



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

December 1, 2021

**Via Electronic Filing**

Secretary Rosemary Chiavetta  
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  
**Joint Petition for Approval of Settlement**

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Joint Petition for Approval of Settlement in the above-referenced proceeding as well as the following Appendices: (1) Appendix A – Joint Stipulation of Facts; (2) Appendix B – Joint Proposed Ordering Paragraphs; (3) Appendix C – the Bureau of Investigation and Enforcement’s Statement in Support; and (4) Appendix D – the Statement in Support of West Penn Power Company.

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 over a white background.

Kourtney L. Myers  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 316494  
(717) 705-4366  
[komyers@pa.gov](mailto:komyers@pa.gov)

KLM/ac  
Enclosures

cc: Honorable Mary D. Long (*via email only*)  
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	:	

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**JOINT PETITION  
FOR APPROVAL OF SETTLEMENT**

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TO PRESIDING ADMINISTRATIVE LAW JUDGE MARY D. LONG:

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E" or "Complainant") and West Penn Power Company ("West Penn," "Company," or "Respondent") hereby submit this Joint Petition for Approval of Settlement ("Settlement" or "Settlement Agreement") to resolve all issues related to the above-docketed I&E Formal Complaint ("Complaint") proceeding. The Complaint alleges violations of the National Electric Safety Code ("NESC"), Pennsylvania Code, and Pennsylvania Public Utility Code ("Code"), which were raised in connection with a fatal electrocution that occurred on April 12, 2018, in Tarentum, Pennsylvania. As part of this Settlement Agreement, I&E and West Penn (hereinafter referred to collectively as the "Parties" or "Joint Petitioners") respectfully request that Your Honor issue an initial decision or recommended decision approving the Settlement without modification. A Joint Stipulation of Facts in Support of

Settlement is attached hereto as **Appendix A**. A Joint Proposed Ordering Paragraphs is attached hereto as **Appendix B**. Statements in Support of the Settlement expressing the individual views of I&E and West Penn are attached hereto as **Appendix C** and **Appendix D**, respectively.

## **I. INTRODUCTION**

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, by its prosecuting attorney, 400 North Street, Harrisburg, PA 17120 and West Penn Power Company with its principal place of business at 800 Cabin Hill Drive, Greensburg, PA 15601.<sup>1</sup>

2. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth, as well as other entities subject to its jurisdiction, pursuant to 66 Pa.C.S. §§ 101, *et seq.*

3. I&E is the entity established to prosecute complaints 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) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

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

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<sup>1</sup> West Penn is a wholly-owned subsidiary of FirstEnergy Corp. ("FirstEnergy").

5. Section 701 of the Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints alleging a violation of any law or regulation that the Commission has jurisdiction to administer.

6. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission's authority for violations of the Code, the Commission's regulations, or both. Section 3301 allows for the imposition of a fine for each violation and each day's continuance of such violation(s).

7. West Penn is a "public utility" as that term is defined at 66 Pa.C.S. § 102 as it is engaged in providing public utility service as an electric distribution company ("EDC") in the Commonwealth of Pennsylvania to the public for compensation.

8. West Penn, as an EDC, is subject to the power and authority of the Commission pursuant to Section 501(c) of the Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission regulations and orders.

9. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of West Penn in its capacity as an EDC.

## **II. BACKGROUND**

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

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

12. After the fire was extinguished, Terry Colton walked through the wooded area of the Colton Property, came into contact with Phase A, was electrocuted, and died.

13. Electric safety engineers from I&E's Safety Division responded to the scene and conducted an in-depth investigation.

14. By letter dated June 19, 2018, I&E notified West Penn that it had initiated an informal investigation of the Company consistent with Sections 331(a) and 506 of the Code, 66 Pa.C.S. §§ 331(a) and 506, and Section 3.113 of the Commission's regulations, 52 Pa. Code § 3.113. I&E advised West Penn that its investigation would focus on the downed conductor and the fatal electrocution.

15. I&E served West Penn with five (5) sets of data requests on June 19, 2018, January 24, 2019, May 28, 2019, November 13, 2020, and February 10, 2021, respectively.

16. West Penn responded to I&E's five (5) sets of data requests on July 18, 2018, February 22, 2019, June 17, 2019, December 7, 2020, and March 2, 2021, respectively.

17. West Penn provided revised responses to I&E Data Requests-Set I, II, and III on March 24, 2021.

18. The results of I&E's investigation, which included a review of the Company's responses to I&E's data requests, formed the basis for I&E's Complaint<sup>2</sup> that

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<sup>2</sup> I&E filed proprietary and non-proprietary versions of the Complaint.

was filed with the Commission on March 26, 2021 at Docket No. C-2021-3024913. The Complaint included allegations that:

- a. Phase A was a 7.2kV (phase-to-ground) primary distribution line.
- b. Phase A and Phase B were part of a two-phase 12.5kV (phase-to-phase) primary distribution system, the Millerstown Circuit.
- c. Respondent does not know the date on which it de-energized Phase B but claims that Phase B was de-energized before April 12, 2018.
- d. Post incident, on May 18, 2018, West Penn removed and restrung Phase A, which has remained de-energized since the incident on April 12, 2018.
- e. Phases A and B were suspended, in part, by West Penn Pole Nos. 146791, 146792, and 146793.
- f. Phase A fell between Pole Nos. 146791 and 146792.
- g. Three (3) fuse locations and two (2) reclosers were installed on the Millerstown Circuit to detect a fault occurring at Pole Nos. 146791, 146792, and 146793.
- h. On the day of the incident, the three (3) fuse locations failed to detect a fault or otherwise effectively de-energize Phase A upon Phase A's failure.
- i. Terry Colton came into contact with Phase A, which was still energized, was continuously electrocuted, and caught fire.
- j. West Penn received a life and limb call from 911 reporting an electrocution at the Colton Property.

k. One (1) hour and two (2) minutes after the “life and limb” call to West Penn, Respondent confirmed that Phase A was de-energized and that the area was safe for first responders to provide aid.

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

m. West Penn has a right of way (“ROW”) or easement that runs through the Colton Property containing Pole Nos. 146791, 146792, and 146793.

n. Pursuant to the ROW, West Penn 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.

o. Prior to the incident, West Penn 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.

p. Throughout the course of I&E’s investigation in this matter, West Penn maintained the position that Asplundh performed vegetation management services on the ROW on the Colton Property for the 2010-2011 and 2015-2016 vegetation management cycles.

q. On April 13, 2018, 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, which depict trees and underbrush along the ROW on the Colton Property that clearly surpassed the approximately 26-foot-height of Phases A and B and arc marks on Phase A consistent with contact with tree branches.

r. 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."

s. Respondent 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 vegetation management cycle in accordance with the Construction, Operation and Maintenance Manual of Allegheny Power,<sup>3</sup> which was in effect during the 2010-2011 vegetation management cycle.

t. West Penn failed to perform visual overhead inspections of the equipment and facilities between Pole Nos. 146791, 146792, and 146793, including Phases A and B, on April 1, 2016 in accordance with its Biennial Inspection, Maintenance, Repair and Replacement Plan ("I&M Plan") for the period of January 1, 2015 through December 31, 2016.

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<sup>3</sup> In 2011, Allegheny Power merged with FirstEnergy.



u. Respondent 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 2015-2016 vegetation management cycle in accordance with its I&M Plan for the period of January 1, 2015 through December 31, 2016 and FirstEnergy Vegetation Management Distribution Specifications, which were in effect during the 2015-2016 vegetation management cycle.

v. 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.

w. 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, which 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.

x. From April 12, 2018 to the present, West Penn 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 accordance with its I&M Plan 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.

19. In the Complaint, I&E made several requests for relief, including that the Commission: (1) find Respondent to be in violation of the NESC, Pennsylvania Code, and Pennsylvania 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 the Complaint; and (4) order such other remedies as the Commission may deem appropriate.

20. 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.

21. 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.

22. 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. 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 disagreed with the civil penalty that I&E seeks to impose.

23. On May 27, 2021, the Commission's Office of Administrative Law Judge ("OALJ") issued a Motion Judge Assignment Notice notifying the Parties that Administrative Law Judge ("ALJ") Mary D. Long was assigned as the Presiding Officer in the above-docketed matter.

24. 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.

25. On June 7, 2021, I&E filed a Reply to New Matter denying the material averments made therein, in addition to an Answer to West Penn's Preliminary Objections asserting that the relief sought in I&E's Complaint is not barred by the statute of limitations.

