

**OFFICE OF CHIEF COUNSEL
Rachel Carson State Office Building
P. O. Box 8464
Harrisburg, PA 17105-8464**

December 18, 2009

Bureau of Regulatory Counsel

Telephone 717-787-7060
Telecopier 717-783-7911

Honorable James McNulty
Secretary, Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary McNulty:

Please find attached for electronic filing the Main Brief of the Commonwealth of Pennsylvania, Department of Environmental Protection in Opposition to the Petition for Interlocutory Review and Answer to a Material Question of West PennPower Company d/b/a Allegheny Power in the above referenced matter. Copies have been served on all parties listed on the enclosed Certificate of Service.

Sincerely,

/s/ Scott Perry

Scott Perry
Assistant Counsel

cc: Service List

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**MAIN BRIEF OF THE
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Scott Perry (Pa. No. 86327)
Assistant Counsel
scperry@state.pa.us

Commonwealth of Pennsylvania
Department of Environmental Protection
RCSOB, 9th Floor
400 Market Street
Harrisburg, PA 17101-2301
717-787-7060
717-783-7911 (Fax)

Dated: December 18, 2009

TABLE OF CONTENTS

I. INTRODUCTION 1

II. PROCEDURAL HISTORY 2

III. DESCRIPTION OF WEST PENN'S PLAN 3

IV. SUMMARY OF THE ARGUMENT 3

V. ARGUMENT 4

 A. ACT 129 SMIP REQUIREMENTS 6

 1. DEPLOYMENT SCHEDULE 6

 a. COMPANY PROPOSAL 6

 b. OTHER PARTIES' POSITIONS 7

 2. SMART METER CAPABILITIES AND RELATED TECHNOLOGIES 7

 a. COMPANY PROPOSAL 7

 b. USE OF IN-HOME DISPLAYS/DEVICES (IHDs) 7

 B. COST ISSUES 9

 1. REASONABLENESS/PRUDENCY 9

 2. REVENUE REQUIREMENT 13

 a. RATE OF RETURN 14

 b. METER ASSET LIFE 15

 c. RECOVERY OF STRANDED INVESTMENT 15

VI. CONCLUSION 16

VII. PROPOSED FINDINGS OF FACT 16

VIII. PROPOSED CONCLUSIONS OF LAW 18

IX. PROPOSED ORDERITN PARAGRAPHS 18

TABLE OF AUTHORITIES

Statutes

66 Pa.C.S. § 332(a)5
66 Pa.C.S. § 2807(f).....*passim*
66 Pa.C.S. § 2807(g) 1, 8. 18

Cases

Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600 (Pa. Cmwlth. 1990).....6
Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950).....6
Norfolk & Western Ry. Co. v. Pa. PUC, 489 Pa. 109, 413 A.2d 1037 (1980)6

Commission Orders

Smart Meter Procurement and Installation Order Docket No. M-2009-2092655*passim*

I. Introduction

Pursuant to the November 24, 2009 Litigation Schedule Order of Administrative Law Judge Mark A. Hoyer, the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) files this main brief in the above captioned matter.

Act 129 of 2008 became effective November 14, 2008 and requires electric distribution companies (“EDCs”) with more than 100,000 customers to, in relevant part, develop smart meter technology procurement and installation plans. 66 Pa. C.S. § 2807 (f)(1). Act 129 further requires EDCs to furnish smart meters upon request from a customer, in new building construction, and in accordance with a distribution schedule not to exceed 15 years. 66 Pa. C.S. § 2807 (f)(2).

Act 129 also specifies the functions smart meters must provide. In order to be considered a smart meter, the meter and supporting infrastructure must 1) be capable of bidirectional communication, 2) record electricity usage on at least an hourly basis, 3) provide customers with direct access to and use of price and consumption information, 4) directly provide customers with information on their hourly consumption, 5) enable time-of-use rates and real-time-price programs and 6) effectively support the automatic control of the customer’s electricity consumption by one or more of the following as selected by the customer: the customer, the EDC, or a third party engaged by the customer or the EDC. 66 Pa. C.S. § 2807 (g).

