



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

December 18, 2023

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
West Penn Power Company
Docket No. C-2023-3042656
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 matter including the following three Appendices: Appendix A – Proposed Ordering Paragraphs; Appendix B - Statement in Support of the Bureau of Investigation and Enforcement and Appendix C – Statement in Support of West Penn Power Company.

Copies are being served on the parties of record in accordance with the attached Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'G. Rosul', written in a cursive style.

Grant Rosul
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 318204
(717) 783-5243
grosul@pa.gov

GR/ac
Enclosures

cc: Office of Special Assistants (*via email* – ra-OSA@pa.gov)
Michael L. Swindler, Deputy Chief Prosecutor, I&E-Enforcement (*via email*)
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2023-3042656
	:	
West Penn Power Company	:	

JOINT PETITION FOR APPROVAL OF SETTLEMENT

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and West Penn Power Company (“West Penn” or “Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to the above-docketed informal investigation.

As part of this Settlement Agreement, I&E and West Penn (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission enter a Final Opinion and Order approving the Settlement without modification. An appendix entitled Proposed Ordering Paragraphs is attached hereto as Appendix A. Statements in Support of the Settlement expressing the individual views of I&E and West Penn are attached hereto as Appendix B and Appendix C, 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 attorneys, with offices at 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.

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

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

6. 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.

7. 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). 66 Pa.C.S. § 3301.

8. 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.

9. 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.

10. 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.

11. Pursuant to 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, Commission staff has the authority to conduct informal investigations or informal proceedings in order to gather data and/or to substantiate allegations of potential violations of the Commission's regulations.

12. I&E instituted an informal investigation of West Penn based on information referred to I&E by the Commission’s Bureau of Consumer Services (“BCS”) regarding an incident where a West Penn primary distribution line made contact with a light pole causing damage. I&E determined that this complaint warranted further investigation to examine whether the actions of West Penn violated the Code, Commission regulations, and NESC.

13. As a result of its informal investigation, I&E filed a Formal Complaint (“Complaint”) on September 1, 2023.

14. West Penn filed an Answer and New Matter on September 21, 2023.

15. I&E filed its Reply to New Matter on October 5, 2023.

16. Subsequent to these filings, the Parties entered into settlement negotiations.

As a result of successful negotiations between I&E and West Penn, the Parties have reached an agreement on an appropriate outcome to the informal investigation as encouraged by the Commission’s policy to promote settlements. *See* 52 Pa. Code § 5.231. The Settlement also is consistent with the Commission’s Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations, 52 Pa. Code § 69.1201. The duly authorized Parties executing this Settlement Agreement agree to the settlement terms set forth herein and urge the Commission to approve the Settlement Agreement as submitted as being in the public interest.

II. BACKGROUND

17. On August 2, 2021, BCS referred a complaint to I&E’s Electric Safety Division regarding a storm incident where a West Penn primary distribution line, attached between West Penn Pole Nos. 18660 and 154287, made contact with a light pole causing damage (hereinafter referred to as “incident”).

18. The 7,200-volt phase-to-ground primary line is near the public parking lot of the Hyatt Place Hotel.

19. I&E's Electric Safety Division initiated an investigation. The following background consists of a summary of the findings of I&E Safety Division's investigation:

- A. On or about November 15, 2020, a windstorm hit the Washington, Pennsylvania area displacing an energized primary distribution line of West Penn, located on the property of Meadows Racetrack and Casino at 212 Racetrack Road in Washington, Pennsylvania.
- B. The energized primary line came into contact with one of the light poles located in the parking lot of Meadows Racetrack and Casino.
- C. The cause of the extended primary line displacement was due to excessive sag.
- D. The high voltage from this primary line burned the light pole and sent high voltage through the grounding system of the property's interconnected exterior lighting circuits, causing extensive over voltage damages to the lighting system lines and electrical protection equipment.
- E. On November 15, 2020, Meadows Hotel Associates LLC reported a power outage to West Penn.
- F. The following day, on November 16, 2020, a West Penn hazard responder arrived at the scene of the incident and noted that the customer still had power.
- G. On November 25, 2020, West Penn removed the excessive sag from all three primary line(s) that had allowed the field-side line to blow into the light pole and cause damage.
- H. Upon further inspection by an electrical contractor, Rozzo Electric, it was determined that West Penn's line made contact with the pole twice, created burn marks on the pole and the primary conductor, and the high voltage travelling through the pole while trying to find ground damaged grounding conductors on two poles and the hotel lighting panel.
- I. The horizontal clearance of the primary line in question was measured by West Penn to be eight (8) feet to the light pole under ordinary conditions.