26. 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 Long. A Prehearing Conference Order dated June 11, 2021 was also issued.

27. A Prehearing Conference was convened on July 14, 2021. The Parties reported that settlement discussions were ongoing and agreed to a litigation schedule.

28. The presiding ALJ issued a Prehearing Order on July 14, 2021 ordering that the hearings in this matter be scheduled for January 26-27, 2022.

29. On October 19, 2021, the Parties informed ALJ Long that a Settlement in Principle had been reached and requested a suspension of the litigation schedule and cancellation of the January 26-27, 2022 evidentiary hearings.

30. On October 20, 2021 an Interim Order was issued, which suspended the litigation schedule, cancelled the January 26-27, 2022 evidentiary hearings, and directed the Parties to file a joint petition for settlement with statements in support and a stipulation of facts in support of the agreed upon settlement terms.

### **III. ALLEGED VIOLATIONS**

31. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments to support its allegations that West Penn committed the following violations:

a. West Penn failed 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 Pole Nos. 146791, 146792, and 146793, including Phases A and B, in 2016, by not identifying 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, I&E alleges that such conduct would have violated 52 Pa. Code §§ 57.194(a) and 57.198(n)(4)(iii) and 66 Pa.C.S. § 1501.

b. West Penn's three (3) fuse locations on the Millerstown Circuit failed to detect a fault or otherwise effectively de-energize Phase A upon Phase A's failure, thereby placing the public safety in danger. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 57.194(a) and 66 Pa.C.S. § 1501.

c. West Penn 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 I&M Plan of West Penn 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. If proven, I&E alleges that such conduct would have violated 52 Pa. Code §§ 57.28(a)(1) and 57.194(a) and 66 Pa.C.S. § 1501.

d. West Penn 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, including Pole Nos. 146791, 146792, and 146793 and Phases A and B, consistent with the I&M Plan of West Penn 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. If proven, I&E alleges that such conduct would have violated NESC § 214(B)(2)-(3), 52 Pa. Code §§ 57.28(a)(1) and 57.194(a)-(b), and 66 Pa.C.S. § 1501.

e. West Penn failed to timely de-energize Phase A on April 12, 2018, which enabled the continuation of an unsafe and hazardous condition and preventing first responders from providing aid and resuscitative measures to

Terry Colton. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 57.194(a) and 66 Pa.C.S. § 1501.

32. Had this matter been fully litigated, West Penn would have denied each of the alleged violations of the NESC, the Commission's regulations, and the Code outlined above in Paragraph 31(a)-(e), raised defenses in support of its position that the Company committed no such violations, and vigorously defended itself against the same in this proceeding and any subsequent appeals.

#### **IV. SETTLEMENT TERMS**

33. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest,<sup>4</sup> I&E and West Penn held a series of extensive and comprehensive technical discussions that culminated in this Settlement. The purpose of this Joint Petition for Approval of Settlement is to resolve this matter without further litigation. There has been no evidentiary hearing before any tribunal and no sworn testimony taken in I&E's Complaint proceeding docketed at C-2021-3024913. The Parties have stipulated to relevant facts. *See* Appendix A attached hereto.

34. The Settlement is a compromise of the allegations in the Complaint, which I&E intended to prove, and that West Penn intended to disprove.

35. The Parties recognize that their positions and claims are disputed and, given that the outcome of a contested proceeding is uncertain, the Parties further recognize the

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<sup>4</sup> *See* 52 Pa. Code § 5.231(a).

significant and more immediate benefits of amicably resolving the disputed issues through settlement as opposed to time-consuming and expensive litigation.

36. I&E and West Penn, intending to be legally bound and for consideration given, desire to fully and finally conclude this litigation and agree that a Commission Order approving the Settlement without modification shall create the following rights and obligations:

a. **Civil Penalty:**

West Penn will pay a civil penalty in the amount of One Million, One Hundred and Seventy-Five Thousand Dollars (\$1,175,000.00) pursuant to 66 Pa.C.S. § 3301(c). Said payment shall be made within thirty (30) days of the entry date of the Commission’s Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the “Commonwealth of Pennsylvania.” The docket number of this proceeding, C-2021-3024913, shall be indicated on the certified check or money order and the payment shall be sent to:

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

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f) and shall not be passed through as an additional charge to West Penn’s customers in Pennsylvania.

**b. Immediate Removal of Facilities:**

West Penn will immediately remove all existing primary facilities from West Penn Pole No. 146791-WP45, including all supporting crossarms, hardware and insulators, to West Penn Pole No. 491873-WP45.

**c. Work Management Software Solution:**

By end of 2Q 2023, West Penn will implement a work management software solution tool to enable the Company's employees and contractors to manage, document, track, inspect, and report on the aspects of vegetation management work. All terms and/or abbreviations utilized for documentation within the software solution tool that describe the type of work, any other category, or action shall be from a predetermined and defined list from FirstEnergy's Vegetation Management Distribution Specifications.

**d. Maintenance of Detailed Records of Required Rework:**

Upon entry of the Commission's Final Order approving the Settlement Agreement, West Penn will maintain detailed records of any areas that have been identified as requiring additional rework and inspection for at least three (3) cycles.

**e. Maintenance of Detailed Records of Rework:**

Upon entry of the Commission's Final Order approving the Settlement Agreement, West Penn will maintain detailed records of rework that was performed and inspected for at least three (3) cycles.



**f. Review of Vegetation Management Standards:**

West Penn will review its existing vegetation management standards to ensure compliance with ANSI standards for vegetation management, including all associated clearance specifications within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement.

**g. Revisions to Distribution Vegetation Management Standards:**

Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, West Penn will revise its Distribution Vegetation Management Standards to include the following:

- i. Specifications that meet the ANSI A300 Standard, and which require accounting for various factors including, but not limited to the voltage and height of the conductor, the type of tree, its growth rate and branching habit, the extent of potential for vegetation to interfere with energized conductors and importance of facilities in maintaining safety and reliability;
- ii. Requirements for on-cycle trimming to be conducted to achieve a minimum of cycle length clearance from all primary conductors based on tree species and growing conditions. In cases where cycle length is unattainable, twelve (12) feet of clearance shall be achieved;

iii. The following language: "Contractor personnel shall be properly trained in tree species identification and growth characteristics to perform the work proficiently and safely to comply with all applicable laws, regulations and local ordinances. The Contractor shall provide all training and secure all required licenses and certifications to perform work and shall provide proof of these upon request"; and

iv. The requirement that West Penn will conduct an annual kickoff meeting with its contractors to review all requirements of the Distribution Vegetation Management Standards, to include the topics of safety, contractor employee responsibilities, emergency work, recordkeeping, landowner notification, tree species identification and growth characteristics, clearance requirements, and vegetation management methods.

**h. Maintenance of Detailed Records of Vegetation Management:**

Upon entry of the Commission's Final Order approving the Settlement Agreement, West Penn will maintain detailed vegetation management records for at least three (3) cycles, to include the following information, *inter alia*:

i. The name of the company performing the vegetation management work;

- ii. The beginning and ending dates of the vegetation management work;
- iii. The locations of the vegetation management work, including the pole numbers of the starting and finishing locations;
- iv. The number of work hours to perform such work;
- v. A reference to the standard to vegetation management work was performed; and
- vi. A legend explaining any code references.

**i. Inspection of Vegetation Management:**

A West Penn forestry representative will thoroughly inspect the vegetation management work completed by employees and contractors and maintain detailed records of such inspections for at least three (3) cycles.

**j. Vegetation Management Quality Control Program:**

Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, West Penn will implement a vegetation management quality control program under which West Penn will:

- i. Conduct field assessments on samples of completed and inspected work and provide feedback on areas of improvement and best practices to staff and vendors; and
- ii. Implement field assessments of work completed by West Penn Forestry Services to provide feedback on areas of improvement

and best practices to internal management and staff.

**k. Review of Emergency Response Procedures:**

Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, West Penn will conduct a review of its existing procedures to ensure effective and efficient response to 911 dispatches and requests to de-energize. After the completion of such review, West Penn will provide I&E's Electric Safety Division with the following:

- i. Detailed documentation of the review performed on West Penn's existing procedures; and
- ii. Information on the Company's plans for improving its existing procedures to ensure effective and efficient 911 dispatches and emergency requests to de-energize.