Through its Smart Meter Procurement and Installation Order (“Installation Order”) at Docket No. M-2009-2092655, the Pennsylvania Public Utility Commission’s (“Commission”) established the process by which the Smart Meter Plans will be approved, the schedule under

which smart meters are to be deployed, the minimum functions the meters are to provide, and the method by which the EDC may recover its costs.

Significantly, the Installation Order established a 30 month network and installation grace period during which EDCs are not required to deploy smart meters. Installation Order at 7. Equally significant, the Installation Order also required smart meters to provide nine additional functions unless the Commission determines that the function is not cost effective. Installation Order, 30-31. Finally, the Installation Order clarified that smart meters are to be deployed throughout the EDC's service territory in less than 15 years from the date the EDC's Smart Meter Plan is approved. *Id.* at 14-15.

Finally, Act 129 permits EDCs to recover Smart Meter Plan costs through: (1) base rates, including a deferral for future base rate recovery of current basis with carrying charge as determined by the Commission; or (2) on a full and current basis through a reconcilable automatic adjustment clause under Section 1307. 66 Pa. C.S. § 2807(f)(7).

II. Procedural History

Pursuant to Act 129 of 2008 and the Pennsylvania Public Utility Commission's ("Commission") Smart Meter Procurement and Installation Order ("Installation Order") at Docket No. M-2009-2092655, on August 14, 2009, Allegheny Power filed its Petition for Expedited Approval of its Smart Meter Technology Procurement and Installation Plan ("Smart Meter Plan").

On August 29, 2009 the Commission published a notice of Allegheny Power's petition in the *Pennsylvania Bulletin* which required Petitions to Intervene and comments to the Smart Meter Plan to be filed by September 25, 2009. The Department filed its petition to intervene

and comments to the Plan on September 18, 2009. The Department's petition to intervene was granted October 5, 2009.

III. Description of Allegheny Power's Smart Meter Plan

Allegheny Power has proposed an aggressive smart meter procurement and implementation schedule that will result in full deployment of smart meters system wide by the end of 2014. Smart Meter Plan at 14. Allegheny Power's smart meters will provide all 14 functions required by the Installation Order. AP St. No. 2 at 19. Although not required by Act 129 or the Installation Order, Allegheny Power will also install in home displays through out its service territory and provide in home load control devices in support of its Energy Efficiency and Conservation Plan. Smart Meter Plan at 55.

The total cost of Allegheny's plan is approximately \$663.6 million. Smart Meter Plan page 94. As a result of savings realized by upgrades to the Company's Customer Information System ("CIS"), savings from automated meter reading and apportionment of CIS costs to Allegheny's Maryland and West Virginia customers, the total cost to Allegheny's Pennsylvania customer is approximately \$580 million. AP St. No. 4 at 4. This cost will be recovered over a 4 year, 4 month time period using a section 1307 surcharge. The monthly surcharge that would start at \$5.86 per month in February 2010, would increase to \$14.34 per month by June 2011, increase to \$15.57 per month in June 2012 and \$15.77 in June 2013. Smart Meter Plan at 98.

IV. Summary of Argument

The overall cost of Allegheny Power's Smart Meter Plan and its proposed Smart Meter Surcharge are not reasonable or prudent. On a per meter basis, Allegheny Power's Smart Meter Plan is more than twice as expensive as any other Smart Meter Plan before the Commission. The reasons for this excessive cost are that Allegheny Power's Smart Meter Plan improperly

includes the costs of in home displays and in home load control devices (collectively “IHDs”), modernizing its Customer Information System, and recovery of stranded meter costs. In addition, Allegheny Power has not substantiated the costly upgrades to its information technology system.

The excessive cost of Allegheny Power’s Smart Meter Plan leads to excessive monthly Smart Meter Surcharges. Beginning February 2010, Allegheny Power proposes a surcharge of \$5.86 per month, which will ultimately escalate to \$15.77 in June 2013. The excessive cost of the surcharge is exacerbated by the facts that Allegheny Power proposes to collect an out of date and unreasonable 11.5% return on equity and that the asset lives of the meter are only 10 years instead of the statutorily mandated 15 years.

