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West Penn Power can deal with $109 million judgment in electrocution death

Parent firm can cover balance even if insurers refuse

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West Penn Power was hit with a jury award nearly 50 percent of the company's net worth on Thursday, but the $109 million it could have to pay for the electrocution death of an Irwin woman would barely be felt by its parent company, FirstEnergy Corp.

Operating 10 utility companies in Ohio, Pennsylvania, West Virginia, Maryland and New Jersey, FirstEnergy had $16 billion in revenue in 2011.

It is likely the jury award -- which could be reduced in a settlement -- will be covered by insurance. Even if not, the largest personal injury award in Allegheny County history will not be passed through to customers by raising rates and instead would be covered by shareholders at a cost of less than one cent per share.

Scott Surgeoner, a spokesman with FirstEnergy, said he could not comment on the case because it is still in active litigation. The company is still considering whether to appeal.

Carrie Goretzka was killed when a power line fell on her as she stood in her side yard on June 2, 2009.

The 39-year-old woman was inside on a sunny, clear day when the power went out. She looked outside and saw trees in her yard burning. Ms. Goretzka retrieved her cell phone from her car to call 911 and stood in the yard to get reception.

The line, which was still electrified, fell on her, and set her on fire.

Her mother-in-law, JoAnn Goretzka, tried to help but was burned. Her two daughters, then ages 2 and 4, saw what happened.

It took 20 minutes before crews arrived and shut off the power. Ms. Goretzka died three days later.

According to testimony at the three-week trial, the line in the family's yard had fallen twice before.

The plaintiffs claimed in their wrongful death lawsuit against West Penn Power that the line fell because when it was installed, work crews failed to use a wire brush to remove oxidation from the splices. Failing to do so leads to overheating within the splice, which can cause the power line to burn through, break and fall while still energized.

According to the Goretzka family's attorney, **Shanin Specter**, it was willing to settle the case before trial for $50 million, plus an agreement from the power company to inspect its lines and retrain its linemen.

West Penn would not accept that offer.

It is possible that now, in an effort to stave off what could be a lengthy appeals process, the two sides could negotiate a settlement of some figure less than the $109 million jury award.

With this award, even though the number is high, the ratio between compensatory damages -- $48 million -- and punitive damages -- $61 million -- is less than 2:1, which makes it less likely that it would be reduced or overturned, said Steven Baicker-McKee, who teaches civil procedure and energy law at Duquesne University School of Law.

Generally, the ratio has to be greater than 9:1 to be set aside.

The way the case played out in court made it clear, Mr. Baicker-McKee said, that the Goretzkas wanted to show that what happened was a systematic, company-wide failure, "a cost-saving, time-saving shortcut" by West Penn employees.

"The plaintiffs put on a case where they were saying this is about more than this one woman," he said.

"The punitive damages indicate the jury thought West Penn Power was outrageously negligent," added Lou Tarasi, a longtime personal injury lawyer in Pittsburgh.

Because of that finding, it's possible West Penn's insurers may fight having to pay the punitive damages.

The company is self-insured for $5 million, with additional coverage from two other carriers of $35 million and $75 million, Mr. Specter said.

Even if the insurance companies were successful in not having to cover the award, FirstEnergy's shareholders would likely not see much impact. The cash to fund the payment would come from either borrowing money or selling additional shares in the company, said Paul Freemont, an analyst with Jefferies.

Even borrowing the entire amount to cover the award would result in a cost to shareholders of less than one cent per share per year, he said.

It would be just a one-time expense for the company.

"It will probably wipe out most of the earnings for West Penn Power for the year," Mr. Freemont said.

The company was predicted in April to have a 15 percent return. The industry average is 10.

Any loss to the company to cover the jury award would not be able to be recouped through increasing customer rates, Mr. Freemont said.

Investigators with the Pennsylvania Public Utility Commission recommended $86,000 in civil penalties and that West Penn Power employees change their training practices.

The company filed its response to the PUC in October and is challenging the agency's findings.