**l. Review of Primary System:**

Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, West Penn will initiate a review of its primary system for facilities that have no current load or connected customers for possible removal. Once identified, an analysis will be undertaken as to whether the facilities can be removed and, if so, these facilities will be de-energized if necessary and removed.

**m. Evaluation of De-Energized Facilities:**

West Penn will evaluate de-energized facilities that are not currently

in use for removal based on possible future use during its standard overhead circuit inspection cycle.

n. **Maintenance of Facilities Not Removed:**

West Penn will ensure that any facilities not removed will be maintained in accordance with the NESC for energized facilities.

o. **Mandatory Training Program:**

Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, West Penn will implement a mandatory training program for all employees and contractors inspecting West Penn's overhead circuit facilities. The program shall include training on the following, *inter alia*:

- i. Identification and documentation of unused facilities; and
- ii. The requirements for inspecting and maintaining West Penn's system as presented in its I&M Plan.

Qualification and certification of successful training will be required for all employees and contractors performing any type of overhead circuit inspection. Mandatory refresher training will be performed on an annual basis to ensure compliance.

p. **Review of Vegetation Management and Inspection Records:**

West Penn will make vegetation management and inspection records available to I&E's Electric Safety Division for review upon request.

**q. Modifications to Training Program:**

Within twelve (12) months of the entry date of a Final Order, West Penn will modify its training program to ensure that appropriate employees and contractors are properly trained in the use of West Penn's vegetation work management system, proper record keeping, and proper notation for follow up work.

**r. Visual Overhead Inspections:**

West Penn will visually inspect its overhead lines and equipment on a five (5) year cycle, beginning January 1, 2022, which shall be reflected in the I&M Plan for the period of January 1, 2022 to December 31, 2023.

37. Following the performance of each non-monetary, remedial measure, referenced above, West Penn shall file with the Commission a verification acknowledging that each non-monetary, remedial measure has been met or complied with, pursuant to 52 Pa. Code § 5.591. In addition, I&E's Safety Division shall have the opportunity to review West Penn's performance of each remedial measure to confirm compliance.

38. Upon Commission approval of the Settlement in its entirety without modification, I&E shall be deemed to have released West Penn from all past claims that were made or could have been made for monetary and/or other relief based on allegations associated with the April 12, 2018 incident.

39. I&E and West Penn jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled

Proceedings, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E Complaint proceeding, promotes public safety, and avoids the time and expense of litigation, which entails hearings, travel for West Penn's witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Attached as **Appendix C** and **Appendix D** are Statements in Support submitted by I&E and West Penn, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

**V. CONDITIONS OF SETTLEMENT**

40. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the Parties. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

41. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon the other party within twenty (20) days after entry of an Order modifying the Settlement.

42. In the event that the presiding ALJ issues an initial decision or recommended decision approving this Joint Petition for Approval of Settlement without modification, the

Parties agree to waive the exception period, thereby allowing the Settlement Agreement to be presented directly to the Commission for review, pursuant to 52 Pa. Code § 5.232(e).

43. The Parties agree that the underlying allegations were not the subject of any hearing and that there has been no order, findings of fact or conclusions of law rendered in this Complaint proceeding. It is further understood that, by entering into this Settlement Agreement, West Penn has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in any other proceeding, including but not limited to any civil proceedings, that may arise as a result of the circumstances described in this Joint Settlement Petition. Nor may this settlement be used by any other person or entity as a concession or admission of fact or law.

44. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding.

45. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. This Settlement is presented without prejudice to any position that any of the Parties may have advanced and without prejudice to the position any of the Parties may advance in the future on the merits of the issues in any other proceedings, except to the extent necessary to effectuate or enforce the terms and conditions of this Settlement Agreement. This Settlement does not preclude the Parties from taking other positions in any other proceeding but is conclusive in this proceeding and may not be reasserted in any other proceeding or forum except for the limited purpose of enforcing the Settlement by a Party.



46. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

**WHEREFORE**, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and West Penn Power Company respectfully request that the Commission approve the terms of the Joint Petition for Approval of Settlement without modification and in their entirety as being in the public interest.

Respectfully submitted and filed by:

**Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement**

**West Penn Power Company**

By:

By:



Kourtney L. Myers, Prosecutor  
PA Attorney ID No. 316494  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
400 North Street  
Harrisburg, PA 17120  
[komyers@pa.gov](mailto:komyers@pa.gov)

Tori L. Giesler, Supervising Counsel  
PA Attorney ID No. 207742  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6658  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

Date: December 1, 2021

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**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	:	

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**JOINT STIPULATION OF FACTS  
IN SUPPORT OF SETTLEMENT**

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Pursuant to 52 Pa. Code § 5.232(a) and the Interim Order dated October 20, 2021 of presiding Administrative Law Judge (“ALJ”) Mary D. Long, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and West Penn Power Company (“West Penn”), by their undersigned attorneys, agree and stipulate to the following facts for the sole purpose of supporting the approval of the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) in the above-captioned matter.

I&E and West Penn have entered into the Settlement, which they recognize is a compromise of disputed claims. I&E also recognizes that the Settlement is entered into without admission of wrongdoing or liability by West Penn.

**STIPULATION OF FACTS**

**A. Conductors**

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

2. Phase A was a 7.2kV (phase-to-ground) primary distribution line.

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

4. West Penn does not know the date on which it de-energized Phase B but claims that Phase B was de-energized before April 12, 2018.

**B. Poles**

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

6. Phase A fell between Pole Nos. 146791 and 146792.

**C. Fault Detection Devices**

7. Three (3) fuse locations and two (2) reclosers (collectively referred to as “fault detection devices”) were installed on the Millerstown Circuit to protect the conductors on Pole Nos. 146791, 146792, and 146793 and to detect a fault occurring at the aforementioned poles.

8. On the day of the incident, the fault detection devices ultimately did not operate to de-energize Phase A after Phase A fell to the ground.

**D. 2010-2011 Vegetation Management Cycle**

9. West Penn has a right of way (“ROW”) or easement that runs through the Colton Property.

10. The ROW contains 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.

11. Pursuant to the ROW, West Penn 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.

12. Prior to the incident, West Penn 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.

13. Throughout the course of I&E’s investigation in this matter, West Penn maintained the position that Asplundh performed vegetation management services on the ROW on the Colton Property for the 2010-2011 vegetation management cycle as Asplundh was contracted and invoiced West Penn for the aforementioned services.

14. In 2011, Allegheny Power merged with FirstEnergy Corp. (“FirstEnergy”).

15. West Penn is a wholly-owned subsidiary of FirstEnergy.

16. According to the “Vegetation – Purpose and Objectives” Section of the Construction, Operation and Maintenance Manual of Allegheny Power (“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 “[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.”

17. 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.”

18. A circuit map of the Millerstown Circuit (hereinafter referred to as “Circuit Map”) reflects the vegetation management that Asplundh presented to West Penn as complete on the Millerstown Circuit for the 2010-2011 vegetation management cycle.

19. 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.”

20. The Circuit Map contains notes in the area of the ROW on the Colton property stating, “OWNER WOULD LIKE LINE CUT DEAD, DOESN’T FEED ANYTHING” and “HAVE R/W ON.”

21. Another area on the Circuit Map to the left of the ROW on the Colton Property contains a note “HAVE R/W ON” and below that note, FirstEnergy Forestry Representative, Charles G. Sarver wrote “CLEARANCE” with his initials “CGS,” directly below.

22. 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.

23. 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.

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

25. 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.”

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

**E. 2016 Overhead Inspection**

27. According to the “Distribution Overhead Line Inspections” Section of the Biennial Inspection, Maintenance, Repair and Replacement Plan (“I&M Plan”) of West Penn for the period of January 1, 2015 through December 31, 2016, “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.”

28. After the alleged 2010-2011 vegetation management cycle work, West Penn 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.

29. During this alleged inspection, West Penn 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**

30. Throughout the course of I&E’s investigation in this matter, West Penn 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 as Asplundh was contracted and invoiced West Penn for the aforementioned services.

31. According to the “Vegetation Management” Section of the I&M Plan of West Penn for the period of January 1, 2015 through December 31, 2016, “West Penn 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.”

32. 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.”

33. 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.”

34. On West Penn’s “Work Inspection Sheet” for the alleged 2015-2016 vegetation management cycle work, West Penn claims that the vegetation management 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.