The Department agrees with OCA witness Nancy Brockway that the extreme overall cost and excessive surcharges of Allegheny Power’s Smart Meter Plan will undoubtedly lead to significant negative public backlash. Because Allegheny Power has not demonstrated that the cost of its Smart Meter Plan and proposed surcharge are reasonable and prudent, the Commission must deny Allegheny Power’s Petition. In addition, the Department urges the Commission to require that Allegheny Power resubmit a Smart Meter Plan that excludes the deployment of IHDs, avoids the recovery of stranded meter costs through delayed deployment of smart meters, substantiate the cost of the IT system upgrades and recover the entire cost of the Smart Meter Plan through base rates.

V. Argument

The Department has long championed expedited deployment of smart meters. In comments filed with the Commission pertaining to the Act 129 Energy Efficiency and Conservation proceedings, the Department requested that the Commission require expedited

deployment of smart meters and held Allegheny Power's EEC Plan out as a positive example. See e.g., *Comments and Recommendations of the Department to PECO Energy Company's Petition for Approval of its Energy Efficiency and Conservation Plan* at Docket No. M-2009-2093215 at pages 5-6.

In addition, in comments filed with the Commission pertaining to the First Energy Companies' Smart Meter Plan, the Department again held Allegheny Power out as a preferred example of a utility promising expedited deployment of smart meters. See, *Comments of the Department to Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company's Petition for Approval of Smart Meter Technology Procurement and Installation Plans* at Docket No. M-2009-2123950 at page 3.

While the Department believes that smart meters provide significant benefits to rate payers and the environment and that rapid deployment is necessary to realize those benefits, it has never advocated that such deployment occur at any cost. The Department's comments to Allegheny Power's Smart Meter Plan filed with the Commission reflect this position.

[T]he Department believes that Allegheny Power has developed the most thorough Smart Meter Plan that is before the Commission. As a matter of providing smart meters with comprehensive functionality to consumers on an expedited basis, the Department has no objection to Allegheny Power's Smart Meter Plan. However, the Department also recognizes that cost impacts associated with smart meter deployment can create adverse reactions by Allegheny Power's customers and potentially delay or prevent widespread deployment of smart meters. As such, the Department fully supports a careful analysis of the costs and benefits of Allegheny Power's Smart Meter Plan." *Department Comments to Allegheny Power's Smart Meter Plan* at 4.

As the petitioner for a Commission Order in this matter, Allegheny Power has the burden of proving that the aspects of its proposed Smart Meter Plan meet the requirements of Act 129 and the Installation Order. 66 Pa.C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. *Samuel J.*

Lansberry, Inc. v. Pa. PUC, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing than that presented by the other parties to the case. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, the Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Allegheny Power has not met its burden of proving that the overall cost of its Smart Meter Plan or its proposed Smart Meter Surcharge is reasonable or prudent. As proposed, Allegheny Power's Smart Meter Plan costs more than twice as much as any other Smart Meter Plan before the Commission. As described in greater detail below, the four primary reasons for the extreme cost of Allegheny Power's Plan are: 1) universal deployment of in home displays and deployment of in home load control devices in support of Allegheny Power's Energy Efficiency and Conservation Plan; 2) modernizing the Customer Information System; 3) unsubstantiated costs associated with network and information technology improvements and 4) recovery of stranded meter costs.

A. Act 129 SMIP Requirements

1. Deployment Schedule

a. Company Proposal

Act 129 and the Installation Order require smart meters to be deployed system wide within 15 years of plan approval. Installation Order at 15. Allegheny Power proposes to deploy smart meters system wide by the end of 2014. Smart Meter Plan at 14.

b. Other Parties' Positions

The Department does not object to the pace of Allegheny Power's planned meter deployment for the policy reasons expressed by OCA witnesses Hornby and Brockway. However, the Department does object to the deployment schedule to the extent this creates stranded meter costs. These objections are discussed in greater detail below.

