



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

Date of Service: May 31, 2012



C-2012-2307244

Bureau of Investigation and Enforcement

v.

WEST PENN POWER COMPANY

Dear Sir/Madam:

The Pennsylvania Public Utility Commission has delegated its authority to initiate prosecutory proceedings to several of its Commission bureaus with enforcement responsibilities. Pursuant to this delegated authority and Section 701 of the Public Utility Code, 66 Pa. C.S. § 701, Bureau of Investigation and Enforcement staff has filed the attached Complaint against you seeking a monetary penalty and/or revocation of your Certificate of Public Convenience.

Very truly yours,

Rosemary Chiavetta
Secretary

DJ

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PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
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May 30, 2012

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

C-2012-2307244

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement West Penn Power Company
Docket No. C-2012-2307244

Dear Ms. Chiavetta:

Enclosed for filing please find the Complaint in the above referenced case, along with the electronic filing confirmation page, on behalf of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

Heidi L. Wushinske

Heidi L. Wushinske
Prosecuting Attorney
Attorney ID No. 93792

Counsel for the Bureau of
Investigation and Enforcement

DOCUMENT
FOLDER

Enclosures

cc: As per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
Complainant :

v. :

West Penn Power Company, :
Respondent :

Docket No. C-2012- 230 7244

FORMAL COMPLAINT

DOCUMENT
FOLDER

NOW COMES the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (“I&E”), by its counsel, pursuant to Section 701 of the Public Utility Code, 66 Pa. C.S. §701, and files this Formal Complaint against West Penn Power Company (“West Penn Power” formerly also doing business as “Allegheny Energy, Inc.” or “Allegheny Power”¹ or “Respondent” or “the Company”), alleging violations of the Public Utility Code. In support of its Formal Complaint, I&E respectfully represents the following:

PARTIES AND JURISDICTION:

1. The Pennsylvania Public Utility Commission (“Commission”), with a mailing address of P.O. Box 3265, Harrisburg, PA, 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§101, *et seq.*

¹ First Energy merged with Allegheny Energy on or about February 25, 2011. In the merger, First Energy assumed the assets and liabilities of Allegheny Energy.

2. Complainant is the Commission's Bureau of Investigation and Enforcement and is the entity established by statute to prosecute complaints against public utilities pursuant to 66 Pa. C.S. §308.2(a)(11). Complainant's counsel are as follows:

Heidi L. Wushinske
Prosecutor
hwushinske@pa.gov
717.214.9594

Wayne T. Scott
First Deputy Chief Prosecutor
wascott@pa.gov
717.783.6150

Counsel for the Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

3. Respondent is West Penn Power Company, an electric distribution company, with offices located at 800 Cabin Hill Drive, Greensburg, PA 15601-1689, attention John L. Munsch.
4. Respondent is a "public utility" as that term is defined in the Public Utility Code at 66 Pa. C.S. § 102(1)(i), as it provides utility service as an electric distribution company to the public for compensation.
5. Section 501(a) of the Public Utility Code, 66 Pa. C.S. §501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Public Utility Code.
6. Section 701 of the Public Utility Code, 66 Pa. C.S. §701, authorizes the Commission, *inter alia*, to hear and determine complaints against public utilities

for a violation of any law or regulation that the Commission has jurisdiction to administer.

7. Section 3301 of the Public Utility Code, 66 Pa. C.S. §3301, authorizes the Commission to impose civil penalties on any public utility, or any other person or corporation subject to the Commission's authority, for violation(s) of the Public Utility Code and/or Commission regulations. Section 3301 further allows for the imposition of a separate fine for each day's continuance of such violation(s).
8. Respondent, in providing electric distribution service for compensation, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Public Utility Code, 66 Pa. C.S. §501(c), which requires any persons or corporations subject to the provisions of that part to comply with Commission orders.
9. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter of this complaint and the actions of Respondent related thereto.

BACKGROUND:

10. After conducting an investigation and reviewing the depositions of numerous individuals, including company employees, I&E submits that the following is a sequence of events that describes the incident in question:
 - a. On June 2, 2009, at approximately 4:30 p.m., West Penn Power's 7200 volt power line fell from its pole into the yard of Carrie Goretzka at 23 West Hempfield Drive, Irwin, Pennsylvania.
 - b. The line came down at its point of connection with the automatic splice, which was a Fargo GL4042A, manufactured by Hubbell Power Systems, Inc. ("Hubbell" or "the manufacturer").

