

COMMONWEALTH OF PENNSYLVANIA



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October 13, 2009

James J. McNulty  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

RE: Petition of West Penn Power Company  
d/b/a Allegheny Power for Expedited  
Approval of its Smart Meter Technology  
Procurement and Installation Plan  
Docket No. M-2009-2123951

Dear Secretary McNulty:

Enclosed for filing is the Brief of the Office of Consumer Advocate in Opposition to Petition for Interlocutory Review and Answer to a Material Question, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in black ink that reads "Tanya J. McCloskey".

Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50044

Enclosures

cc: Chairman James H. Cawley  
Vice Chairman Tyrone J. Christy  
Commissioner Robert F. Powelson  
Commissioner Kim Pizzingrilli  
Commissioner Wayne E. Gardner  
Honorable Mark A. Hoyer  
Office of Special Assistants

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of West Penn Power Company :  
d/b/a Allegheny Power for Expedited : Docket No. M-2009-2123951  
Approval of its Smart Meter Technology :  
Procurement and Installation Plan :

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BRIEF OF THE OFFICE OF CONSUMER ADVOCATE  
IN OPPOSITION TO PETITION FOR INTERLOCUTORY  
REVIEW AND ANSWER TO A MATERIAL QUESTION

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Dated: October 13, 2009

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## I. INTRODUCTION

On September 30, 2009, pursuant to 52 Pa. Code §5.302, Allegheny Power Company (Allegheny Power or the Company) filed a Petition for Interlocutory Review and Answer to a Material Question. Through its Petition, Allegheny Power seeks review of Administrative Law Judge (ALJ) Mark Hoyer's decision to deny the Company's request for an expedited initial phase schedule and its overall request to expedite review of the Company's Smart Meter Technology Procurement and Installation Plan (SMIP). The question that Allegheny Power seeks to have reviewed is as follows:

Whether the decision to deny Allegheny Power's proposed procedural schedules was lawful and appropriate, given the demonstrated need for a phased and expedited review and approval of the Company's SMIP.

Interlocutory Review Petition at 2.<sup>1</sup> The Office of Consumer Advocate submits that Allegheny Power's Petition should be denied as Allegheny Power has provided no extraordinary circumstances or compelling reasons in support of its Petition. On the contrary, Allegheny Power's extraordinary request to accelerate its \$580 million Smart Meter Plan and impose a rate surcharge on every residential customer that rises to \$14.34 per month by June 2011 requires careful scrutiny by the ALJ and this Commission.

If answered, the Office of Consumer Advocate (OCA) submits that this material question must be answered in the affirmative; that is, the ALJ's decision to deny the procedural schedule forwarded by Allegheny Power in this case is fully in accord with the law and the Commission's Implementation Order, and is fully appropriate given the complexity and magnitude of the costs

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<sup>1</sup> The OCA submits that Allegheny Power's proposed Material Question is improperly worded in that it assumes a demonstration of a need for a phased or expedited implementation and review despite the fact that this is one of the key elements of its request that is at issue in this proceeding. Simply put, there has been no demonstration that an expedited review is necessary nor that it would be a reasonable way to proceed. The premise of the question is unsupported.

of the Smart Meter Plan under review. See, Smart Meter Implementation Order, Docket No. M-2009-2092655 (Order entered June 24, 2009)(Smart Meter Implementation Order).

The OCA submits that the ALJ has established a reasonable procedural schedule that will afford the parties, the ALJ and the Pennsylvania Public Utility Commission (Commission or PUC) sufficient time to review Allegheny Power's Smart Meter Plan. Allegheny Power's Smart Meter Plan comes at a cost of \$580 million and will increase the rates of every residential customer by an extraordinary \$14.34 per month starting in June 2011, rising to \$15.77 per month by 2013. Such a significant and unprecedented plan requires the necessary time for record development, and time for thoughtful and reasoned decisions by the ALJ and the Commission. The schedule adopted by the ALJ, which results in a Recommended Decision no later than January 29, 2010 as called for in the Commission's Implementation Order, will provide the necessary time for full consideration of these matters.