35. On April 13, 2018, 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. The photographs are attached to I&E’s Complaint as I&E Exhibits 1A-C.



36. In its responses to I&E's data requests on December 8, 2020, West Penn 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."

37. 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.

### **G. Chronology of Events**

38. After Phase A fell, a brush fire started in the wooded area of the Colton Property.

39. 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.

40. After the fire was extinguished, Terry Colton came into contact with Phase A, which was still energized.

41. Terry Colton was electrocuted and caught fire.

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

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

44. Terry Colton was continuously electrocuted until West Penn de-energized the conductor at 8:15 PM.

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

#### **H. Post Incident**

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

47. Although Phase B was allegedly de-energized some time prior to April 12, 2018 and Phase A has been de-energized since April 12, 2018, West Penn 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.

48. According to the “Vegetation Management” Section of the Biennial Inspection, Maintenance, Repair and Replacement Plan of West Penn 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.”

49. 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 to I&E’s Complaint as I&E Exhibits 3A-C.

50. As of the filing date of West Penn’s Answer to I&E’s Complaint, May 17, 2021, West Penn had not performed vegetation management on or maintained the ROW on the Colton Property, including Pole Nos. 146791, 146792, and 146793 and Phases A and B.

**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	:	

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**JOINT PROPOSED ORDERING PARAGRAPHS**

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1. That the Joint Settlement Petition filed on December 1, 2021 between the Commission’s Bureau of Investigation and Enforcement and West Penn Power Company is approved in its entirety without modification.

2. That, in accordance with Section 3301(c) of the Public Utility Code, 66 Pa.C.S. § 3301(c), within thirty (30) days of the date this Order becomes final, West Penn Power Company shall pay a civil penalty of One Million, One Hundred and Seventy-Five Thousand Dollars (\$1,175,000.00). Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania.” The docket number of this proceeding, C-2021-3024913, shall be indicated on the certified check or money order and the payment shall be sent to:

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

3. That the civil penalty shall not be tax deductible or passed through as an additional charge to West Penn Power Company's customers in Pennsylvania.

4. That upon fulfillment of each non-monetary, remedial measure set forth in Paragraph 36 of the Joint Petition for Settlement, West Penn Power Company shall file with the Commission a verification acknowledging compliance with each non-monetary remedial measure, pursuant to 52 Pa. Code § 5.591.

5. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.

6. That the above-captioned matter shall be marked closed upon receipt of the civil penalty and the verifications acknowledging that the non-monetary remedial measures set forth in Paragraph 36 of the Joint Petition for Settlement have been fulfilled.

**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 :

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**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S  
STATEMENT IN SUPPORT OF THE  
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

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TO ADMINISTRATIVE LAW JUDGE MARY D. LONG:

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and West Penn Power Company (“West Penn,” “Respondent,” or “Company”).<sup>1</sup> I&E avers that the terms and conditions of the Settlement are just and reasonable and in the public interest for the reasons set forth herein.

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<sup>1</sup> I&E and West Penn are collectively referred to herein as the “Parties.”

## I. Background

I&E's Safety Division conducted an in-depth investigation of a conductor ("Phase A"), owned and operated by West Penn, that fell to the ground on April 12, 2018 at 203 McKrell Road, Tarentum, Pennsylvania 15084 ("Colton Property") and resulted in a brush fire and fatal electrocution. The results of the investigation formed the basis for the allegations set forth in I&E's Formal Complaint ("Complaint"),<sup>2</sup> which was filed on March 26, 2021.

The crux of I&E's Complaint alleged that West Penn failed to perform vegetation management on the right of way ("ROW") on the Colton Property, including West Penn 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 ("I&M Plan") of West Penn for the period of January 1, 2015 through December 31, 2016, and FirstEnergy Vegetation Management Distribution Specifications, which was in effect during the 2015-2016 vegetation management cycle, thereby creating an ongoing, unsafe, and hazardous condition in violation of Section 57.28(a)(1) of the Pennsylvania Code, 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

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<sup>2</sup> I&E filed proprietary and non-proprietary versions of the Complaint.

public and others may be subjected to by reason of its provision of electric utility services and its associated equipment and facilities”), Section 57.194(a) of the Pennsylvania Code, 52 Pa. Code § 57.194(a) (requiring an electric distribution company [“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 Section 1501 of the Public Utility Code (“Code”), 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”).

I&E’s Complaint also alleged that Respondent 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 I&M Plan of West Penn 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 in violation of Section 214(B)(2)-(3) of the National Electric Safety Code (“NESC”) (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), Section



57.194(b) of the Pennsylvania Code, 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]”), Section 57.28(a)(1) of the Pennsylvania Code, 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”), Section 57.194(a) of the Pennsylvania Code, 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 Section 1501 of the Code, 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”).

I&E’s Complaint sought relief in the form of a civil penalty of \$3,376,000.00, as well as a number of corrective measures designed to address emergency response, training, revisions of West Penn’s procedures, and the review of West Penn’s primary system for facilities that have no current load or connected customers for possible removal.

On May 17, 2021, West Penn filed an Answer with New Matter and Preliminary Objections. On June 7, 2021, I&E replied to West Penn's Preliminary Objections and New Matter.

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 Administrative Law Judge ("ALJ") Mary D. Long. A Prehearing Conference Order was also issued on June 11, 2021.

The Prehearing Conference was convened on July 14, 2021. The Parties reported that settlement discussions were ongoing and agreed to a litigation schedule. On July 14, 2021, ALJ Long issued a Prehearing Order ordering that the hearings in this matter be scheduled for January 26-27, 2022.

On October 19, 2021, the Parties informed ALJ Long that a settlement-in-principle had been reached and requested a suspension of the litigation schedule and cancellation of the January 26-27, 2022 evidentiary hearings.

On October 20, 2021, an Interim Order was issued, which suspended the litigation schedule, cancelled the January 26-27, 2022 evidentiary hearings, and directed the Parties to file a joint petition for settlement with statements in support and a stipulation of facts in support of the agreed upon settlement terms.

On December 1, 2021, the Parties filed a Joint Petition for Approval of Settlement resolving all issues between I&E and West Penn in the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

## II. The Public Interest

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to I&E's Formal Complaint proceeding. West Penn has been cooperative with I&E related to identifying policies and procedures, facilities, and training that can be further improved to assist West Penn in enhancing the safety and reliability of service and to satisfy the commitments that I&E has required in the settlement process.

The Settlement, if approved, will provide substantial public benefits including a program for the review of West Penn's entire primary system for facilities that have no current load or connected customers for possible removal, enhanced training of West Penn employees and contractors on the inspection and maintenance of West Penn's overhead circuit facilities, improvements to West Penn's distribution vegetation management standards, maintenance of records, and emergency response procedures, as well as a vegetation management quality control program.

I&E intended to prove the factual allegations set forth in its Formal Complaint at hearing to which West Penn would have disputed. This Settlement Agreement results from the compromises of the Parties. I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation. I&E submits that the Settlement constitutes a reasonable compromise of the

issues presented and is in the public interest as it provides for a number of relevant corrective measures as well as a civil penalty. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

### **III. Terms of Settlement**

Under the terms of the Settlement Agreement, I&E and West Penn have agreed to the following:

**a. Civil Penalty:**

West Penn will pay a civil penalty in the amount of One Million, One Hundred and Seventy-Five Thousand Dollars (\$1,175,000.00) pursuant to 66 Pa.C.S. § 3301(c). Said payment shall be made within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement. The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f) and shall not be passed-through as an additional charge to West Penn's customers in Pennsylvania.

**b. Immediate Removal of Facilities:**

West Penn will immediately remove all existing primary facilities from West Penn Pole No. 146791-WP45, including all supporting crossarms, hardware and insulators, to West Penn Pole No. 491873-WP45.

**c. Work Management Software Solution:**

By end of 2Q 2023, West Penn will implement a work management

software solution tool to enable the Company's employees and contractors to manage, document, track, inspect, and report on the aspects of vegetation management work. All terms and/or abbreviations utilized for documentation within the software solution tool that describe the type of work, any other category, or action shall be from a predetermined and defined list from FirstEnergy's Vegetation Management Distribution Specifications.

**d. Maintenance of Detailed Records of Required Rework:**

Upon entry of the Commission's Final Order approving the Settlement Agreement, West Penn will maintain detailed records of any areas that have been identified as requiring additional rework and inspection for at least three (3) cycles.