- c. Carrie Goretzka came into contact with the above live wire in her yard.
- d. The downed power line caused Carrie Goretzka to fall in her yard.
- e. Carrie Goretzka was tangled in the line and caught fire.
- f. JoAnn Goretzka, Carrie Goretzka's mother-in-law, suffered a shock to her fingertips that threw her several feet when she tried to assist Carrie Goretzka.
- g. Carrie Goretzka suffered burns on 85% of her body and died from her injuries on June 5, 2009.
- h. West Penn Power's utility linemen installed the splice and hung the subject 7200 volt line on June 23, 2004.
- i. The manufacturer of the splice instructed that the conductor must be cleaned with a wire brush.
- j. West Penn Power's linemen were routinely trained that a conductor could be cleaned with a knife, pliers, or a wire brush before being inserted into an automatic splice.
- k. The Company's Transmission and Distribution Construction ("T&D") Standards specifically direct: "[c]lean conductor with a wire brush."
- l. The T&D Standards also explain that the wire brush cleaning should clean completely through oxides because an "[u]nclean conductor will set up overheating and eventually cause failure of the splice."
- m. The manufacturer of the automatic splice also stated that failure to clean the conductor with a wire brush would not remove all of the oxides, which could result in an increased temperature and lost tension in the wire, causing the wire to fall.
- n. According to the Company, it trained the personnel who hung the subject line to clean a conductor with knives, pliers, or a wire brush before being inserted into an automatic splice.
- o. On June 4, 2009, Commission staff contacted West Penn Power and requested that the utility file its final internal investigation report of this incident to the Commission's Bureau of Fixed Utilities.

- p. On November 3, 2009, Commission staff again contacted the Company regarding the status of the internal investigation report. The Company replied that it was still in the process of conducting its investigation, which it expected to be completed in six to nine months.
- q. On April 28, 2010, Commission staff contacted the Company and requested that West Penn Power provide the following information:
1. The experts involved with evaluating the cause of the line that fell at 23 West Hempfield Drive;
 2. The work each such expert has been asked to perform;
 3. Whether the experts have been able to exclude any potential causes; and
 4. Maintenance and repair records for the line that fell.
- r. On April 29, 2010, the Company provided a memo to Commission staff, wherein it confirmed and identified the experts that it had retained to perform testing and the work that the experts were asked to perform. Regarding the results of the experts' analyses, the Company stated that several of the analyses fell within the purviews of the Work Product Privilege. The Company asserted that additional testing was to take place in early June 2010 and that the Company would inform Commission staff when that report was generated.
- s. On February 29, 2012, Commission staff again contacted the Company, reiterating Commission demands for the information so that Commission staff could complete its investigation.
- t. On March 12, 2012, Commission staff contacted the Company for the fifth time and demanded that it provide the information that the Commission staff requested in this matter within 14 days. Commission staff informed the Company that submission of the requested information was required by law and did not constitute a waiver of confidentiality.
- u. To date, the Company has not complied with the Commission staff's repeated requests for information.

VIOLATIONS:

COUNT ONE

11. All allegations in paragraphs 1-10 are incorporated as if fully set forth herein. West Penn Power failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in that the Company did not ensure the integrity of the splice.
This is a violation of 66 Pa. C.S. § 1501.

COUNT TWO

12. All allegations in paragraphs 1-10 are incorporated as if fully set forth herein. West Penn Power failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities by failing to properly train its employees in preparation and cleaning of connections and/or splices, as specified in its T&D Standards and the manufacturer's instructions.
This is a violation of 66 Pa. C.S. § 1501.

COUNT THREE

13. All allegations in paragraphs 1-10 are incorporated as if fully set forth herein. West Penn Power failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities by failing to properly monitor and supervise its employees to ensure that they were following internal procedures for splice and conductor installation, including cleaning with a wire brush.
This is a violation of 66 Pa. C.S. § 1501.