Allegheny Power stands alone among Pennsylvania's electric distribution companies (EDCs) in proposing to rely on an aggressive deployment of smart meters to meet the initial demand response goals of Act 129. It is this design of its energy efficiency and demand response program (EE&C Plan) that Allegheny Power uses to support its request for expedited treatment of its Smart Meter Plan. As the OCA set forth in its Testimony and Briefs regarding the EE&C Plan, however, Allegheny Power's reliance on aggressive smart meter deployment, with its significant challenges and costs, was not reasonable and would not meet the Total Resource Cost test required by Act 129. Allegheny Power also stands alone among the EDCs in its proposal to forego the 30-month "grace period" provided by the Commission in its Smart Meter Implementation Order. The 30-month grace period was to allow the time for the proper evaluation, analysis, technology selection, and design of a cost-effective smart meter deployment

strategy. Allegheny's decisions should not force a rushed consideration of this matter by the parties, the ALJ or the Commission.

## II. BACKGROUND

On August 14, 2009, Allegheny Power filed its Smart Meter Technology Procurement and Installation Plan (SMIP). In its SMIP Petition, the Company requested that the Commission expedite the approval for the overall Smart Meter Plan with a Commission decision by January 29, 2010. SMIP Petition at ¶¶ 20-23. In addition, the Company also proposed that \$33.8 million be "pre-approved" by the Commission for initial phase expenditures including the following: meter testing and field trials; back office applications; security and program management. SMIP Petition at ¶ 21-22; SMIP Plan at 39.

On September 25, 2009, the OCA filed its Comments in the above-captioned proceeding. In its Comments, the OCA strongly opposed the Company's proposed SMIP and expedited review of the proposed Plan. As noted in the OCA's Comments, the OCA identified significant concerns with the Company's proposal, including its proposal to rush consideration of this matter and to begin immediate cost recovery of initial phase costs. The OCA discussed in its Comments that the Commission's Smart Meter Implementation Order provides for a 30 month grace period for implementation of Smart Meters due to the complexities involved with such an endeavor, and that the Act and the Smart Meter Implementation Order recognize that the EDCs will roll out Smart Meters over a period of time, perhaps as long as fifteen years. The OCA argued in its Comments that expedited consideration for such a major endeavor, in an already ambitious review period, could not be justified and was not required by Act 129.

A prehearing conference was held on September 30, 2009 in order to set a procedural schedule in the proceeding. In its Petition and prehearing memorandum, the Company requested

an expedited review of its initial phase activities and that the ALJ certify the initial phase proceeding to the Commission for a final Commission Order on December 3, 2009. As to the full SMIP Plan, rather than receive an ALJ decision on January 29, 2010 as called for in the Smart Meter Implementation Order, Allegheny seeks to have an ALJ decision by December 23, 2009.<sup>2</sup> This accelerates the consideration of the full Plan by at least one month from what the Commission's Order provides. The OCA opposed this request in its Comments and at the prehearing conference. Administrative Law Judge Mark Hoyer denied the Company's request for an expedited initial phase schedule and an expedited SMIP proceeding. The ALJ provided for a schedule that will allow for the issuance of an Initial Decision by the Administrative Law Judge on or before January 29, 2010, as called for in the Commission's Smart Meter Implementation Order.

Thereafter, the Company requested that ALJ Hoyer certify the question to the Commission. ALJ Hoyer denied the Company's request to certify the question to the Commission. Allegheny Power then filed this Petition for Interlocutory Review to the Commission. As discussed below, the OCA submits that the ALJ has adopted a reasonable procedural schedule that is in accord with the law and will allow for the full and reasoned consideration of the significant issues presented by Allegheny Power's SMIP within the constraints established by the Commission's Implementation Order. Allegheny Power's Petition should be denied, or if answered, the material question should be answered in the affirmative so as to support the schedule adopted by ALJ Hoyer.

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<sup>2</sup> The Company's proposed schedule for a bifurcated and accelerated proceeding is attached to its Petition.

## II. ARGUMENT

### A. Introduction

Allegheny Power has proposed a Smart Meter Implementation Plan that is extremely aggressive in terms of its deployment schedule, broad in terms of the types of technologies it seeks to install in every customer's home, and costly in terms of its financial impact on consumers. Allegheny Power estimates that the total cost of its Plan for development, deployment, and operation and maintenance, including the stranded costs of existing meters, and even after reflecting an off-set for system operational benefits, will be \$580 million. Allegheny Power St. 4 at 4; See, SMIP Plan, Table 4.1, at 94.<sup>3</sup> For residential customers, the Company is proposing an estimated additional monthly surcharge that would start at \$5.86 per month in February 2010, and would reach \$14.34 per month by June 2011, just five months after those customers are hit with the expiration of the Allegheny Power generation rate caps. The estimated surcharge would increase to \$15.57 per month in June 2012 and \$15.77 in June 2013. SMIP Plan at 98. Over the four year and four month period identified in the Company's filing, every Allegheny Power residential customer would pay a total of \$641 just to cover the proposed Smart Meter surcharge.<sup>4</sup> SMIP Plan at 98. These proposed increases will be in addition to the generation rate increases that are expected to occur in 2011 when Allegheny Power's rate cap expires.