- J. The absence of West Penn oversight contributed to the creation of an unsafe condition/environment which allowed the primary distribution line to be displaced during a windstorm and cause damage to the parking lot lighting system.
- K. I&E determined that West Penn failed to maintain adequate horizontal (wind displacement) clearance to the light pole and that West Penn failed to recognize the compliance issue during their overhead circuit inspections.

III. ALLEGED VIOLATIONS

20. Based on information obtained through its investigation, as described above, and a review of the Commission's regulations and relevant regulations and statutes, I&E filed a formal complaint alleging that West Penn violated certain provisions of the Commission's regulations, the NESC, and the Code in that West Penn failed to maintain the required horizontal clearance with wind displacement from the primary line to the light pole, which created an ongoing unsafe and hazardous condition, resulted in property damage, and placed the public safety in danger.

If proven, this is a violation of NESC § 234(C) (requiring a horizontal clearance from a conductor over 720V to 22kV to an installation to not be less than 4.5 feet when displaced by the wind), 52 Pa. Code § 57.194(b) (requiring an EDC to "install, maintain and operate its distribution system in conformity with the applicable requirements of the [NESC]"), 52 Pa. Code § 57.28(a)(1) (requiring an electric utility to "use reasonable effort to properly warn and protect the public from danger" and to "exercise reasonable care to reduce the hazards to which employees, customers, the public and others may be subjected to by reason of its provision of electric utility services and its associated equipment and facilities"), 52 Pa. Code § 57.194(a) (requiring an EDC to "furnish and maintain adequate, efficient, safe and reasonable service and facilities" and "to make repairs, changes, alterations, substitutions,

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

21. In its Answer, West Penn denied the alleged violations, raised defenses and mitigating factors in support of its defense, and would have defended against the same at hearing.

22. West Penn understands the nature of the allegations that I&E asserted in its formal complaint and has put into effect appropriate measures that have been approved by I&E to ensure that such issues would not be likely to reoccur.

23. As a mitigating factor to the above allegations, I&E acknowledges that West Penn fully cooperated with I&E’s investigation. During the investigatory process, West Penn fully complied with I&E’s requests for information and documentation and timely provided I&E with records, correspondences, and other documents as requested by I&E.

IV. SETTLEMENT TERMS

24. Pursuant to the Commission’s policy of encouraging settlements that are reasonable and in the public interest,¹ I&E and West Penn held a series of discussions prior to and after the filing of I&E’s Complaint that culminated in this Settlement. The purpose of this Joint Petition for Approval of Settlement is to terminate I&E’s Complaint and to settle

¹ See 52 Pa. Code § 5.231(a).

this matter completely without further litigation. Although I&E filed a formal Complaint, there has been no evidentiary hearing before any tribunal, and no sworn testimony has been taken in any proceeding related to this incident.

25. West Penn fully acknowledges the seriousness of I&E's allegations and recognizes the need to prevent the reoccurrence of the misconduct which was the subject of I&E's instant Complaint.

26. The Parties recognize that their positions and claims are disputed and given that the precise outcome of a contested proceeding is uncertain, the Parties further recognize the benefits of amicably resolving the disputed issues through settlement.

27. I&E and West Penn, intending to be legally bound and for consideration given, desire to fully and finally conclude this Complaint and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:

- A. West Penn will pay a civil penalty in the amount of Seventeen Thousand Five Hundred Dollars (\$17,500.00). 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 shall be indicated with 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. West Penn has taken corrective action to bring the conductor into compliance and implemented revisions to its operating procedures which will act as safeguards against future misconduct. The pertinent portions of West Penn's modified procedures are briefly described as follows:

- 1) West Penn, including all contracted employees, shall be re-trained to recognize potential clearance issues from West Penn's lines to all structures and objects;
- 2) The new heightened awareness training shall be appended to West Penn's overhead lines and equipment inspection policy and procedures with clear guidelines for specified minimum clearances; and
- 3) Documentation of successful training verification shall be kept on file by West Penn for future reference.

28. Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any other complaints or initiate other action against West Penn at the Commission with respect to the allegations which were the subject of I&E's instant Complaint.

29. 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's formal Complaint and avoids the time and expense of further litigation, which entails hearings, travel for out-of-state witnesses, and the preparation and filing of briefs, exceptions, and reply exceptions, as well as possible appeals. Attached as Appendices B and C are Statements in Support submitted by I&E and West Penn, respectively, setting forth the bases upon which the Parties believe the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

30. 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 involved. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

31. 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 this Settlement Agreement 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 all parties within twenty (20) business days after entry of an Order modifying the Settlement.

32. The Parties agree that the underlying allegations were not the subject of any hearing or formal procedure 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 all proceedings that may arise as a result of the circumstances described in this Settlement Agreement.

33. 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.

34. 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 Agreement 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 future proceedings, except to the extent necessary to effectuate 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.

35. 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 issue an Order approving the terms of this Settlement Agreement in their entirety as being in the public interest.

[Signature Page to Follow]

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement


By: 

Grant Rosul
Prosecutor
PA Attorney ID No. 318204
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120
grosul@pa.gov

Date: December 18, 2023

Respectfully Submitted,

West Penn Power Company

By: 

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

Date: December 18, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
Complainant :
v. : Docket No. C-2023-3042656
West Penn Power Company, :
Respondent :

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Petition for Approval of Settlement filed on December 18, 2023, between the Commission’s Bureau of Investigation and Enforcement and West Penn Power Company is approved in its entirety without modifications.

2. That within thirty (30) days of the date this Order becomes final, West Penn Power Company shall pay Seventeen Thousand Five Hundred dollars (\$17,500), which consists of the entirety of the civil penalty amount. Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

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

3. That the civil penalty shall not be tax deductible under Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

4. That documentation of successful training verification shall be kept on file by West Penn for future reference.

5. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

6. That the above-captioned matter shall be marked closed upon receipt of West Penn Power Company's payment of the administrative penalty.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
Complainant :
v. : Docket No. C-2023-3042656
West Penn Power Company, ;
Respondent :

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

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

The Bureau of Investigation and Enforcement (“I&E”) offers the following Statement in Support of the Joint Petition for Approval of Settlement between West Penn Power Company (“West Penn”) and I&E for West Penn’s violations of the Public Utility Code (the “Code”), 66 Pa.C.S. §§ 101 *et seq.* and Commission regulations.

I. INTRODUCTION

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 *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).

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. 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.

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

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. 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.

Pursuant to 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, Commission staff has the authority to conduct informal investigations or informal proceedings in order to gather data and/or to substantiate allegations of potential violations of the Commission’s regulations.

I&E instituted an informal investigation of West Penn based on information referred to I&E by the Commission's Bureau of Consumer Services ("BCS") regarding an incident where a West Penn primary distribution line made contact with a light pole causing damage. I&E determined that this complaint warranted further investigation to examine whether the actions of West Penn violated the Code, Commission regulations, and the NESC.

However, after a thorough review of the case and discussion with West Penn, the parties have reached mutually agreeable settlement terms and believe that it is in the public interest to settle the matter.

II. SUMMARY OF SETTLEMENT

The Joint Petition for Approval of Settlement ("Settlement") resolves all outstanding violations of the Code stemming from the incident wherein West Penn's primary distribution line, attached between West Penn Pole Nos. 18660 and 154287, made contact with a light pole causing damage to the Hyatt Hotel at the Meadowlands Racetrack and Casino (hereinafter referred to as "incident").

Pursuant to the Settlement, West Penn will adhere to corrective action that it has already taken, which will act as safeguards against future misconduct. Specifically, West Penn will adhere to its revised operating procedures including retraining its workforce to recognize potential clearance issues from West Penn's lines to all structures and objects, and the new heightened awareness training shall be appended to West Penn's overhead lines and equipment inspection policy and procedures with clear guidelines for specified

minimum clearances. Documentation of successful training verification shall be kept on file by West Penn for future reference.

