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January 2, 2009

VIA HAND DELIVERY

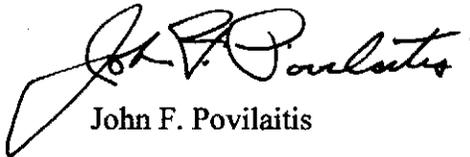
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
400 North Street – 2nd Floor
Commonwealth Keystone Building
Harrisburg, Pennsylvania 17120

Re: Implementation of Act 129 of 2008 Phase 2 – Registry of Conservation
Service Providers, Docket No. M-2008-2074154

Dear Secretary McNulty:

Enclosed are an original, fifteen (15) copies and an electronic Word version on disk of the Comments of West Penn Power Company, d/b/a Allegheny Power in the above-referenced proceeding. An original and fifteen copies of this filing is being provided to the Commission and copies are being served as indicated in the attached Certificate of Service. An electronic copy is also being sent to ra-Act129@state.pa.us and to all parties that provided comments at Docket No. M-2008-2069887.

Very truly yours,



John F. Povilaitis

JFP/ck
Enclosures

c. Certificate of Service

The Honorable James H. Cawley, Chairman
The Honorable Tyrone J. Christy, Vice-Chairman
The Honorable Robert F. Powelson, Commissioner
The Honorable Kim Pizzingrilli, Commissioner
The Honorable Wayne E. Gardner, Commissioner

The Honorable Veronica Smith, Chief Administrative Law Judge
The Honorable David Salapa, Administrative Law Judge
Cheryl Walker Davis, Director, Office of Special Assistants
Karen O. Moury, Director of Operations
Robert F. Wilson, Director, Fixed Utility Services, (w/disk)
Paul Diskin, Manager, Energy, Fixed Utility Services
Mitchell A. Miller, Director, Bureau of Consumer Services
Bohdan R. Pankiw, Chief Counsel, (w/disk)
Robert F. Young, Deputy Chief Counsel
Louise Fink Smith, Assistant Counsel
Wayne L. Williams, Director, CEEP (w/disk)
Cal Birge, Conservation, Economics and Energy Planning
June Perry, Director, Legislative Affairs
Tom Charles, Manager, Office of Communications

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 129 of 2008 :
Phase 2 – Registry of Conservation Service : **Docket No. M-2008-2074154**
Providers :

**COMMENTS OF WEST PENN POWER COMPANY
d/b/a ALLEGHENY POWER TO TENTATIVE ORDER**

Act 129 of 2008 directs the Pennsylvania Public Utility Commission ("Commission") to establish a registry of approved persons qualified to provide conservation services to all classes of customers.¹ On December 18, 2008, the Commission adopted a Tentative Order to establish the minimum experience and qualification requirements for conservation service providers ("CSPs"). Absent the filing of adverse comments within 10 days after entry, the Tentative Order becomes final without further action by the Commission.² West Penn Power Company d/b/a Allegheny Power ("Allegheny" or "the Company") provides the following comments, which support, in part, request clarification, in part, and object, in part, to the Tentative Order:

Experience and Technical Qualifications

Agreement with Criteria as Minimum Standards

In the Tentative Order (p. 6), the Commission reiterates that its criteria (relating to technical fitness) are minimum experience and qualification requirements.³ Allegheny Power agrees that it is necessary and proper to allow Electric Distribution Companies ("EDCs") to employ more stringent requirements than those required by the registry, when such requirements

¹ 66 Pa.C.S. § 2806.2(a).

² The Tentative Order was entered on December 22, 2008.

³ At page 4 of the Tentative Order, the Commission notes that submitted CSP registry applications will be reviewed by the Bureau of Fixed Utility Services to determine if the applicant is financially viable and if the applicant has the requisite technical experience "as outlined above." However, upon review, the information required as part of the application is not discussed "above," but rather, appears to follow on pages 5-8 of the order.

are warranted by the nature of the program measures being provided by the CSP. Thus, Allegheny Power fully endorses the Commission's authorizing EDCs to impose additional reasonable experience and qualification requirements that are commensurate with the type and scope of work to be performed by each CSP and urges final adoption of this authority.

Clarification of Three Years' Experience Requirement

At page 6 of the Tentative Order at page 6, the Commission directs that a CSP, or its principals, must have at least three years of documented experience in providing program consultation, design, administration and management services related to energy efficiency and conservation services. This requirement also is specified in the proposed Application to register as a CSP ("Application"). The Commission should briefly clarify that the 3-year CSP requirement should not apply to self-supplier programs, which are contemplated under Act 129,⁴ or to self-supplier design, administration and/or management service functions. A 3-year requirement for self-suppliers is not necessary. As a jurisdictional, certificated utility, the EDC is a known quantity whose fitness is presumed⁵ and whose technical fitness can be further vetted through the Energy Conservation and Efficiency Plan review process.