As the ALJ properly found, a procedural schedule that gives time for full consideration of this extraordinary undertaking is needed. Allegheny's only argument for such a shortened time

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<sup>3</sup> Allegheny Power witness Valdes clarifies that the Pennsylvania costs for the program are \$580 million, while Table 4.1 includes the total Allegheny Power systemwide costs of \$620 million. Allegheny Power St. 4 at 4.

<sup>4</sup> In the OCA's Comments filed on September 25, 2009, the OCA estimated the total per residential customer cost to be \$571. That estimate, however, failed to include the costs incurred during the first 12 months of the surcharge period. When those months are included, the total per residential customer amount is \$641.

frame for consideration of this matter is that it has rested its compliance with the Energy Efficiency and Demand Response requirements of Act 129 on its ability to deploy smart meters on this aggressive schedule. Interlocutory Review Petition at 3. This is a situation of Allegheny Power's own making, however. Alone among Pennsylvania EDCs, Allegheny Power elected to rely on the deployment of Smart Meters to meet the near-term (2011-2013) demand reduction requirements of Act 129. Allegheny Power pursued this design of its Energy Efficiency and Conservation (EE&C) Plan under Act 129 without adequate consideration of the significant costs and significant challenges of an aggressive Smart Meter deployment and without consideration of whether its EE&C Plan met the Total Resource Cost test required by Act 129 under this design. As the OCA detailed in its Comments, Testimony and Briefs in Allegheny Power's EE&C case at Docket No. M-2009-2093218, Allegheny Power's approach is unreasonable.

The OCA submits that ALJ Hoyer's procedural schedule is fair and reasonable. This proceeding is already accelerated under the Commission's Implementation Order, and there is no basis to bifurcate it into two phases and accelerate both phases even further. The issues presented are complex issues that must be thoroughly explored and analyzed as these decisions will have a significant impact on customers well into the future. As a practical matter as well, bifurcating and accelerating this schedule as proposed by Allegheny Power would be impractical, particularly for the statutory advocates and low income advocates, who would need to litigate issues in this case on an overlapping schedule while also litigating all of the other Smart Meter Plan filings. A review of the schedule proposed by Allegheny Power, attached to the Petition as Appendix A, shows the significant overlap in tasks expected of the parties and the ALJ. Significantly, under the Company's bifurcated and accelerated schedule, the ALJ would not render a decision at all on the initial phase issues, meaning that the Commission would not

have the benefit of the ALJ's decision as it sought through the Smart Meter Implementation Order. Then, the ALJ would only have about 30 days to write his decision on the remaining issues, which could differ substantially from, or impact, the Commission's earlier decision on the initial phase issues. Such a procedure constrains the ALJ and the Commission for no compelling reason.

Moreover, the proposed schedule works a significant prejudice on the OCA and other parties who are already trying to file testimony, conduct Technical Conferences, conduct hearings, and conduct briefing in four other Smart Meter cases in this same time frame of late October into November. The schedule for this case alone would require the OCA and other parties to file two testimonies only 7 days apart. The OCA and others would also be in hearings with their witnesses on this first set of testimony when the second set is due. This does not even account for the fact that the OCA and other parties have various testimonies due in four other cases in these same weeks. There is simply no compelling reason to substantially prejudice all other parties to this proceeding as Allegheny Power proposes.

Act 129 placed an enormous task before the Commission in many respects. The Commission's procedures for accomplishing these tasks were set forth in the Smart Meter Implementation Order of June 24, 2009 and are reasonable. The Smart Meter Implementation Order recognized the complex task at hand, the need to conduct five proceedings (one involving three subsidiaries) in the same short time frame, and the need for full consideration by the ALJ and the Commission of the Plans. These procedures are reasonable and should be followed. ALJ Hoyer adopted a schedule that provides for full and fair consideration of Allegheny Power's Smart Meter Implementation Plan in accordance with the Commission's Order. The Petition for

Answer to a Material Question should be denied, but if answered, the Commission should support the schedule adopted by ALJ Hoyer.

