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December 4, 2009

VIA ELECTRONIC FILING

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
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**Re: Petition of PPL Electric Utilities Corporation for Approval of a Smart
Meter Technology Procurement and Installation Plan
Docket No. M-2009-2123945**

Dear Secretary McNulty:

Pursuant to 52 Pa. Code § 5.412, enclosed for filing is a copy of the Main Brief and Certificate of Service, which is being served on behalf of Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. in the above-captioned proceedings.

If you have any questions, please contact me.

Respectfully,


Christopher Sharp

CS/scc

Enclosure

Cc: Honorable Wayne L. Weismandel – Via Email and First Class Mail
All Parties on Certificate of Service– Via Email and First Class Mail

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TABLE OF AUTHORITIES

1. *Implementation Order*, Commission Docket No. M-2009-2092655 (entered June 24, 2009).
2. *Act 129 of 2008*, 2008 Penn. Act 129 (enacted Oct. 15, 2008).
3. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A. 2d 600, 602 (Pa. Cmwlth. 1990).

I. INTRODUCTION

Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively, “Constellation”) hereby submit their Main Brief for consideration by the Pennsylvania Public Utility Commission (“Commission”), with regard to the *Smart Meter Technology Procurement and Installation Plan* (“Smart Meter Plan” or “Plan”) filed by PPL Electric Utilities Corporation (“PPL Electric”) on August 14, 2009¹ (with supporting testimony from PPL Electric filed on that same date²), in accordance with the Commission’s June 24, 2009 *Implementation Order*.³

A. SUMMARY AND STATEMENT OF POSITION

As part of its Smart Meter Plan, PPL Electric discusses, generally, methods for customer’s and third-party suppliers’ (“TPSs”) access to data and the types and frequency of data that will be available under the technologies rolled out through PPL Electric’s Plan. PPL Electric in its Plan, however, provides only limited details surrounding these topics that are particularly important to Electric Generation Suppliers (“EGSs”) and other TPSs. The lack of details with respect to these topics represents the sole issue that Constellation addresses herein.

Constellation submits that it is critical that each electric distribution company’s (“EDC”) Smart Meter plan includes sufficient detail with respect to: (a) how a customer and/or its EGS or

¹ *Petition of PPL Electric Utilities Corporation for Approval of a Smart Meter Technology Procurement and Installation Plan*, Commission Docket No. M-2009-2123945 (Aug. 14, 2009) (“PPL Electric Petition”); and *PPL Electric Utilities Corporation Smart Meter Technology Procurement and Installation Plan*, Commission Docket No. M-2009-2123945 (Aug. 14, 2009) (the “Smart Meter Plan” or “Plan”).

² *See, generally, PPL Electric Energy Company Statement Nos. 1-5*, Commission Docket No. M-2009-2123945 (Aug. 14, 2009).

³ *Implementation Order*, Commission Docket No. M-2009-2092655 (entered June 24, 2009) (“Implementation Order”).

other TPSs will access data; and (b) what specific frequencies, types and formats of data will be provided through such EDC's Smart Meters. Adopting Constellation's suggested improvements with respect to each of these topics will best ensure that PPL Electric's Smart Meter Plan is likely to effectively meet the goals of the Commission's Implementation Order and *Act 129 of 2008* ("Act 129"),⁴ and will be in the public interest.

B. PROCEDURAL HISTORY

PPL Electric on August 14, 2009 filed its Plan along with supporting testimony, in accordance with the Implementation Order. On September 29, 2009, a Prehearing Conference was held, with Administrative Law Judge Wayne L. Weismandel ("ALJ") presiding. At the Prehearing Conference, the ALJ adopted the procedural schedule ("Procedural Schedule") agreed to by the parties.

In addition to PPL Electric, Appearances and/or Petitions to Intervene were filed by the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, the Commonwealth of Pennsylvania Department of Environmental Protection, the PP&L Industrial Customer Alliance, the Pennsylvania Association of Community Organizations for Reform Now, and Constellation.

On October 6, 2009, Administrative Law Judge Kandace Melillo presided over a Technical Conference in this matter.

⁴ *Press Release, Governor Rendell Signs Energy Conservation Bill to Save Consumers Millions on Electricity; Urges Legislature to Pass Rate Mitigation Bill*, Pennsylvania Office of the Governor (Oct. 15, 2008) (http://www.portal.state.pa.us/portal/server.pt?open=512&objID=2999&PageID=431162&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/global/news_releases/governor_s_office/news_releases/governor_rendell_signs_energy_conservation_bill_to_save_consumers_millions_on_electricity_urges_legislature_to_pass_rate_mitigation_bill.html).

