should be dismissed as a matter of law for several reasons, including that: (a) a number of I&E's allegations and requests for relief were time-barred and/or limited under Section 3314(a) of the Public Utility Code, 66 Pa.C.S. § 3314(a); and (b) the civil penalty proposed by I&E violated the Excessive Fines clauses of the Pennsylvania Constitution and the United States Constitution.

10. West Penn also intends to prove that it properly inspected its system at all times consistent with its inspection and maintenance program terms, Commission regulations, and the Public Utility Code, and did not unreasonably place the public safety in danger in violation of 52 Pa. Code § 57.198(n)(4)(iii), 52 Pa. Code § 57.194(a), and/or 66 Pa.C.S. § 1501.

11. West Penn also plans to demonstrate that its fuse equipment operated as designed and in accordance with industry standard, specifically as related to fuse design and operation, and as such, West Penn did not act in any way so as to violate 52 Pa. Code § 57.194(a) or 66 Pa.C.S. § 1501.

12. West Penn also expects to show that has at all times adhered to its applicable manuals, specifications and plans, as have been modified over time, associated with vegetation management throughout its electric distribution system and, therefore, West Penn has not violated 52 Pa. Code § 57.28(a)(1), 52 Pa. Code § 57.194(a), or 66 Pa.C.S. § 1501.

13. West Penn also plans to demonstrate that it has at all times maintained its

distribution system in conformity with the National Electric Service Code (“NESC”) related to out of service facilities, and therefore has not violated NESC § 214(B)(2)-(3), 52 Pa. Code § 57.194(a), or 66 Pa.C.S. § 1501.

14. West Plan also intends to demonstrate that its response to emergency requests to de-energize its facilities on April 12, 2018 were reasonable and timely, and that there has been no allegation nor could any allegation be proved reflecting that West Penn violated 52 Pa. Code § 57.194(a), or 66 Pa.C.S. § 1501.

15. Finally, West Penn intends to show that I&E’s requested relief in the form of a civil penalty of \$3,376,000 should be denied.

**IV. WITNESSES**

16. West Penn is still evaluating the witnesses it intends to call in order to rebut I&E’s allegations and intends to preliminarily identify its witness(es) by no later than September 30, 2021.

17. West Penn also reserves the right to call and present additional witnesses to address any issues that may arise during the course of the proceeding.

**V. PROCEDURAL SCHEDULE**

18. West Penn and I&E have worked together to develop an agreed-upon procedural schedule, which they propose as follows:

Direct Testimony	Friday, November 12, 2021
Rebuttal Testimony	Friday, December 17, 2021
Surrebuttal Testimony	Tuesday, January 18, 2022
Oral Rejoinder Testimony	Tuesday, January 25, 2022
Evidentiary Hearings	January 25-26, 2022

Under this proposed schedule, it is contemplated that discovery may run through the start of

hearings. Also, note that all dates are considered to be in-hand service, and that the Parties have agreed to the receipt of electronic service only for purposes of this proceeding.

**VI. DISCOVERY**

19. West Penn does not propose any modifications to the Commission's discovery regulations at this time. West Penn reserves its rights to propose modifications if the schedule adopted in this proceeding differs from that proposed and contains abbreviated periods between rounds of testimony.

**VII. SETTLEMENT**

20. The Parties have initiated settlement discussions and remain optimistic that a negotiated resolution of this matter may be possible, given additional time. As such, they continue actively discussing such potential resolution.

Dated: July 13, 2021

Respectfully submitted,



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*Counsel for West Penn Power Company*

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the Prehearing Conference Memorandum of West Penn Power Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by electronic mail only as follows:

The Honorable Mary D. Long  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
Piatt Place, Suite 220  
301 Fifth Avenue  
Pittsburgh, PA 15222  
[malong@pa.gov](mailto:malong@pa.gov)

Kourtney Myers, Esquire  
PA PUC BI&E  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[komyers@pa.gov](mailto:komyers@pa.gov)

Michael L. Swindler, Esquire  
PA PUC BI&E  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[mwindler@pa.gov](mailto:mwindler@pa.gov)

Dated: July 13, 2021



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