Further, West Penn will pay a civil penalty of \$17,500 to the Commission within 30 days of approval of the Settlement.

III. THE SETTLEMENT IS IN THE PUBLIC INTEREST AND SATISFIES THE *ROSI* FACTORS TO DETERMINE THE APPROPRIATE CIVIL PENALTY

Section 3301(a) of the Code provides that a public utility, or any other person or entity subject to the Code, violates any part of the Code, is subject to a civil penalty of not more than one thousand dollars (\$1,000) per violation. 66 Pa.C.S. § 3301(a). The Code further provides that each and every day's continuance in the violation of the Code or any regulation, order, judgment, or decree shall be a separate and distinct offense. 66 Pa.C.S § 3301(b).

In its Complaint, I&E had alleged that West Penn's actions and failure to act constituted a violation of NESC § 234(C) (requiring a horizontal clearance from a conductor over 720V to 22kV to an installation to not be less than 4.5 feet when displaced by the wind), 52 Pa. Code § 57.194(b) (requiring an EDC to "install, maintain and operate its distribution system in conformity with the applicable requirements of the [NESC]"), 52 Pa. Code § 57.28(a)(1) (requiring an electric utility to "use reasonable effort to properly warn and protect the public from danger" and to "exercise reasonable care to reduce the hazards to which employees, customers, the public and others may be subjected to by reason of its provision of electric utility services and its associated equipment and facilities"), 52 Pa. Code § 57.194(a) (requiring an EDC to "furnish and

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

Further, from the time of the incident (November 15, 2020), to the date the deficient conditions were remedied and brought into compliance with the Code, Commission regulation, and the NESC on November 25, 2020, was ten (10) days.

The Commission’s Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201, lists the following factors which the Commission shall consider in determining the appropriate civil penalty:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue 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.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
- (5) The number of customers affected and the duration of the violation.
- (6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.
- (7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.
- (8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.
- (9) Past Commission decisions in similar situations.
- (10) Other relevant factors.

69 Pa. Code § 1201(c).

Regarding the first and second factor, the conduct at issue was of a serious nature. West Penn's 720 kV primary distribution line, as a result of not conforming to the requirements of NESC § 234(C), made contact with a light pole that was eight feet away during windy and inclement weather. The consequences of the conduct were also serious. As a result, the Hyatt Hotel lost power for a period of time and suffered electrical damage to equipment. Additionally, the incident could have presented a serious safety hazard had anyone been near the light pole at the time of the incident.

The third factor, whether the conduct at issue was intentional or negligent, is not relevant here, as this factor “may only be considered in evaluating litigated cases.” Here, the parties have reached a settlement.

Regarding the fourth factor, West Penn has made efforts to modify its internal practices and procedures to avoid the conduct responsible for the incident and prevent similar future line contact incidents. As stated above, West Penn will adhere to its revised operating procedures including retraining its workforce to recognize potential clearance issues from West Penn’s lines to all structures and objects, and the new heightened awareness training shall be appended to West Penn’s overhead lines and equipment inspection policy and procedures with clear guidelines for specified minimum clearances. Documentation of successful training verification will be kept on file by West Penn for future reference.

Regarding the fifth factor, one customer — the Hyatt Hotel at the Meadowlands Racetrack and Casino — was affected by the incident. The hotel lost power for several hours. The damage to the hotel, according to Hyatt Hotel management, exceeded \$20,000, including costs to hire an electrical contractor to repair damage, costs to hire an attorney, and economic loss from lost hotel and corporate staff time.

West Penn has a history of compliance with the Code and Commission regulations. However, it has engaged in conduct that violated the Code on several occasions in the past, including incidents in 2018¹ and 2019.²

¹ See C-2021-3024913.

² See C-2020-3019952.

As to the seventh factor, whether the regulated entity cooperated with the Commission's investigation, it is I&E's position that West Penn has been cooperative in this investigation. Additionally, the Electric Safety Division has informed I&E that West Penn's line supervisor and crew were responsive to the suggestion to remove slack in overhead lines in other locations after this incident occurred.