Pursuant to the Procedural Schedule, direct testimony was submitted by intervening parties on October 9, 2009. Subsequently, rebuttal testimony was submitted by parties on October 26, 2009, and surrebuttal testimony was filed on October 30, 2009. Constellation submitted and circulated to parties only direct testimony for the Commission's consideration, in order to provide an analysis of the Smart Meter Plan.⁵ PPL Electric submitted rebuttal testimony from Douglas R. Krall related to the issues raised by Constellation.⁶

A hearing was held on November 3, 2009, at which time pre-filed written testimony and exhibits were admitted into the record, and parties conducted limited cross-examination of witnesses.

II. ARGUMENT

A. LEGAL STANDARDS

1. Burden of Proof.

Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. Further, it is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”⁷

⁵ See *Direct Testimony of David I. Fein on Behalf of Intervenors Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.*, Commission Docket No. M-2009-2123945 (Oct. 9, 2009) (“Constellation St. 1”).

⁶ See *Rebuttal Testimony of Douglas A. Krall*, Commission Docket No. M-2009-2123945 (Oct. 26, 2009) (“PPL Electric St. 1-R”).

⁷ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A. 2d 600, 602 (Pa. Cmwlth. 1990).

2. Standards Applicable to Smart Meter Plans.

The requirements for utilities' Smart Meter technology Implementation Plans can be found in the Commission's June 2009 Implementation Order and Act 129's revisions to Section 2807, *Duties of Electric Distribution Companies*, of Title 66 of the Pennsylvania Consolidated Statutes (66 Pa.C.S. § 2807). With respect to Smart Meter technology and its capabilities for data access, forms and frequency in each EDC's plan, Act 129 provides that Smart Meter technology:

- (a) "means technology, including metering technology and network communications technology capable of bidirectional communication, that records electricity usage on at least an hourly basis, including related electric distribution system upgrades to enable the technology;"⁸
- (b) "shall provide customers with direct access to and use of price and consumption information;"⁹ and
- (c) "shall also:
 - (1) Directly provide customers with information on their hourly consumption.
 - (2) Enable time-of-use rates and real-time price programs.
 - (3) Effectively support the automatic control of the customer's electricity consumption by one or more of the following as selected by the customer:
 - (i) the customer;
 - (ii) the customer's utility; or
 - (iii) a third party engaged by the customer or the customer's utility."¹⁰

⁸ Act 129 at 66 Pa.C.S. § 2807(g).

⁹ Act 129 at 66 Pa.C.S. § 2807(g).

¹⁰ Act 129 at 66 Pa.C.S. § 2807(g).

With respect to these same issues, the Commission's Implementation Order provides additional details, laying out, in part, that "[t]he Commission believes that the smart meter capability requirements set out in Act 129 are minimal requirements,"¹¹ and that:

a covered EDC's smart meter technology *must* support the following capabilities:

1. Bidirectional data communications capability.
2. Remote disconnection and reconnection.
3. Ability to provide 15 minute or shorter interval data to customers, EGSs, third parties and the regional transmission organization ("RTO") on a daily basis, consistent with the data availability, transfer and security standards adopted by the RTO.
4. A minimum of hourly reads delivered at least once per day.
5. On board meter storage of meter data that complies with nationally recognized non proprietary standards such as ANSI C12.19 and C12.22 tables.
6. Open standards and protocols that comply with nationally recognized non proprietary standards, such as IEEE 802.15.4.
7. Ability to upgrade these minimum capabilities as technology advances and becomes economically feasible.
8. Ability to monitor voltage at each meter and report data in a manner that allows EDC to react to the information.
9. Remote programming capability.
10. Communicate outages and restorations.
11. Ability to support net metering of customer generators.
12. Support automatic load control by EDC, customer and third parties, with customer consent.
13. Support time of use and real time pricing programs.

¹¹ Implementation Order at p.16.