B. ALJ Hoyer's Procedural Schedule Does Not Result In Substantial Prejudice To Allegheny Power.

The Commission's regulations set out the clear standard for consideration as to a petition for interlocutory review, in relevant part as follows:

**§ 5.302. Petition for interlocutory Commission review and answer to a material question.**

(a) During the course of a proceeding, a participant may file a timely petition directed to the Commission requesting review and answer to a material question which has arisen or is likely to arise. The petition shall be in writing with copies served on all participants and the presiding officer and shall state, in not more than three pages, the question to be answered and the *compelling reasons* why interlocutory review will prevent *substantial prejudice* or expedite the conduct of the proceeding.

52 Pa. Code § 5.302 (*emphasis added*). Allegheny Power must provide compelling reasons why the existing procedural schedule will work substantial prejudice as to Allegheny Power's interests, within the body of the petition. Allegheny Power has failed to make this baseline showing.<sup>5</sup>

Allegheny Power recites several alleged reasons why the Commission should entertain the instant petition. Specifically, the Company argues that the denial of the initial phase schedule and the expedited SMIP schedule "jeopardizes the Company's ability to achieve smart meter implementation as outlined in the SMIP, including installation of 93,000 smart meters in 2010." Interlocutory Review Petition at 3. Further, the Company argues that the current

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<sup>5</sup> The OCA acknowledges that Section 5.302 allows interlocutory review to prevent substantial prejudice or to expedite the conduct of the proceeding. The OCA has not addressed the second part of the regulation. The OCA interprets the regulation as not being designed to afford interlocutory review to any party based solely on their desire to speed up the process; rather, the regulation should afford relief to those parties who seek to avoid unnecessary or protracted litigation when a timely answer from the Commission as to a question of law or procedure could streamline the proceeding. The OCA submits that as a matter of policy, litigants should not be able to satisfy the second element of the regulation simply by requesting an accelerated proceeding.

schedule jeopardizes the Company's ability to meet the Act 129 demand reduction requirements. Id. The OCA submits that this is a problem of the Company's own making and does not provide a compelling reason for interlocutory review or an abbreviated and truncated schedule. Indeed, the Company's own actions have not shown the need for such acceleration of the schedule.

Allegheny Power has known since June 24, 2009, when the Commission entered its Smart Meter Implementation Order, that the Commission procedure contemplated an Initial Decision by the Administrative Law Judge on or before January 29, 2010. Smart Meter Implementation Order at 6. The Smart Meter Implementation Order specifically provided the following schedule:

Accordingly, as outlined above, we will require smart meter plans to be filed with the Commission on or before August 14, 2009. Comments may be filed with the Commission on or before September 25, 2009. Technical conferences will be held during October 2009, with evidentiary hearings, if necessary, to be held during November 2009, and the Initial Decisions to be issued on or before January 29, 2010. Any party may file Exceptions and/or Reply Exceptions to the Initial Decisions, in accordance with Commission Regulations, before the Commission issues its final decision.

Smart Meter Implementation Order at 6.

Allegheny Power did not seek Clarification or Reconsideration of the Commission's Implementation Order regarding these dates. Allegheny Power then filed its Smart Meter Plan on the last possible date—August 14, 2009. Allegheny Power did not file its testimony in support of its plan until two weeks later, on August 28, 2009. If Allegheny Power needed advance approval of its Smart Meter Plan to implement its EE&C Plan, Allegheny Power could have filed its Smart Meter Plan and testimony at an earlier time. The Smart Meter Implementation Order required that Allegheny Power file its Plan *by no later than* August 14, 2009. Allegheny Power chose to file its plan on August 14, 2009 (not before), and chose to file

its testimony two weeks later. Allegheny Power now seeks to shorten the period in which the other parties, the ALJ and the Commission have to review that Plan.