Objection to Scope of Prohibition regarding Affiliated CSPs

In the Tentative Order and proposed Application, it appears that the Commission has prohibited an affiliated CSP (a CSP that is owned, partnered, or affiliated with an EDC) from being eligible for the registry.⁶ The Commission's prohibition in this regard is overly broad.

⁴ 66 Pa.C.S. § 2806.1(A)(10) (An EDC's Energy Conservation and Efficiency Plan shall include, *inter alia*, a requirement for the participation of conservation service providers in all or part of a plan).

⁵ A certificated public utility enjoys a rebuttable presumption that it is technically and financially fit to provide service. *See Re V.I.P. Travel Service, Inc.*, 1982 Pa. PUC LEXIS 12.

⁶ From page 5 of the Tentative Order: "As the Commission and EDCs must be able to identify the type of entity a CSP is and confirm that it is not owned, partnered or affiliated with an EDC, the Commission requires all CSP registry applicants to provide the following information . . ." From page 2 of the Application: "An entity that is directly or indirectly owned, partnered or in any way affiliated with an electric distribution company ("EDC") is not eligible for the registry."

Allegheny Power does not dispute that an EDC may not contract with an affiliated CSP. However, a CSP affiliated with an EDC should not be barred outright from providing service to an unaffiliated EDC. As noted in the previous comments of PPL Electric Utilities Corporation, the statute opens the registry to qualified entities,⁷ and it is unreasonable and discriminatory to exclude an otherwise qualified entity from the registry simply because of its relationship to an EDC.

Clarification regarding the Scope of Registry Activities

The Tentative Order (page 6) limits the scope of the registry to entities providing consultation, design, administration and management services to an EDC and excludes from the registry installers, equipment suppliers and contractors for use by the general public and EDC customers. Allegheny Power submits that the Commission needs to maintain flexibility in defining registry activities so as to include entities that may provide any type of relevant, conservation-related service to an EDC such as energy audit functions. This flexibility is important, given the fluid nature of the Act 129 implementation process and the fact that the Commission and all parties will have a better understanding of EDC program needs as things progress. This flexibility could be achieved by a confirmation that the Commission will interpret broadly what constitutes "consultation, design, administration and management services" and a clarification that the Commission will entertain registry applications for any conservation-related services for which an EDC may contract, even if such services might not include "consultation, design, administration and management services."

⁷ 66 Pa.C.S. § 2806.2.

Application Language in need of Clarification and Modification

The Commission in the Tentative Order requires all CSP applicants to provide sundry information regarding their experience and technical qualifications, including, *inter alia*, the "types of services the applicant intends to provide to an EDC, to include the customers that the service benefits and the region(s) in Pennsylvania the CSP intends to serve" and a "description of the documentation provided to support the applicant's technical fitness." (Tentative Order, p. 7). Allegheny Power requests clarification and confirmation that these application requirements include a description and documentation of experience that is specific to the services that a CSP intends to offer EDCs in Pennsylvania. Such information is necessary to ensure that the technical fitness of a CSP applicant relates to the specific services being offered to an EDC.

Paragraph 8 of the Application requires the applicant to describe the type(s) of services that it intends to provide to an EDC, including the customers that the service benefits and the region(s) in Pennsylvania the CSP intends to serve. The reference to "region(s)" is vague and ambiguous. For clarity purposes, Allegheny recommends that paragraph 8 be revised as follows to require the applicant to identify the particular EDC service territories, or parts thereof, that it intends to serve:

8. Describe the type(s) of services that the Applicant intends to provide to an EDC, to include the customers that the service benefits and the EDC service territories in Pennsylvania, or portions thereof, that the CSP intends to serve.

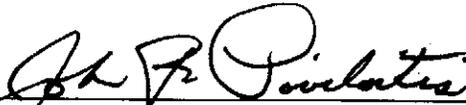
The revised language will help ensure coverage for all customers of an EDC.

Respectfully submitted,

West Penn Power Company
d/b/a Allegheny Power

Date: January 2, 2009

By:



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 129 of 2008 :
Phase 2 – Registry of Conservation Service : Docket No. M-2008-2074154
Providers :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

VIA FIRST CLASS MAIL

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