14. Provide customer direct access to consumption and pricing information.¹²

B. EGSs’ AND OTHER TPSS’ ACCESS TO CUSTOMER DATA FROM PPL ELECTRIC’S SMART METERS.

Act 129 and the Commission’s Implementation Order specifically lay out requirements and goals for all EDCs’ Smart Meter technologies, including the way in which customers and their TPS designees may access data, and the granularity of the data that can be accessed. For instance, Act 129 states that Smart Meter technologies must provide “direct access to and use of price and consumption information,”¹³ and must “[d]irectly provide customers with information on their hourly consumption.”¹⁴ The Implementation Order adds that Smart Meter technology implemented by an EDC must include the “[a]bility to provide 15 minute or shorter interval data to customers, EGSs, third parties and the [RTO] on a daily basis,”¹⁵ and must be able to provide “[a] minimum of hourly reads delivered at least once per day.”¹⁶ Moreover, the Implementation Order makes clear that these are only “minimum capabilities” and suggests that Smart Meters should provide additional capabilities if it is technologically and economically feasible.¹⁷

Through direct testimony, Constellation – as an EGS and TPS familiar with retail customers’ needs as they shop and look for new and well-tailored products – sought additional detail with respect to data access and frequency, and provided suggestions as to the level of granularity that PPL Electric’s Smart Meters should provide to customers in order to empower

¹² Implementation Order at pp.16-17 (*emph. added*).

¹³ Act 129 at 66 Pa.C.S. § 2807(g).

¹⁴ Act 129 at 66 Pa.C.S. § 2807(g).

¹⁵ Implementation Order at pp.16-17.

¹⁶ Implementation Order at pp.16-17.

¹⁷ Implementation Order at pp.16-17 (stating that EDCs should be able “to upgrade these minimum capabilities as technology advances and becomes economically feasible”).

them in a developing competitive marketplace. Through additional testimony, it became clear that PPL Electric's Smart Meter Plan included some of these capabilities, but that it failed to provide certain valuable characteristics that could benefit PPL Electric's customers.

Adopting PPL Electric's Smart Meter Plan, as clarified in PPL Electric St. 1-R, along with Constellation's limited and narrow suggested improvements, will be in the public interest.

1. The Commission Should Approve the Electronic Access Capabilities of the Smart Meter Plan, as Clarified by PPL Electric Witness Krall.

Act 129 and the Implementation Order both require that Smart Meter technology provide PPL Electric's customers with direct access to and use of price and consumption information.¹⁸ Constellation witness David I. Fein recommends that "any Smart Meter Plan should allow a customer to electronically grant access to [TPSs],"¹⁹ and expects that through PPL Electric's Plan, "customers' EGSs or other [TPSs] will be allowed to directly utilize PPL Electric's web-based "Energy Analyzer" to obtain the customers' data."²⁰

PPL Electric witness Douglas A. Krall explains that PPL Electric "has a web-based release form that permits customers to electronically grant the release of information to EGSs," which allows EGSs to then "access customer usage information using standard format electronic data interchange transactions."²¹ Mr. Krall confirms, moreover, that TPSs and EGSs "can access

¹⁸ See Act 129 at 66 Pa.C.S. § 2807(g) (stating that Smart Meter technology "shall provide customers with direct access to and use of price and consumption information"); see also Implementation Order at p.17 (stating that Smart Meter technology should "[p]rovide customer direct access to consumption and pricing information").

¹⁹ Constellation St. 1 at p.6 (lines 10-11).

²⁰ Constellation St. 1 at p.6 (lines 16-19).

²¹ PPL Electric St. 1-R at p.10 (lines 17-22).

a customer’s account information via the ‘Energy Analyzer’ if the customer has provided his or her password and account number.”²²

As PPL Electric’s Smart Meter Plan was unclear on these details, but PPL Electric has provided necessary clarification through its testimony, Constellation asks that the Commission approve this aspect of the Smart Meter Plan as clarified and proposes the following Ordering Paragraph:

The Commission hereby **APPROVES** the electronic access provisions of the Smart Meter Plan, as clarified in PPL Electric St. 1-R at pp.10 (lines 12-22) and 11 (lines 9-16).

2. The Commission Should Require PPL Electric to Provide for All Commercial and Industrial Customers 15-Minute Interval Data Updated and Made Available on an Hourly Basis or, at a Minimum, on a Daily (24-Hour) Basis.

The Implementation Order states specifically that each EDC’s Smart Meter technology must support the:

[a]bility to provide 15 minute or shorter interval data to customers, EGSs, third parties and the [RTO] on a daily basis, consistent with the data availability, transfer and security standards adopted by the RTO.²³

In addition, the Commission states that such technology should provide “[a] minimum of hourly reads delivered at least once per day,”²⁴ and that Smart Meters should provide additional capabilities – over and above these requirements – if it is technologically and economically feasible.²⁵

²² PPL Electric St. 1-R at p.11 (lines 9-11).

²³ Implementation Order at p.16.

²⁴ Implementation Order at p.16.