**e. Maintenance of Detailed Records of Rework:**

Upon entry of the Commission's Final Order approving the Settlement Agreement, West Penn will maintain detailed records of rework that was performed and inspected for at least three (3) cycles.

**f. Review of Vegetation Management Standards:**

West Penn will review its existing vegetation management standards to ensure compliance with ANSI standards for vegetation management, including all associated clearance specifications within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement.

**g. Revisions to Distribution Vegetation Management Standards:**

Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, West Penn will revise its Distribution Vegetation Management Standards to include the following:

- i. Specifications that meet the ANSI A300 Standard, and which require accounting for various factors including, but not limited to the voltage and height of the conductor, the type of tree, its growth rate and branching habit, the extent of potential for vegetation to interfere with energized conductors and importance of facilities in maintaining safety and reliability;
- ii. Requirements for on-cycle trimming to be conducted to achieve a minimum of cycle length clearance from all primary conductors based on tree species and growing conditions. In cases where cycle length is unattainable, twelve (12) feet of clearance shall be achieved;
- iii. The following language: "Contractor personnel shall be properly trained in tree species identification and growth characteristics to perform the work proficiently and safely to comply with all applicable laws, regulations and local ordinances. The Contractor shall provide all training and secure all required licenses and certifications to perform work and shall provide proof of these upon request"; and

iv. The requirement that West Penn will conduct an annual kickoff meeting with its contractors to review all requirements of the Distribution Vegetation Management Standards, to include the topics of safety, contractor employee responsibilities, emergency work, recordkeeping, landowner notification, tree species identification and growth characteristics, clearance requirements, and vegetation management methods.

**h. Maintenance of Detailed Records of Vegetation Management:**

Upon entry of the Commission's Final Order approving the Settlement Agreement, West Penn will maintain detailed vegetation management records for at least three (3) cycles, to include the following information, *inter alia*:

- i. The name of the company performing the vegetation management work;
- ii. The beginning and ending dates of the vegetation management work;
- iii. The locations of the vegetation management work, including the pole numbers of the starting and finishing locations;
- iv. The number of work hours to perform such work;

- v. A reference to the standard to vegetation management work was performed; and
- vi. A legend explaining any code references.

**i. Inspection of Vegetation Management:**

A West Penn forestry representative will thoroughly inspect the vegetation management work completed by employees and contractors and maintain detailed records of such inspections for at least three (3) cycles.

**j. Vegetation Management Quality Control Program:**

Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, West Penn will implement a vegetation management quality control program under which West Penn will:

- i. Conduct field assessments on samples of completed and inspected work and provide feedback on areas of improvement and best practices to staff and vendors; and
- ii. Implement field assessments of work completed by West Penn Forestry Services to provide feedback on areas of improvement and best practices to internal management and staff.

**k. Review of Emergency Response Procedures:**

Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, West Penn will conduct a review of its existing procedures to ensure effective and efficient response



to 911 dispatches and requests to de-energize. After the completion of such review, West Penn will provide I&E's Electric Safety Division with the following:

- i. Detailed documentation of the review performed on West Penn's existing procedures; and
- ii. Information on the Company's plans for improving its existing procedures to ensure effective and efficient 911 dispatches and emergency requests to de-energize.

**l. Review of Primary System:**

Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, West Penn will initiate a review of its primary system for facilities that have no current load or connected customers for possible removal. Once identified, an analysis will be undertaken as to whether the facilities can be removed and, if so, these facilities will be de-energized if necessary and removed.

**m. Evaluation of De-Energized Facilities:**

West Penn will evaluate de-energized facilities that are not currently in use for removal based on possible future use during its standard overhead circuit inspection cycle.

n. **Maintenance of Facilities Not Removed:**

West Penn will ensure that any facilities not removed will be maintained in accordance with the NESC for energized facilities.

o. **Mandatory Training Program:**

Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, West Penn will implement a mandatory training program for all employees and contractors inspecting West Penn's overhead circuit facilities. The program shall include training on the following, *inter alia*:

- i. Identification and documentation of unused facilities; and
- ii. The requirements for inspecting and maintaining West Penn's system as presented in its I&M Plan.

Qualification and certification of successful training will be required for all employees and contractors performing any type of overhead circuit inspection. Mandatory refresher training will be performed on an annual basis to ensure compliance.

p. **Review of Vegetation Management and Inspection Records:**

West Penn will make vegetation management and inspection records available to I&E's Electric Safety Division for review upon request.

q. **Modifications to Training Program:**

Within twelve (12) months of the entry date of a Final Order, West Penn will modify its training program to ensure that appropriate employees and contractors are properly trained in the use of West Penn's vegetation work management system, proper record keeping, and proper notation for follow up work.

r. **Visual Overhead Inspections:**

West Penn will visually inspect its overhead lines and equipment on a five (5) year cycle, beginning January 1, 2022, which shall be reflected in the Company's I&M Plan for the period of January 1, 2022 to December 31, 2023.

In consideration of West Penn's payment of a civil penalty and various remedial measures, I&E agrees that it has released West Penn from all past claims that were or could have been made for monetary and/or other relief based on allegations associated with the April 12, 2018 incident.

**IV. Legal Standard for Settlement Agreements**

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof' standard, as is utilized for contested matters." *Pa. Pub. Util.*

*Comm'n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten (10) factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest." *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as

an administrative or technical error. Conduct of a more serious nature may warrant a higher civil penalty while conduct that is less egregious warrants a lower amount. 52 Pa. Code § 69.1201(c)(1). I&E submits that the conduct alleged in the Complaint is of a very serious nature. I&E alleges that West Penn's conduct includes the following: (1) West Penn failed 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 Pole Nos. 146791, 146792, and 146793, including Phases A and B, in 2016, by not identifying the overgrown vegetation in that area that had the potential to adversely affect the operation of Phases A and B; (2) West Penn's three (3) fuse locations on the Millerstown Circuit failed to detect a fault or otherwise effectively de-energize Phase A upon Phase A's failure; (3) West Penn 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 I&M Plan of West Penn for the period of January 1, 2015 through December 31, 2016, and FirstEnergy Vegetation Management Distribution Specifications, which was in effect during the 2015-2016 vegetation management cycle; (4) West Penn 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, including Pole Nos. 146791, 146792, and 146793 and Phases A and B, consistent with the I&M Plan of West Penn 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; and (5) West Penn failed to timely de-energize Phase A on April 12, 2018.

I&E submits that any conduct involving the inspection, vegetation management, and maintenance of overhead conductors should be taken seriously due to the inherent danger involved if such lines should overheat, fall, or otherwise fail. Further, the actions and inactions of West Penn described above constitute conduct that placed the public safety at great risk, and therefore, I&E submits that a higher civil penalty is warranted in this case.

The seriousness of the conduct at issue is addressed in the costly and extensive, corrective measures that the Company has agreed to undertake, as well as the payment of the agreed-upon civil penalty.

The second factor considers whether the resulting consequences of West Penn's alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). In this case, the resulting consequences are tragic and of a very serious nature, warranting a higher civil penalty. Due to the misconduct and lack of proper inspection, vegetation management, and maintenance of the ROW on the Colton Property, including Pole Nos. 146791, 146792, and 146793 and Phases A and B, as described above, Phase A fell to the ground. Additionally, West Penn's failure to ensure the correct operation of its fault detection devices (which ultimately failed to detect a fault or otherwise effectively deenergize Phase A upon Phase

A's failure) and West Penn's untimely reaction to the ongoing, unsafe, and hazardous condition at hand (by taking over an hour to de-energize Phase A) resulted in a fatal electrocution.

The agreed-upon civil penalty and the terms and conditions of the Settlement acknowledge that serious consequences occurred and are designed to further enhance the safety of West Penn's service and facilities.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* Whether West Penn's alleged conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties.

The fourth factor to be considered is whether West Penn has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). In response to the April 12, 2018 incident, West Penn Power removed and restrung Phase A, which has remained de-energized since the incident.

Additionally, a comprehensive list of the remedial actions that West Penn has agreed to undertake is outlined in the Settlement Agreement at Paragraph 36. Some of the more significant, remedial actions can be found in the following settlement terms. First, West Penn will immediately remove all existing primary facilities from Pole Nos. 146791-WP45 to 491873-WP45, which includes Phases A and B and initiate a review of its entire primary system for facilities that have no current load or connected customers for possible removal.