The civil penalty agreed to by both parties is sufficient to deter future violations of the Code, but less than the amount sought by I&E in its complaint. It represents a compromise that reflects the factors discussed above. I&E believes the civil penalty agreed upon by the parties is sufficient to deter future violations. The agreed upon civil penalty in the Settlement is similar to the civil penalty sought in other electric safety cases wherein an EDC violated the NESC, the Code, and Commission regulation as a result of improper or unsafe overhead line condition and where there was no injury to persons. This settlement will encourage West Penn's compliance with the Code and Commission regulations.

IV. CONCLUSION

The Settlement is a fair and reasonable compromise between the parties. Had this matter proceeded to litigation, West Penn would have disputed the allegations in the complaint and I&E would have had to expend staff time and resources to prepare for and conduct the hearing. Aside from avoiding litigation, the Settlement is in the public interest because it appropriately penalizes West Penn for its non-compliance with the NESC, the Code, and Commission regulation and puts future compliance efforts and safety at the center of the agreement.

For the reasons set forth above, the Commission should approve the Joint Petition for Approval of Settlement, without modification.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "G. Rosul", with a long horizontal flourish extending to the right.

Grant Rosul
Prosecutor
PA Attorney ID No. 318204

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 783-5243
grosul@pa.gov

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 :
v. : Docket No. C-2023-3042656
 :
West Penn Power Company :

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

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE ALPHONSO ARNOLD:

West Penn Power Company (“West Penn” or the “Company”) hereby files this Statement in Support of the Joint Petition for Settlement (“Settlement”) entered by West Penn 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 an incident where a West Penn distribution line made contact with a light pole that occurred on November 15, 2020 at 212 Racetrack Drive, Washington, PA 15301 (“Incident”). West Penn respectfully requests that the Honorable Administrative Law Judge Alphonso Arnold (the “ALJ”) and the Commission approve the Settlement, including the terms and conditions thereof, without modification.

West Penn undertook an investigation of the events related to the 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 engaged in 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 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 prosecutor 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 law resort services to approximately 720,000 customers throughout its certificated service territory subject to the regulatory jurisdiction of the Commission.

B. BACKGROUND

On November 15, 2020, a windstorm in Washington, Pennsylvania displaced an energized primary distribution line of West Penn, located on the property of Meadows Racetrack and Casino at 212 Racetrack Road in Washington, Pennsylvania (“Meadows Casino”). The energized primary line came into contact with one of the light poles located in the parking lot of Meadows Casino. The cause of the extended primary line displacement was due to excessive sag. The high voltage

from this primary line burned the light pole and sent high voltage through the grounding system of the property's inter-connected exterior lighting circuits, causing extensive over voltage damages to the lighting system lines and electrical protection equipment. On November 15, 2020, Meadows Hotel Associates LLC reported a power outage to West Penn. The following day, on November 16, 2020, a West Penn hazard responder arrived at the scene of the incident and noted that the customer still had power.

On November 25, 2020, West Penn removed the excessive sag from all three primary line(s) that had allowed the field-side line to blow into the light pole and cause damage. An electrical contractor, Rozzo Electric, determined that West Penn's line made contact with the pole twice, created burn marks on the pole and the primary conductor, and the high voltage travelling through the pole while trying to find ground damaged grounding conductors on two poles and the hotel lighting panel.

As a result of the Incident, I&E filed a formal complaint alleging that West Penn violated the Public Utility Code, the Commission's regulations and National Electric Safety Code ("NESC") standards in that West Penn failed to maintain the required horizontal clearance with wind displacement from the primary line to the light pole, which created an ongoing unsafe and hazardous condition, resulted in property damage, and placed the public safety in danger.

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 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 state 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) 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 these 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 afford 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 Incident. The Formal Complaint alleges that West Penn violated the Public Utility Code, the Commission's regulations and NESC, with respect to the Incident and the events leading up to the Incident. Based on these allegations, the Formal Complaint requested that the Commission order West Penn to pay a civil penalty. 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 allegation, and defended against the same at hearing.