²⁵ Implementation Order at pp.16-17 (stating that EDCs should be able “to upgrade these minimum capabilities as technology advances and becomes economically feasible”).

It seems clear, then, that a minimum, the Implementation Order requires that PPL Electric's Smart Meter Plan provide for the implementation of Smart Meters that "provide 15 minute . . . interval data . . . on a daily basis," as noted above. Despite this language, PPL Electric seems to suggest that meters with these capabilities will not necessarily be made available to all customers.

First, with respect to the availability of 15-minute interval data, PPL Electric witness Krall explains that "[t]he meters deployed to customers in the Company's Large Commercial and Industrial [("C&I")] class already capture 15-minute interval data and that data is stored in a repository and is made available to customers and their designated EGSs and [TPSs]," but that, while the meters deployed to "Small [C&I] customers are *capable* of capturing 15-minute data and of communicating that for storage and use," PPL Electric "would need to make certain upgrades "in order to make such data available" to these customers and their designated EGSs and TPSs.²⁶ PPL Electric has not provided any evidence – economic or otherwise – as to why such capabilities are not being utilized and made available to Small C&I customers in the same way that they are made available to Large C&I customers under the Smart Meter Plan. Absent any evidence to the contrary, the Commission should find that it is in the public interest to provide this same 15-minute interval data access to Small C&I customers as well.

Next, with respect to the timeliness of making such 15-minute interval data available, though the Implementation Order states that such data *at a minimum* should be made available on a *daily* basis, PPL Electric proposes to provide such data *only on* a 48-hour basis.²⁷ Again,

²⁶ PPL Electric St. 1-R at p.12 (lines 8-16).

²⁷ See PPL Electric St. 1-R at p.13 (lines 6-8) (stating that "[t]he Company's AMI system routinely makes data that has been validated, edited, and estimated available to customers via its website *on a 48-hour basis*") (*emph. added*).

PPL Electric has not provided evidence proving why it would not be in the public interest to provide such data on a *daily* basis, as laid out in the Implementation Order. Meanwhile, Constellation witness Fein explains in detail why 15-minute data on an hourly basis, as provided for in the Implementation Order, is important to Large and Small C&I customers, and provides evidence as to why going beyond the Implementation Order’s minimum frequency – providing 15-minute data *on an hourly basis* rather than only on the Commission’s minimum daily basis recommendation – is also in the public interest for C&I customers, stating that:

In today’s competitive business environment, all sizes of [C&I] customers are thinking about energy as a strategic asset integral to every aspect of the bottom line. The capacity to actively monitor and manage usage and adjust operations accordingly reflects the increasingly sophisticated energy strategies now available. Load response solutions, for instance, are particularly attractive to businesses that have already invested in intelligent building designs, and wish to leverage the full spectrum of the energy chain to maximize these energy investment decisions. [Constellation] and other EGSs are helping customers adapt successfully to this new energy paradigm and positioning them to make the most of the opportunity to participate in the emerging energy marketplace of the 21st Century. Overlaying Smart Meter technologies onto existing open platforms makes it possible to more successfully harness and shape load whether the load is distributed across a single facility, college campus, or retail chain with multiple locations throughout a large geographic area. This ability to shift and shape load across multiple buildings is going to reveal itself to be the smartest and most efficient way to create the virtual peaking plants and intelligent buildings of the greener energy grid of the future. Innovations of this magnitude in our built environment, by virtue of its role in consumption, have the potential to shift our understanding of energy generation, demand and load allocation in an entirely new direction. This shift in direction, however, while *possible* is only *likely* to occur if the proper access to data is available to customers and their EGSs in quick, easy and straightforward manners, and if the data provided by such new Smart Meter technologies is as specific and frequent as possible.²⁸

²⁸ Constellation St. 1 at pp.8 (line 4) – 9 (line 2).

In this way, providing 15-minute data *on a daily basis at a minimum* will encourage new innovation and efficiencies in energy use, but providing such 15-minute data *on an hourly basis* will go even further to allow Large and Small C&I customers to take advantage of new energy infrastructure and shape new energy and resource management innovation.

As PPL Electric's Smart Meter Plan does not meet its burden of proof to support its failure to include the Implementation Order's stated minimum goal of providing 15-minute data on a daily basis, and as Constellation has provided sufficient evidence to support going beyond the Implementation Order's *minimum* goal, Constellation proposes the following Ordering Paragraph:

The Commission hereby **ORDERS** PPL Electric to revise its Smart Meter Plan to provide to Small and Large Commercial and Industrial customers and their designated EGSs and TPSs 15-minute interval data on an hourly basis.