Next, West Penn will implement a work management software solution tool to enable the Company's employees and contractors to manage, document, track, inspect, and report on the aspects of vegetation management work.

West Penn will revise its Distribution Vegetation Management Standards to include specifications that meet the ANSI A300 Standard and require accounting for various factors including, but not limited to, the voltage and height of the conductor, the type of tree, its growth rate and branching habit, the extent of potential for vegetation to interfere with energized conductors and importance of facilities in maintaining safety and reliability and requirements for on-cycle trimming to be conducted to achieve a minimum of cycle length clearance from all primary conductors based on tree species and growing conditions.

West Penn will also visually inspect its overhead lines and equipment on a five (5) year cycle, whereas Respondent was previously conducting such inspections on a six (6) year cycle.

Each of these remedial actions and commitments address the alleged conduct at issue and are designed to prevent a similar incident from occurring again. The remedial actions demonstrate that West Penn is taking appropriate actions to enhance the safety of its distribution system, improve the reliability of its operations, and prevent similar occurrences in the future. These improvements will provide a significant benefit to public safety.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). In



this case, one fatal electrocution occurred. On the day of the incident, approximately 109 customers experienced an outage that lasted for an hour and twenty-seven minutes.

As for the duration of the violations, the crux of I&E's Complaint alleges that West Penn's conduct of failing 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, the I&M Plan of West Penn Power for the period of January 1, 2015 through December 31, 2016, and FirstEnergy Vegetation Management Distribution Specifications, created an ongoing, unsafe, and hazardous condition in violation of 52 Pa. Code §§ 57.28(a)(1) and 57.194(a) and 66 Pa.C.S. § 1501. I&E asserts that these violations continued from December 31, 2011, the last day of the 2010-2011 vegetation management cycle, to April 12, 2018, the date of the incident, or 2,294 days.

Additionally, West Penn 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 I&M 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, which created an ongoing, unsafe, and hazardous condition in 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. I&E asserts that these violations continued 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 or 1,079 days.

The sixth factor to be considered relates to the compliance history of West Penn. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. *Id.* Aside from the instant Complaint, I&E is aware of one (1) prior complaint against West Penn that resulted in serious consequences, including death, *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. West Penn Power Company*, Docket No. C-2012-2307244 (Order entered January 9, 2014) (hereinafter referred to as "*West Penn I*"). In this case, the Commission approved a settlement agreement that imposed a civil penalty of \$86,000.00 upon West Penn in connection with an overhead conductor that came down at its point of connection with an automatic splice. The live conductor fell into the yard of a homeowner, who came into contact with the live conductor, was electrocuted, and ultimately died.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). "Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty." *Id.* As referenced in Paragraph 60 of I&E's Complaint, I&E submits that West Penn was not initially forthcoming with information regarding its contractor, Asplundh Tree Experts, LLC's "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."

Although I&E would not characterize West Penn's conduct during I&E's investigation as completely cooperative, West Penn has cooperated throughout the complaint and settlement process.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E submits that given the serious nature of West Penn's conduct and the serious nature of the resulting consequences, a civil penalty amount of \$1,175,000.00, which is not tax deductible, is an appropriate penalty payment in this case.

I&E further submits that the monetary cost of West Penn's performance of all the remedial measures is sufficient to deter West Penn from committing future violations. The remedial measures that West Penn has agreed to are collectively estimated to cost in excess of \$10 million.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). In *West Penn I*, the Commission approved a settlement agreement that imposed a civil penalty of \$86,000.00 upon West Penn. As part of the settlement, West Penn agreed to the performance of remedial measures equating to approximately \$2.5 million. In its Complaint, I&E alleged that West Penn's conduct constituted six, separate violations of 66 Pa.C.S. § 1501 and sought a \$1,000 civil penalty for each violation. Additionally, I&E alleged that West Penn committed an ongoing violation of Sections 504-506 of the Code, 66 Pa.C.S. §§ 504-506, by failing to furnish information requested by Commission staff in aid of its investigation and I&E sought a civil penalty of \$80,000 for such violation.

Although factually similar at first blush, the *West Penn I* case is quite distinguishable from the instant matter. A significant difference is that the crux of this proceeding is based on serious, ongoing violations of NESC § 214(B)(2)-(3), 52 Pa. Code §§ 57.28(a)(1) and 57.194(a)-(b), and 66 Pa.C.S. § 1501, which resulted in serious consequences involving death, whereas the crux of *West Penn I* and much of the \$86,000 civil penalty in that case was based on an ongoing violation of 66 Pa.C.S. §§ 504-506, relating to a failure to furnish information to the Commission.

I&E submits that a similar case for consideration is *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Metropolitan Edison Company*, Docket No. C-2019-3011675 (Order entered February 4, 2021), wherein the Commission approved a settlement agreement that imposed a civil penalty of \$1,000,000 upon Metropolitan Edison Company (“Met-Ed”) as well as a \$150,000 contribution to Met-Ed’s hardship fund in connection with an overhead conductor that fell from its point of attachment with a bronze hot line clamp. Similar to the instant case, the live conductor fell into the yard of a homeowner, who encountered energized ground from the conduct, was electrocuted, and died. As part of the settlement, Met-Ed agreed to the performance of remedial measures in excess of \$16 million.

Like the instant proceeding, I&E alleged in the *Met-Ed* proceeding, *inter alia*, that Met-Ed committed serious, ongoing violations of 66 Pa.C.S. § 1501 (by installing bronze hot line clamps inconsistent with the recommendation of the manufacturer of the clamps and FirstEnergy Material Specifications), which resulted in serious consequences involving death, and sought a \$1,000 civil penalty for each violation and each day’s

continuance of such violation. Therefore, I&E submits that the instant Settlement Agreement is fair, reasonable, and consistent with past Commission decisions in similar situations.

The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise while allowing the parties to move forward and to focus on implementing the agreed upon remedial actions.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties.

**WHEREFORE**, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the Settlement in its entirety without modification.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Myers', written in a cursive style.

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  
[komyers@pa.gov](mailto:komyers@pa.gov)

Dated: December 1, 2021

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**WEST PENN POWER COMPANY STATEMENT IN SUPPORT OF  
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

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**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE MARY D. LONG:**

West Penn Power Company (“West Penn” or the “Company”) hereby files this Statement in Support of the Joint Petition for Settlement (“Settlement”) entered into by the Company and the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), hereinafter, collectively the “Joint Petitioners,” in the above-captioned proceeding. The Settlement, if approved, will fully resolve all issues related to I&E’s Formal Complaint regarding a fatal electrocution that occurred on April 12, 2018, in Tarentum, Pennsylvania (“April 12 Incident”). West Penn respectfully requests that the Honorable Administrative Law Judge Mary D. Long (the “ALJ”) and the Commission approve the Settlement, including the terms and conditions thereof, without modification.

West Penn undertook an extensive investigation of the events related to the April 12 Incident and cooperated with and assisted I&E with its investigation of the events surrounding the incident. As discussed in the Settlement, West Penn and I&E held extensive and comprehensive technical discussions that culminated in the Settlement. The Settlement is in the public interest because it effectively addresses I&E’s allegations that are the subject of the I&E Complaint

proceeding, promotes public safety, and avoids the time and expense of litigation, which entails hearings, travel for West Penn's witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. For these reasons and the reasons set forth below, the Settlement is fair, just and reasonable and, therefore, the Settlement should be approved without modification.

**I. INTRODUCTION**

**A. PARTIES**

I&E is the entity established by statute to prosecute complaints against public utilities pursuant to 66 Pa.C.S. § 308(b). The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities. *Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852* (Aug. 11, 2011).

West Penn is a "public utility" and an "electric distribution company" ("EDC") as those terms are defined in Sections 102 and 2202 of the Code, 66 Pa.C.S. §§ 102, 2803. West Penn provides electric distribution, and supplier of last resort services to approximately 720,000 customers throughout its certificated service territory subject to the regulatory jurisdiction of the Commission.

**B. BACKGROUND**

The background and factual circumstances underlying this matter have been stipulated to by the Joint Petitioners and the Joint Stipulation of Facts is included as Appendix A to the Settlement. West Penn incorporates the Joint Stipulation of Facts herein by reference.

**II. COMMISSION POLICY FAVORS SETTLEMENT**

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve



precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, Docket No. C-2010-2071433, 2012 Pa. PUC LEXIS 1377 at \*6 (August 31, 2012).