2. Smart Meter Capabilities and Related Technologies

a. Company Proposal

Allegheny Power's smart meters will provide all 14 functions required by the Installation Order. AP St. No. 2 at 19. Although not required by Act 129 or the Installation Order, Allegheny Power will also install in home displays through out its service territory and provide in home load control devices in support of its Energy Efficiency and Conservation Plan. Smart Meter Plan at 55.

b. Use Of In-Home Displays/Devices (IHDs)

In Home Displays and In Home Load Control Devices Should not be Included in Allegheny Power's Smart Meter Plan.

Allegheny Power proposes to provide every customer with an in home display and deploy in home load control devices in support of Allegheny Power's Energy Efficiency and Conservation Plan. The cost of providing and maintaining the IHDs is estimated to be almost \$106 million. Smart Meter Plan page 131. The costs of IHDs should not be recoverable as part of Allegheny Power's Smart Meter Plan for two reasons. First, IHDs are not included within the definition of "smart meter technology" and Act 129 only allows EDCs to recover the costs of providing smart meter technology. 66 Pa. C.S. §2807(f)(7). Second, even if IHDs meet this definition, Allegheny Power has not demonstrated that the cost associated with IHDs reasonable and prudent.

66 Pa. C.S. § 2807 (g) defines “smart meter technology” as follows:

[T]echnology, 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. The technology shall provide customers with direct access to and use of price and consumption information. The technology 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) or a third party engaged by the customer or the customer’s utility. (Emphasis added)

With regard to the enumerated functions mandated by Act 129, the Installation Order provides as follows:

[T]he Commission will require EDC smart meters to have a capability to provide raw near real-time consumption data through a HAN or similarly capable method of open protocols. This delivery method should also be capable of providing pricing signals to support real-time and time-of use pricing programs, as well as energy efficiency and demand response programs. Smart meters should support EDC and EGS time-of-use and real-time-pricing programs. Similarly, smart meters should support EDC, EGS and CSP energy efficiency and demand response programs.

Installation Order at 23.

It is clear that neither Act 129 nor the Installation Order require IHDs to be deployed. It is also clear from the Commission’s Installation Order that smart meters must simply enable a Home Area Network that can support IHDs but does not include the IHDs themselves. Allegheny Power appears to agree that IHDs are not critical to meeting the definition of “smart meter technology” as IHDs will not be provided beyond the initial round of meter installation. OCA St. No. 2 page 21. If IHDs were necessary smart meter technology, Allegheny Power would be legally required to provide IHDs to all customers in perpetuity. Because IHDs are not

included in the definition of smart meter technology in Act 129 or the Commission's Installation Order, the cost of providing IHDs cannot be recovered as part of Allegheny Power's Smart Meter Plan. 66 Pa. C.S. § 2807(f)(7).

Even if the Commission concludes that IHDs somehow meet the definition of "smart meter technology", the Department agrees with OCA witnesses Hornby and Brockway that that IHD costs should not be recoverable because Allegheny Power has not demonstrated that universal deployment of these devices is cost effective. OCA St. No. 2 page 31, OCA St. No. 1S pages 11-13. The Department also agrees with OCA witness Brockway that given the enormous expense of Allegheny Power's Smart Meter Plan, customer reaction to receiving IHDs, and the burdens the customer will have to endure in order to even have the IHDs installed, is likely to be profoundly negative. See, OCA St. No. 2 page 31.

As Allegheny witness Cohen notes, the real reason Allegheny Power is providing these devices is to support its Energy Efficiency and Conservation Plan. AP St. No. 5-R page 8. As such, these costs should not be included in the proposed smart meter surcharge and should instead be included as part of Allegheny's Act 129 Energy Efficiency and Conservation Plan.

B. Cost Issues

1. Reasonableness/Prudence

The Overall Cost of Allegheny Power's Smart Meter Plan is not Reasonable or Prudent.