Allegheny Power's argument that it now has compelling reasons to rush this matter along or it will experience substantial prejudice from any delay should be given no weight, particularly when such request works a substantial prejudice to the ALJ and the other parties. Allegheny Power, alone among the EDCs, made a business decision to rest its compliance with the demand response requirements of Act 129 on an unprecedented and aggressive smart meter deployment strategy. Allegheny Power has many means at its disposal to meet the demand response requirements of Act 129, such as the deployment of programs that work within its existing meter infrastructure and direct load control programs. Allegheny Power could also utilize the Commission's 30-month grace period, as every other Pennsylvania EDC has proposed, to work to achieve a more modest, initial pilot smart meter deployment rather than the immediate full scale, aggressive deployment that it has selected. The OCA presented its position that this was an unreasonable and unsupported strategy throughout the energy efficiency and demand response proceeding in August and September of this year. Yet Allegheny Power continued to pursue its strategy. Allegheny Power's request now is a result of its own business decisions and desires, and cannot be found to meet the substantial prejudice standard for interlocutory review. Indeed, Allegheny Power's request works a substantial prejudice against the ALJ and all other parties.

The Commission was clear in its Implementation Order that it wants a thorough process with sufficient time for the ALJ to prepare a decision and for the Commission to consider that decision. As the Commission stated:

While the Commission agrees with the need to complete the plan approval process expeditiously, we are persuaded that the process, and its results, will be improved considerably if we extend the time period for reviewing and approving plans. We will not, however, adopt the OCA's proposal as that proposal does not

provide the ALJs with adequate time to prepare an initial decision following the receipt of briefs and reply briefs in December 2009.

Smart Meter Implementation Order at 6.<sup>6</sup>

The OCA submits that in light of the Commission's Implementation Order, Allegheny Power's request for interlocutory review should be denied. Allegheny Power has not demonstrated the necessary requirements for interlocutory review nor has Allegheny Power demonstrated that a shortened procedural schedule is necessary or that without such an abbreviated schedule Allegheny Power will incur substantial prejudice. 52 Pa. Code § 5.302(a). As the Commission has stated, "[w]e do not routinely grant interlocutory review except upon a showing by a petitioner of extraordinary circumstances or compelling reasons." Pa. P.U.C. v. Wynnewood Sewer Corp., Docket No. R-00963708, Order at 5 (December 6, 1996)(Wynnewood).

Allegheny Power has made no showing of substantial prejudice and has provided no compelling reasons for the Commission to answer the material question. The Petition for Answer to a Material Question should be denied. If the Commission determines to answer the material question, the Commission should find that the procedural schedule established by the Administrative Law Judge is in accordance with the law, in accordance with the Commission's Implementation Order, reasonable and fair.

C. The Smart Meter Plan Raises Many Significant And Complex Issues That Must Be Fully Examined And Thoroughly Considered.

Allegheny Power seeks to bifurcate its Smart Meter Plan filing and have the case considered in two phases. In Phase 1, Allegheny seeks approval to conduct a number of

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<sup>6</sup> The OCA's proposal referenced in the quote would have provided a shorter time for the ALJ to prepare a decision than allowed under the Commission's Implementation Order. The Commission was very clear in its Order that it was rejecting an approach that constrained the time frame for the ALJ's decision and the Commission's consideration. For the same reasons, Allegheny Power's proposal here should be rejected as it severely constrains not only the parties but the ALJ.

activities including planning and construction of a test meter lab and LAN field trials; definition, design and selection of various applications such as the meter data management system, the enterprise service bus and the identity management system; selection and procurement of the CIS Systems Integrator and the smart meter systems integrator; smart meter program management; and planning the business process redesign. The second phase, Phase II, would encompass a review of Allegheny Power's full plan for deployment. Allegheny Power seeks expedited consideration of both phases of the case, with a *Commission* decision on Phase I by December 3, 2009 and an ALJ's decision on Phase II by December 23, 2009. A review of the schedules proposed by Allegheny Power, attached to the Petition, shows the extreme burden that would be placed on the parties and the ALJ by such an approach.<sup>7</sup> Such a constrained and overlapping schedule does not afford the parties adequate time to review the many complex and interrelated issues raised by this significant, costly and aggressive Smart Meter Plan.

The OCA has significant concerns with the Company's proposal to rush consideration of this matter and the proposed immediate cost recovery for Phase I items. The Phase I tasks include many tasks that support the full scale, aggressive deployment proposed by Allegheny and tasks, such as the replacement of the legacy Customer Information System, that may not be directly related to the Act 129 smart meter requirements. Early approval of these Phase I tasks may, in the end, be more costly if the final smart meter plan approved by the Commission is not the same as Allegheny Power has proposed. Early approval of cost recovery may also result in costs being included in the smart meter recovery surcharge that would more properly be base rate items. While some of the tasks in Phase I are activities that the Company could conduct in

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<sup>7</sup> For example, the intervening parties, such as the OCA, would have to file direct testimony on October 14, 2009 on Phase I and then would have to file another piece of direct testimony on Phase II on October 21, 2009. Yet, those parties and their witnesses are also expected to be in hearings on October 21, 2009 on the Phase I issues. Many of the intervening parties are also filing testimony or attending hearings and Technical Conferences for other proceedings during these weeks as well.

support of any finally approved plan by the Commission, there is no reason that the Company cannot engage in these activities without prior Commission approval. Activities that the Company pursues that are reasonable and prudent, and support the final Plan that is approved, would still receive cost recovery through the finally approved cost recovery mechanism. Utilities, for decades, have engaged in this type of planning, design and development work without prior Commission approval.