The Commission has promulgated a Policy Statement that sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201. These factors are: (i) Whether the conduct at issue was of a serious nature; (ii) Whether the resulting consequences of the conduct at issue were of a serious nature; (iii) Whether the conduct at issue was deemed intentional or negligent; (iv) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) The number of customers affected and the duration of the violation; (vi) The compliance history of the regulated entity that committed the violation; (vii) Whether the regulated entity cooperated with the Commission's investigation; (viii) The amount of the civil penalty or fine necessary to deter future violations; (ix) Past Commission decisions in similar situations; and (x) Other relevant factors. 52 Pa. Code § 69.1201(c). The Commission will not apply the standards as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b).

The substantial public benefits of the Settlement, as well as the ten factors that the Commission considers in reviewing a settlement of an alleged violation, are addressed in the section that follows. For the reasons explained below, the Settlement is in the public interest and should be approved.

### **III. THE SETTLEMENT IS IN THE PUBLIC INTEREST**

#### **A. SUMMARY**

The Settlement, once approved, will resolve all issues related to the Formal Complaint of I&E related to the April 12 Incident. The Formal Complaint alleges that West Penn violated the Public Utility Code, the Commission's regulations and National Electric Safety Code ("NESC") standards, with respect to the April 12 Incident and the events leading up to the Incident. Based on these allegations, the Formal Complaint requested the Commission order West Penn to pay a civil penalty, and to implement a number of changes, including modifications to its construction standards, employee training policies, practices and procedures and field manuals. Had this matter been fully litigated, West Penn would have denied each of the alleged violations of the NESC, the Commission's regulations, or the Code, raised defenses to each of these allegations, and defended against the same at hearing.

Throughout the investigative and Formal Complaint process, West Penn cooperated with I&E and the Joint Petitioners engaged in an extensive and comprehensive series of technical discussions surrounding vegetation management, maintenance, record keeping, and other standards, practices and policies used throughout West Penn's service territory. Many of the agreed upon changes have already been implemented or are in progress by West Penn and, as a result of the investigation and ongoing discussions with I&E, West Penn has begun the process to remove all existing primary facilities from West Penn Pole No. 146791-WP45, including all supporting crossarms, hardware and insulators, to West Penn Pole No. 491873-WP45. These

actions have been undertaken in the interest of continuous improvement to West Penn's safety performance.

Apart from these actions, West Penn has already completed or is in the process of completing, many of the other elements outlined and agreed to within the Settlement, including increasing the frequency of its overhead inspection protocols, making changes to its practices and procedures, and developing its new work management system for use in vegetation management applications, to name several.

Furthermore, West Penn has made a substantial economic concession to I&E in the form of a substantial civil penalty. Finally, the terms and conditions of the Settlement align with the ten factors that may be considered under the Commission's Policy Statement. Accordingly, the Settlement should be approved.

## **B. DESCRIPTION OF THE SETTLEMENT**

Among the terms and conditions of the Settlement, West Penn has agreed to the following measures to be implemented upon approval of the Settlement:

1. **Civil Penalty**: West Penn will pay a civil penalty in the amount of One Million, One Hundred and Seventy-Five Thousand Dollars (\$1,175,000.00) pursuant to 66 Pa.C.S. § 3301(c). Said payment shall be made within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania." The docket number of this proceeding, C-2021-3024913, shall be indicated on the certified check or money order and the payment shall be sent to:

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

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f) and shall not be passed through as an additional charge to West Penn's customers in Pennsylvania.

2. **Immediate Removal of Facilities:** West Penn will immediately remove all existing primary facilities from West Penn Pole No. 146791-WP45, including all supporting crossarms, hardware and insulators, to West Penn Pole No. 491873-WP45.
3. **Work Management Software Solution:** By end of 2Q 2023, West Penn will implement a work management software solution tool to enable the Company's employees and contractors to manage, document, track, inspect, and report on the aspects of vegetation management work. All terms and/or abbreviations utilized for documentation within the software solution tool that describe the type of work, any other category, or action shall be from a predetermined and defined list from FirstEnergy's Vegetation Management Distribution Specifications.
4. **Maintenance of Detailed Records of Required Rework:** Upon entry of the Commission's Final Order approving the Settlement Agreement, West Penn will maintain detailed records of any areas that have been identified as requiring additional rework and inspection for at least three (3) cycles.
5. **Maintenance of Detailed Records of Rework:** Upon entry of the Commission's Final Order approving the Settlement Agreement, West Penn will maintain detailed records of rework that was performed and inspected for at least three (3) cycles.
6. **Review of Vegetation Management Standards:** West Penn will review its existing vegetation management standards to ensure compliance with ANSI

standards for vegetation management, including all associated clearance specifications within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement.

7. **Revisions to Distribution Vegetation Management Standards:** Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, West Penn will revise its Distribution Vegetation Management Standards to include the following:
  - a. Specifications that meet the ANSI A300 Standard, and which require accounting for various factors including, but not limited to the voltage and height of the conductor, the type of tree, its growth rate and branching habit, the extent of potential for vegetation to interfere with energized conductors and importance of facilities in maintaining safety and reliability;
  - b. Requirements for on-cycle trimming to be conducted to achieve a minimum of cycle length clearance from all primary conductors based on tree species and growing conditions. In cases where cycle length is unattainable, twelve (12) feet of clearance shall be achieved;
  - c. The following language: "Contractor personnel shall be properly trained in tree species identification and growth characteristics to perform the work proficiently and safely to comply with all applicable laws, regulations and local ordinances. The Contractor shall provide all training and secure all required licenses and certifications to perform work and shall provide proof of these upon request"; and

- d. The requirement that West Penn will conduct an annual kickoff meeting with its contractors to review all requirements of the Distribution Vegetation Management Standards, to include the topics of safety, contractor employee responsibilities, emergency work, recordkeeping, landowner notification, tree species identification and growth characteristics, clearance requirements, and vegetation management methods.
8. **Maintenance of Detailed Records of Vegetation Management:** Upon entry of the Commission's Final Order approving the Settlement Agreement, West Penn will maintain detailed vegetation management records for at least three (3) cycles, to include the following information, inter alia:
- a. The name of the company performing the vegetation management work;
  - b. The beginning and ending dates of the vegetation management work;
  - c. The locations of the vegetation management work, including the pole numbers of the starting and finishing locations;
  - d. The number of work hours to perform such work;
  - e. A reference to the standard to vegetation management work was performed;
  - and
  - f. A legend explaining any code references.
9. **Inspection of Vegetation Management:** A West Penn forestry representative will thoroughly inspect the vegetation management work completed by employees and contractors and maintain detailed records of such inspections for at least three (3) cycles.

10. **Vegetation Management Quality Control Program:** Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, West Penn will implement a vegetation management quality control program under which West Penn will:
  - a. Conduct field assessments on samples of completed and inspected work and provide feedback on areas of improvement and best practices to staff and vendors; and
  - b. Implement field assessments of work completed by West Penn Forestry Services to provide feedback on areas of improvement and best practices to internal management and staff.
  
11. **Review of Emergency Response Procedures:** Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, West Penn will conduct a review of its existing procedures to ensure effective and efficient response to 911 dispatches and requests to de-energize. After the completion of such review, West Penn will provide I&E's Electric Safety Division with the following:
  - a. Detailed documentation of the review performed on West Penn's existing procedures; and
  - b. Information on the Company's plans for improving its existing procedures to ensure effective and efficient 911 dispatches and emergency requests to de-energize.
  
12. **Review of Primary System:** Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, West Penn will

initiate a review of its primary system for facilities that have no current load or connected customers for possible removal. Once identified, an analysis will be undertaken as to whether the facilities can be removed and, if so, these facilities will be de-energized if necessary and removed.

13. **Evaluation of De-Energized Facilities:** West Penn will evaluate de-energized facilities that are not currently in use for removal based on possible future use during its standard overhead circuit inspection cycle.
14. **Maintenance of Facilities Not Removed:** West Penn will ensure that any facilities not removed will be maintained in accordance with the NESC for energized facilities.
15. **Mandatory Training Program:** Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, West Penn will implement a mandatory training program for all employees and contractors inspecting West Penn's overhead circuit facilities. The program shall include training on the following, inter alia:
  - a. Identification and documentation of unused facilities; and
  - b. The requirements for inspecting and maintaining West Penn's system as presented in its Biennial Inspection, Maintenance, Repair and Replacement Plan ("I&M Plan").