Act 129 permits EDCs to recover the reasonable and prudent costs of providing smart meter technology. 66 Pa. C.S. § 2807(f)(7). The Department agrees with OCA witnesses J. Richard Hornby and Nancy Brockway that the cost of Allegheny Power's Smart Plan is not reasonable or prudent and that Allegheny Power has failed to demonstrate that its Plan cost effective. OCA St No. 1, page 4, OCA St. No. 2, page 9.

Allegheny Power serves 619,088 metered residential and 95,917 metered commercial and industrial customers. AP St. 2, page 4. This is a total of 715,005 meters. The net cost of Allegheny Power's Smart Meter Plan is projected to be \$580 million. AP St. No. 4, page 4. Smart Meter Plan at 94. This equates to approximately \$811 per meter. OSBA St. No. 1 page 2.

However, to provide a completely accurate analysis of the cost of Allegheny Power's Smart Meter Plan, the Department believes that the gross cost of the plan should be reviewed. The *real* cost of Allegheny's plan is approximately \$663.7 million – or \$928 per meter. Smart Meter Plan page 94. Because Allegheny Power's meter and billing system is so antiquated, moving to automated meter reading and upgrading the CIS provide offsetting cost reductions. Further, by apportioning costs of the CIS to Allegheny's Maryland and West Virginia ratepayers the net cost of the plan born by Pennsylvania customers is reduced to \$580 million. AP St. No. 4 at 4.

As OCA witness J. Richard Hornby observes, Allegheny Power's Smart Meter Plan costs than twice as much as the Smart Meter Plans that have been implemented by other EDCs throughout the country. OCA St. No. 1, page 15. Allegheny Power's Smart Meter Plan is also considerably more costly than the Smart Meter Plans proposed by all other Pennsylvania EDCs. OSBA St. No. 1 page 2. Indeed, on a per meter basis Allegheny Power's Smart Meter Plan is *two to three times* as expensive as every other smart meter plan before the Commission. Id. PPL Smart Meter Technology Procurement and Installation Plan, page 11 Docket No. M-2009-2123945 (providing an estimate of \$380 - \$450 million to completely replace its current system).

A comparison to First Energy and PPL's estimates is particularly relevant given the similar characteristics of the service territories and Allegheny witness Cohen's explanation that the reason for the extreme cost of Allegheny Power's Plan is the "hilly and rural" nature of its service territory. AP St. No. 5-R pages 6-8. The Department submits that the extreme difference in costs observed by witnesses Hornby and Knecht should, by themselves, be ample evidence of the unreasonable cost of Allegheny Power's Smart Meter Plan.

Given the disproportionately high cost of Allegheny Power's Smart Meter Plan, the Department agrees with witness Hornby that Allegheny Power must demonstrate that its plan is the most cost-effective plan it could pursue. OCA St. No. 1 pages 10-11. Allegheny Power estimates that its Plan will produce \$9.44 million in benefits annually through generation savings in its distribution service costs beginning in 2015. OCA Statement No. 1, page 9. This results in a net cost of more than \$400 million over the first five years of the plan. Id. Ultimately, as OCA witness Hornby concludes, the benefit to cost ratio of Allegheny's Smart Meter Plan is only 0.2. OCA St. No. 1 page 19. This stands in stark contrast to the Smart Meter Plans this witness has reviewed in other jurisdictions which produced benefit to cost ratios in excess of 1.0. OCA St. No. 1 page 20.¹

The Department shares witness Hornby's concern that Allegheny Power did not present a comparison of other EDC AMI proposals and prepare a formal benchmarking during the development of its plan to adequately explain why the costs of its Plan are more than twice as high as other EDC plans. OCA St. 1S page 9. Because Allegheny Power has the burden of

¹ Even the *post hoc* analysis provided by Allegheny Witness Graves does not produce a benefit to cost ration greater than 0.74. AP St. No. 6-R page 16. The Department believes that the testimony of witness Graves should not be given any weight towards determining whether Allegheny Power has met its statutory obligation to prove its case. His analysis was not done to assist in the development of Allegheny Power's plan but is instead offered to attempt to diminish the testimony of the OCA witnesses. Allegheny Power has the burden of demonstrating that the costs of its Smart Meter Plan are reasonable and prudent. Mr. Graves testimony in no way fulfills that purpose.

proving that the cost of its Smart Meter Plan is reasonable and prudent but failed to justify this cost beyond the conclusory statements of its witnesses, the Department contends that the only appropriate alternative method of cost recovery for the entire Smart Meter Plan is through a base rate proceeding.