Alternatively, if the Commission does not move to require PPL Electric to provide 15-minute data on an hourly basis, despite the evidence in the record, Constellation proposes the following Ordering Paragraph:

The Commission hereby **ORDERS** PPL Electric to revise its Smart Meter Plan to provide to Small and Large Commercial and Industrial customers and their designated EGSs and TPSs 15-minute interval data on a daily (24-hour) basis.

C. DEFAULT SERVICE WHOLESALER SUPPLIER ACCESS TO UP-TO-DATE, AGGREGATE, CLASS-BY-CLASS DATA DURING AND AFTER IMPLEMENTATION OF PPL ELECTRIC'S SMART METER PLAN.

With respect to the Smart Meter requirements under Act 129, Governor Rendell's office explains that:

A smart meter gives consumers the information they need to better control their energy consumption, such as the current cost of power or whether they are in a peak rate period. Armed with this information, consumers can choose to use energy when it is cheapest and cut back at times when it is most expensive.²⁹

In this way, as Constellation witness Fein explains, “it is clear that one intention of Smart Meter proliferation is to *change* the way that consumers use energy from the manner in which they typically may use it today – i.e., to change customers’ usage patterns and profiles.”³⁰ In order to help PPL Electric’s Default Service suppliers to best predict and accordingly plan for new patterns in energy usage, Mr. Fein recommended “that PPL Electric provide to such suppliers the most up-to-date and accurate information available with respect to both its progress in implementing its Smart Meter Plan,” and the amount of energy used by each customer class – in the aggregate.³¹ Specifically, Constellation recommended that PPL Electric provide:

- Monthly updates on the numbers of Smart Meters installed by customer class pursuant to PPL Electric’s Smart Meter Plan; and
- As soon in time as possible, but no later than after 48 hours (as required under the Implementation Order with respect to customer access to Smart Meter data), validated aggregate customer consumption data, by customer class, for every hour of every day.³²

In response to Mr. Fein’s suggestions, PPL Electric witness Krall pointed to “[PPL Electric’s] proposal for semi-annual stakeholder meetings and updates of Plan progress,”³³ and stated that:

²⁹ See Constellation St. 1 at pp.9-10 (quoting *Governor Rendell Signs Energy Conservation Bill to Save Consumers Millions on Electricity; Urges Legislature to Pass Rate Mitigation Bill*, Press Release, Pennsylvania Office of the Governor (issued Oct. 15, 2008)).

³⁰ Constellation St. 1 at p.10 (lines 3-5).

³¹ Constellation St. 1 at p.10 (lines 13-17).

³² Constellation St. 1 at p.11 (lines 3-8).

³³ PPL Electric St. 1-R at p.17 (lines 15-17).

the hourly data from . . . customers' smart meters is aggregated and transmitted to PJM for scheduling and settlement purposes on behalf of the Company's default generation suppliers and each supplier then has available the data, including any effect associated with smart meter capabilities³⁴

In light of PPL Electric witness Krall's testimony, Constellation asks that the Commission approve this aspect of the Smart Meter Plan and proposes the following Ordering Paragraph:

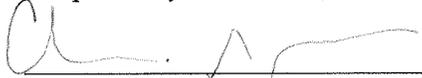
The Commission hereby **APPROVES** the PPL Electric Smart Meter Plan's proposed semi-annual stakeholder meetings and updates of Plan progress.

IV. CONCLUSION

PPL Electric's Smart Meter Plan, including Constellation's proposed improvements to data access and frequency herein, is supported by substantial evidence in the record before the Commission. The Smart Meter Plan, coupled with improved access to and frequency of customer data, will encourage customers to adapt successfully to the new energy paradigm in the Commonwealth and, in turn, will better assure that PPL Electric's customers are well positioned to make the most of the opportunity to participate in the emerging energy marketplace of the 21st Century.

³⁴ PPL Electric St. 1-R at p.17 (lines 17-22).

Respectfully Submitted,



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*On Behalf of Intervenors Constellation Energy
Commodities Group, Inc. and Constellation
NewEnergy, Inc.*

December 4, 2009

CERTIFICATE OF SERVICE

I hereby certify that this day I have served a true copy of the foregoing Main Brief of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc., upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

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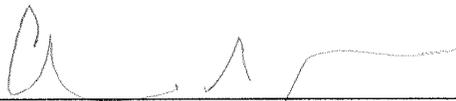
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