Qualification and certification of successful training will be required for all employees and contractors performing any type of overhead circuit inspection. Mandatory refresher training will be performed on an annual basis to ensure compliance.



16. **Review of Vegetation Management and Inspection Records:** West Penn will make vegetation management and inspection records available to I&E's Electric Safety Division for review upon request.
17. **Modifications to Training Program:** Within twelve (12) months of the entry date of a Final Order, West Penn will modify its training program to ensure that appropriate employees and contractors are properly trained in the use of West Penn's vegetation work management system, proper record keeping, and proper notation for follow up work.
18. **Visual Overhead Inspections:** West Penn will visually inspect its overhead lines and equipment on a five (5) year cycle, beginning January 1, 2022, which shall be reflected in the I&M Plan for the period of January 1, 2022 to December 31, 2023.

Notably, West Penn has already implemented or begun to implement certain of the terms included in the Settlement as a part of its continuous improvement efforts.

Importantly, as discussed in Paragraph 43 to the Settlement, the Parties agree that it is their intent that the Settlement not be admitted as evidence in any potential civil proceeding involving this matter. It is further understood that, by entering into the Settlement, West Penn has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in all proceedings, including but not limited to any civil proceedings, that may arise as a result of the circumstances described in the Settlement.

The terms of the Settlement fully resolve all of the issues raised in and relief requested by I&E's Formal Complaint, including the payment of civil penalties. As explained below, West Penn believes that approval of the Settlement is in the public interest. Further, acceptance of the

Settlement will avoid the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the parties.

### **C. PUBLIC BENEFITS OF THE SETTLEMENT**

If approved, the Settlement will provide substantial and important benefits to the customers and communities served by West Penn, including significant enhancements to West Penn's standards, policies, practices and procedures related to the installation, inspection and maintenance of connections. As noted below, these enhancements are designed to decrease the likelihood of incidents similar to the April 12 Incident from occurring in the future.

### **D. FACTORS UNDER THE COMMISSION'S POLICY STATEMENT**

Under the Policy Statement, the Commission may consider ten specific factors when evaluating settlements of alleged violations of the Public Utility Code and the Commission's Regulations. 52 Pa. Code § 69.1201(c).

The first factor considers whether the conduct at issue was of a serious nature and, if so, whether the conduct may warrant a higher penalty. The alleged conduct in this case involves a conductor ("Phase A") owned and operated by West Penn which fell into the wooded property of Terry and Frances Colton at 203 McKrell Road, Tarentum, Pennsylvania 15084 ("Colton Property") causing a brush fire. Appendix A ¶¶ 1, 38. The West Deer Township Police Department and Volunteer Fire Department responded to an emergency call from the Colton Property regarding the brush fire and extinguished the fire. Appendix A ¶ 39. After the fire was extinguished, Terry Colton walked through the wooded area of the Colton Property, came into contact with Phase A and was electrocuted. Appendix A ¶¶ 40, 41. These events resulted in the fatal electrocution of one customer and fire damage to the customer's property. *See* Appendix A ¶¶ 41, 45. Electric safety is a paramount concern of the Company, and West Penn continually strives to provide safe electric service to its customers. The terms and conditions of the Settlement

adequately take the alleged conduct into account, as well as West Penn's response under the circumstances.

The second factor considers the seriousness of the consequences of the incident at issue. West Penn believes that it promptly responded to the incident and, since the event, has begun to identify, de-energize and remove unused facilities in an effort to decrease the likelihood of similar events in the future. Unfortunately, those actions did not avoid the serious consequences of the incident. The terms and conditions of the Settlement recognize the seriousness of the incident and are designed to enhance West Penn's system safety and service reliability and to minimize the likelihood that a similar incident occur in the future.

The third factor to be considered in this case, namely, whether West Penn's alleged conduct was intentional or negligent, does not apply to the present case because this proceeding is a settled matter. To the extent this factor is to be considered, there has been no finding that West Penn's conduct was either intentional or negligent in nature as is typical in a matter that is being fully resolved through a negotiated settlement.

The fourth factor to be considered is whether West Penn made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. West Penn undertook an extensive investigation of the events related to the April 12 Incident and cooperated with and assisted I&E in its investigation of the incident. In addition, after the incident, West Penn permanently de-energized the subject facilities. West Penn has also, among other things, begun taking steps to identify, de-energize and remove unused facilities elsewhere on its system. Finally, as outlined above, West Penn will adopt several changes to its policies and practices to further enhance the safety and reliability of its service. The terms and

conditions of the Settlement properly acknowledge West Penn's efforts to modify and adopt internal policies and procedures to address the alleged issues.

The fifth factor to be considered deals with the number of customers affected and the duration of the violation. In this case, a system outage and electrocution occurred. The electrocution resulted in the fatal electrocution of one customer and fire damage to the customer's property. Others in the community experienced a service interruption as a result of the incident. As explained above, West Penn believes that it promptly responded to the incident and took actions to interrupt the flow of electricity to the downed line. The terms and conditions of the Settlement adequately consider the serious nature of the incident, the number of customers affected, as well as West Penn's response under the circumstances.

The sixth factor considered is the compliance history of West Penn. After the incident, West Penn has, among other things, begun taking steps to identify, de-energize and remove unused facilities. The Settlement also contains further commitments to revise and enhance a number of the Company's standards, policies, practices and programs related to the installation, inspection and maintenance of its overhead lines. These enhancements to West Penn's existing standards, policies, practices and programs will benefit its customers in the future. As such, the Settlement further evidences West Penn's good faith efforts to enhance the safety and reliability of its electrical system, consistent with the purposes of the Code and the Commission's regulations.

The seventh factor considered is whether the regulated entity cooperated with the Commission's investigation. West Penn supported and cooperated with the Commission and its staff throughout its investigation, as well as the Commission complaint and settlement process. West Penn also demonstrated a commitment consistent with the Commission's public safety goals

and objectives by implementing or beginning to implement many of the changes set forth in the settlement prior to the filing of the Settlement.

The eighth factor is whether the amount of the civil penalty or fine will deter future violations. West Penn submit that a civil penalty in the amount of \$1.175 million is quite substantial and has substantial deterrent weight. West Penn believes that the civil penalty set forth in the Settlement appropriately recognizes the seriousness of the matter but also reflects a negotiated compromise by the parties that considers the efforts of the Company since the April 12 Incident occurred.

The ninth factor examines past Commission decisions in similar situations. When all relevant factors are evaluated, the Settlement is not inconsistent with past Commission actions. Moreover, since this is a settled matter, it should be considered on its own merits.

Relative to the tenth factor, West Penn submits that additional relevant factors are critically important to the Settlement. First, a settlement avoids the necessity for the prosecuting agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiated from their initial litigation positions. The fines, penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise but allow the parties to move forward and to focus on implementing the agreed upon remedial actions. West Penn has demonstrated a commitment consistent with the Commission's public safety goals and objectives and broadly expanded the scope of the general public that will benefit from the commitments made in this Settlement.

Based on the foregoing, the Settlement should be considered fair, equitable and reasonable under the Commission's Policy Statement.

**IV. CONCLUSION**

WHEREFORE, West Penn Power Company submits that this Settlement is the result of the parties' cooperative efforts, and constitutes a fair, equitable, and reasonable resolution of this proceeding. The Settlement resolves all issues related to the I&E complaint and satisfies the ten factors set forth in the Pennsylvania Public Utility Commission's Policy Statement, 52 Pa. Code § 69.1201(c). West Penn Power Company supports the Settlement and respectfully requests that the Honorable Administrative Law Judge Mary D. Long and the Pennsylvania Public Utility Commission approve the Settlement in its entirety, without modification.

Respectfully submitted,

Date: December 1, 2021



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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)

*Counsel for West Penn Power Company*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

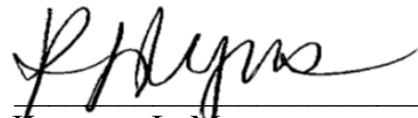
Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No.: C-2021-3024913
	:	
West Penn Power Company,	:	
Respondent	:	

**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).

**Served via Electronic Mail Only**

Tori L. Giesler, Esquire  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001  
[tgiesler@firstenergycorp.com](mailto: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](mailto:komyers@pa.gov)

Date: December 1, 2021