The Cost of Modernizing the Customer Information System and Improving Allegheny Power's Information Technology System Should be Recovered Through Base Rates.

Allegheny Power states that it must modernize its CIS to support its smart meter infrastructure and meet its Energy Efficiency and Conservation plan goals. AP St. No. 3 page 11. The total cost of modernizing the CIS is approximately \$71.4 million (Smart Meter Plan page 93) of which, 52% of the cost will be attributed to Pennsylvania rate payers. OCA St. No. 1 page 30.

The Department agrees with OCA witness Hornby that modernizing Allegheny Power's CIS is an investment that a utility would make in the normal course of business OCA St. No. 1 page 30. As described by Allegheny Power witness Arthur, the Company's "CIS system was originally installed into production in the 1970s. This system is built upon an aging legacy platform that is increasingly more difficult maintain...The skill sets required to maintain and develop the CIS application are increasingly more difficult to find." AP St. No. 3 page 11. From this description it is clear that the Company's CIS is an antiquated system that should be replaced regardless of whether replacement supports Allegheny Power's Smart Meter Plan.

The Department also agrees with witness Hornby that a base rate proceeding is the best forum in which to examine the reasonableness of the proposed upgrades to the CIS as well as the Company's network and information technology systems. Id. The cost associated with improving Allegheny Power's IT system is a significant contributor to the excessive cost of Allegheny Power's Smart Meter Plan. OCA St. No. 1 page 5, 16. In addition to providing a

better forum for evaluating the reasonableness of the Company's proposals, cost recovery through base rates appropriately places the financial risk of the Company's investment in these systems on Allegheny Power rather than its rate payers. Accord, *id* at 11.

While Act 129 permits EDCs to recover the costs of their Smart Meter Plans through section 1307 surcharges, that method of cost recovery is not the only option. 66 Pa. C.S. § 2807(f)(7). Act 129 also authorizes EDCs to recover their costs through base rates. *Id.* The Department shares witness Hornby's concern that Allegheny Power did not present a comparison of other EDC AMI proposals and prepare a formal benchmarking during the development of its plan to adequately explain why the costs of its Plan are more than twice as high as all other EDC plans. OCA St. 1S page 9.

Because Allegheny Power has the burden of proving that the cost of its Smart Meter Plan is reasonable and prudent but failed to justify this cost beyond the conclusory statements of its witnesses, Allegheny Power's Petition for Approval of its Smart Meter Plan must be denied. In addition, given Allegheny Power's failure to demonstrate the cost effectiveness of its plan, the Department contends that the only appropriate method of cost recovery for the entire Smart Meter Plan is through a base rate proceeding.

2. Revenue Requirement

Allegheny Power's Smart Meter Surcharge is not Reasonable or Prudent

In order to recover the unreasonably high costs of its plan, Allegheny Power proposes an unreasonably high Smart Meter Surcharge. Beginning February 2010, Allegheny Power proposes a surcharge of \$5.86 per month, which will ultimately escalate to \$15.77 in June 2013. Smart Meter Plan at 98. As described by OCA witness Hornby, this surcharge would increase

the electric bill of a residential customer who uses approximately 500 kWh per month by 12% in 2010 and 34% by 2013. OCA Statement No. 1, page 27.

Exacerbating the cost of the surcharge are the facts that Allegheny Power Allegheny Power proposes to collect an out of date and unreasonable 11.5% return on equity, proposes meter asset lives of only 10 years instead of 15 years, and proposes to recover \$24.6 million in stranded meter costs incurred due to expedited deployment of smart meters.