Throughout the investigative and Formal Complaint process, West Penn cooperated with I&E and engaged in discussions surrounding the training on policies and procedures regarding clearance issues and overhead lines and equipment inspections. The agreed upon changes have been implemented by West Penn as a result of the investigation and ongoing discussions with I&E. These actions have been undertaken in the interest of continuous improvement to West Penn's safety and reliability performance.

Furthermore, West Penn has made an economic concession to I&E in the form of a 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 Seventeen Thousand Five Hundred Dollars (\$17,500.00). 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 shall be indicated with 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. **Corrective Action**: West Penn has taken corrective action to bring the conductor into compliance and implemented revisions to its operating procedures which will act as safeguards against future misconduct. The pertinent portions of West Penn’s modified procedures are briefly described as follows:

- 1) West Penn, including all contracted employees, shall be re-trained to recognize potential clearance issues from West Penn’s lines to all structures and objects;
- 2) The new heightened awareness training shall be appended to West Penn’s overhead lines and equipment inspection policy and procedures with clear guidelines for specified minimum clearances; and

- 3) Documentation of successful training verification shall be kept on file by West Penn for future reference.

Notably, West Penn has already implemented certain of the terms included in the Settlement as part of its continuous improvement efforts. It is 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.

3. 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 training on policies and procedures regarding clearance issues and overhead lines and equipment inspections. As noted below, these enhancements are designed to decrease the likelihood of incidents similar to the Incident from occurring in the future.

4. 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 one of West Penn's energized primary distribution lines coming into contact with one of the light poles located in the parking lot of Meadows Casino. The voltage of the primary line burned the light pole and sent high voltage through the grounding system of the property's inter-connected exterior lighting circuits. This caused damage to the lighting system lines and electrical protection equipment, specifically, the grounding conductors on two poles and the Meadows Casino lighting panel. Electric safety is a paramount concern to West Penn and the Company continually strives to provide safe electric service to its customers. The terms and conditions of the Settlement adequately take the alleged conduct into account.

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 training to employees to recognize potential clearance issues as well as heightened awareness training regarding specified minimum clearance for West Penn's overhead lines. The terms and conditions of the Settlement recognize the seriousness of the incident and are designed to enhance West Penn's safety and service reliability and to minimize the likelihood of a similar incident occurring in the future.

The third factor considers whether West Penn's alleged conduct was intentional or negligent. Because this proceeding is a settled matter, this factor does not apply. To the extent that 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. As a result of this Incident, West Penn undertook an investigation and the events related and cooperated with and assisted I&E in its investigation. As outlined above, West Penn has adopted several changes to its training policies and procedures 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, property damage and a system outage was reported at the Meadows Casino on November 15, 2020. West Penn responded the following day on November 16, 2020, and noted that the customer still had power. On November 25, 2020, West Penn removed the excessive sag from the primary lines. West Penn believes that it promptly responded to the Incident. The terms and conditions of the Settlement adequately consider the nature of 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. Since the incident, West Penn has, among other things, brought the conductor into compliance and implemented revisions to its operating procedures. These enhancements to West Penn's existing standards, policies, and procedures 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 to be 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 eight factor is whether the amount of the civil penalty or fine will deter future violations. West Penn submits that a civil penalty in the amount of \$17,500.00 as set forth in the Settlement appropriately recognizes the seriousness of the matter but also reflects a negotiated compromise by the parties that considered the efforts of the Company since the Incident occurred.

The ninth factor considers past Commission decisions in similar situations. When all of the relevant factors are evaluated, the Settlement is not inconsistent with the 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 Alphonso Arnold and the Pennsylvania Public Utility Commission approve the Settlement in its entirety, without modification.

Respectfully submitted:

By: 

Tori L. Giesler
PA Attorney ID No. 207742
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6658
tgiesler@firstenergycorp.com

Dated: December 14, 2023

Attorney 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-2023-3042656
	:	
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).

Service by Electronic Mail

Tori L. Giesler
Supervising Counsel
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6658
tgeisler@firstenergycorp.com



Grant Rosul
Prosecutor
PA Attorney ID No. 318204

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 783-5243
grosul@pa.gov

Dated: December 18, 2023