As to consideration of the entire Plan on an expedited schedule, the Smart Meter Implementation Order provides for a 30 month grace period for implementation of Smart Meters due to the complexities involved with such an endeavor. The Act and the Smart Meter Implementation Order also recognize that the EDCs will roll out Smart Meters over a period of time, perhaps as long as fifteen years. The Commission's Smart Meter Implementation Order specifically addresses this issue and states that:

As EDCs will need time to develop and install the entire smart meter network, the Commission is granting a network development and installation grace period of up to 30 months following plan approval. During this grace period the Commission will not require EDCs to install a smart meter at a customer's premises. However, during this grace period, the Commission will require EDCs to provide interval data capable meters, if the existing meter is not capable of providing interval data, and direct access to the customer's interval data to third-parties, such as EGSs or CSPs, upon customer request.

Smart Meter Implementation Order at 7 (emphasis added).

The OCA submits that smart meter implementation is a major undertaking with hundreds of millions of dollars of costs being imposed on ratepayers. With the number of major changes for both the Company and customers, the Smart Meter implementation must ensure that all processes and procedures are in place and operating properly, that the technology is operating and supporting essential utility service, and that customers have been adequately educated. Allegheny Power's proposed Plan leaves little time for this major undertaking and provides for

little or no Commission review of the many significant changes that must be made. Now, Allegheny Power wants to provide the ALJ and the Commission with even less time to consider this significant proposal.

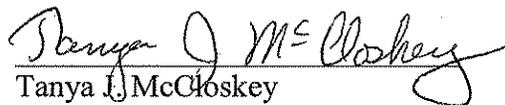
The OCA submits that planning, analysis, development, field testing and implementation raise many issues that must be carefully reviewed and considered. Currently, Allegheny Power has 720,000 customer meters in place, including approximately 619,088 residential meters that are proposed to be replaced. SMIP Plan at 10; Allegheny Power St. 3 at 4. Considering the significant cost of Allegheny Power's Plan, the potential impact on residential consumers, and the potential issues that need to be reviewed in this proceeding, the OCA submits that Allegheny Power's proposed Plan is not a decision that should be entered without the opportunity for full investigation and review.

The Commission's procedural schedule established in the Smart Meter Implementation Order is already aggressive, but is designed to provide a reasoned consideration of the key issues and challenges. Accelerating this schedule further would serve no useful purpose and would constrain the necessary review. The OCA respectfully requests that Allegheny Power's request to expedite consideration of the initial phase implementation and consideration of the full deployment plan be denied.

### III. CONCLUSION

WHEREFORE, the Office of Consumer Advocate respectfully requests that Allegheny Power's request for the Commission to consider a material question regarding expedited treatment of its initial phase activities and expedited review of its SMIP Plan be denied. If the Commission determines to answer the material question, the material question must be answered in the affirmative; that is, the ALJ's decision to deny the procedural schedule forwarded by Allegheny Power in this case is fully in accord with the law and the Commission's Implementation Order, and is fully appropriate given the complexity and magnitude of the costs of the Smart Meter Plan under review.

Respectfully submitted,



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Date: October 13, 2009  
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CERTIFICATE OF SERVICE

Petition of West Penn Power Company :  
d/b/a Allegheny Power for Expedited : Docket No. M-2009-2123951  
Approval of its Smart Meter Technology :  
Procurement and Installation Plan :

I hereby certify that I have this day served a true copy of the foregoing document, the Brief of the Office of Consumer Advocate in Response to Petition for Interlocutory Review and Answer to a Material Question, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 13<sup>th</sup> day of October 2009.

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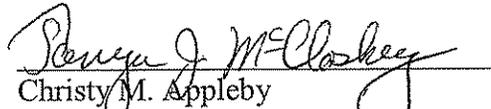
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