COUNT FOUR

14. All allegations in paragraphs 1-10 are incorporated as if fully set forth herein. West Penn Power failed to furnish and maintain adequate, efficient, safe, and

reasonable service and facilities by failing to ensure that employees were following the manufacturer's instructions for splice and conductor installation. This is a violation of 66 Pa. C.S. § 1501.

COUNT FIVE

15. All allegations in paragraphs 1-10 are incorporated as if fully set forth herein. West Penn Power failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities by failing to ensure that the splice was free from oxidizing agents that could cause excess corrosion. This is a violation of 66 Pa. C.S. § 1501.

COUNT SIX

16. All allegations in paragraphs 1-10 are incorporated as if fully set forth herein. West Penn Power failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities by not properly securing the power line in the automatic splice used to hold the line. This is a violation of 66 Pa. C.S. § 1501.

COUNT SEVEN THROUGH EIGHTY-SIX

17. All allegations in paragraphs 1-10 are incorporated as if fully set forth herein. West Penn Power failed to furnish information requested by the Commission staff in aid of its investigation. Each day that West Penn Power failed and continues to fail to furnish information is a separate violation of 66 Pa. C.S. § 504-506.

RELIEF REQUESTED:

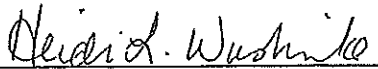
18. Based on the foregoing allegations, the Bureau of Investigation and Enforcement hereby requests the following relief:

- a. West Penn Power be ordered to pay a civil penalty of up to \$86,000.00 for the violations alleged herein up to May 31, 2012, and up to \$1,000 per day for each day that West Penn Power continues to fail to furnish information requested by the Commission staff. Such civil penalties are pursuant to the provisions of 66 Pa. C.S. § 3301 and the Company may not claim or include any portion of this penalty for recovery in future ratemaking proceedings;
- b. West Penn Power be ordered to modify its training program so that its employees are properly trained in conductor, splice, and connections installations, in accordance with the Company's T&D Standards and the manufacturer's instructions;
- c. West Penn Power be ordered to modify its training program so that its employees are properly trained in preparation and cleaning of connections and/or splices, in accordance with West Penn Power's T&D Standards and the manufacturer's instructions;
- d. West Penn Power be ordered to increase its supervision of linemen and other field employees so that such employees are properly monitored and supervised to ensure that they are following internal procedures for splice and conductor installation, including cleaning with a wire brush;
- e. West Penn Power be ordered to modify its training procedures so that employees are trained in the methods and importance of removing oxidizing agents that could cause excess corrosion and overheating;
- f. West Penn Power be ordered to comply with the Commission staff's request for information in this matter;
- g. West Penn Power be ordered to immediately begin a program to inspect and replace any and all other lines containing automatic splices for signs of excessive heat or other signs of potential failure, preferably using infrared. Such program shall be completed in one year. West Penn Power shall immediately replace any splices that are found to be overheating or otherwise in danger of failure;

- h. West Penn Power be ordered to conduct a systematic review of all training and supervision to ensure that employees are trained on the contents of all field manuals and are following the instructions contained therein; and
- i. Grant such other further relief as the Commission deems just and reasonable.

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of Pennsylvania Public Utility Commission respectfully requests that, after consideration of the record, the Office of Administrative Law Judge and the Commission find West Penn Power in violation of each and every count as set forth herein and grant the relief specified above.

Respectfully submitted,



Heidi L. Wushinske
Prosecutor
PA Attorney ID No. 93792

Wayne T. Scott
First Deputy Chief Prosecutor
PA Attorney ID No. 29133

Johnnie E. Simms
Chief Prosecutor
PA Attorney ID No. 33911

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Date: May 30, 2012

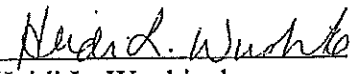
C-2012-2307244

CERTIFICATE OF SERVICE

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

Notification by First Class Mail:

West Penn Power Company
Attention: John L. Munsch
800 Cabin Hill Drive
Greensburg, PA 15601-1689


Heidi L. Wushinske
Prosecuting Attorney
PA Attorney ID No. 93792

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: May 30, 2012