A. Rate of Return

Allegheny Power's Proposed Return on Equity is Out of Date and Excessive.

Allegheny Power proposes to collect a return on equity of 11.5% that is based on its last rate case which was 15 years ago. AP St. No 4, page 9. Company witness Avera further argues that the 11.5% ROE proposed by Allegheny Power is “a conservative estimate of investor’s required rate of return for the Company based on recent analyses....” AP St. No. 7-R page 6.

To the contrary, the Department agrees with OCA witness Kahal that “use of Allegheny Energy’s disastrous experience in the deregulated generation market (which nearly led to its bankruptcy) to leverage its rate of return in this case for its captive utility customers” is “unacceptable”. OCA St. No.3S pages 5-6.

The Department also agrees with witness Kahal that if the Commission permits Allegheny Power to recover its costs through a reconcilable surcharge, the financial risk faced by Allegheny Power is significantly reduced and should be reflected in its return on equity. OCA St. No.3S pages 5. Finally, the Department agrees with OCA witness Hornby and Kahal that using a 10.1% ROE based on the most recently litigated rate case is reasonable and prudent. OCA St. No. 1 page 29, OCA St. No. 3S page 10 (noting that 10.1% may be too high).

B. Meter Asset Life

Allegheny Power Smart Meter Asset Lives are Too Short

Allegheny Power proposes the following asset lives for its smart meters and smart meter infrastructure:

<u>Asset Type</u>	<u>Book Life</u>	<u>Tax Life</u>
IHD	5 years	10 years
Smart Meters	10 years	10 years
Hardware	5 years	5 years
Software w/o CIS	5 years	3 years
Software w/ CIS	7 years	3 years

AP St. No. 4 page 9

As noted by OCA witness Hornby, all other EDCs have proposed a depreciable life for smart meters of 15 years. COA St. No. 1 page 29. The Department agrees with witness Hornby that this depreciation life is appropriate and in keeping with the language of Act 129 which states that smart meter technology shall be furnished in accordance with a depreciation schedule not to exceed 15 years. Id., 66 Pa C.S. § 2807 (f)(6)(iii). Accordingly, the Commission should order Allegheny Power to extend the asset lives of its smart meters to 15 years.

C. Recovery Of Stranded Investment

Recovery of Stranded Meter Costs is not Appropriate

The final reason for the excessively high Smart Meter Surcharge is because Allegheny Power proposes to collect over \$24.6 million in stranded meter costs. Smart Meter Plan at 94. OCA witness Hornby contends that if the Commission permits Allegheny Power to recover these costs, they should be recovered through a base rate proceeding. OCA St. No. 1 page 29.

While the Department does agree with this assertion, the Department also contends that given the unreasonably high cost of Allegheny Power’s Smart Meter Plan, there is no excuse for incurring additional stranded meter costs. The Department’s position has been clear. Expedited

smart meter deployment is crucial, but a 10 year deployment schedule is appropriate. *Comments of the Department to Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company's Petition for Approval of Smart Meter Technology Procurement and Installation Plans* at Docket No. M-2009-2123950.

Because the cost of Allegheny Power's Smart Meter Plan is unreasonable, The Commission must order Allegheny Power to deploy smart meters in a manner that does not incur stranded meter costs.

VI. Conclusion

For the foregoing reasons, the Department respectfully requests that the Commission deny Allegheny Power's Petition for Approval of its Expedited Smart Meter Technology Procurement and Installation Plan and require Allegheny Power to resubmit a Smart Meter Plan that complies with the proposed ordering paragraphs provided below.

VIII. Proposed Findings of Fact

- 1) Allegheny Power has 715,000 metered customers. Smart Meter Plan at 5.
- 2) The gross cost of Allegheny Power's Smart Meter Plan is \$663.7 million. Smart Meter Plan at 94.
- 3) The net cost of Allegheny Power's Smart Meter Plan to its Pennsylvania customers is estimated to be \$580 million. AP St. No. 4 at 4
- 4) On a per meter basis, the net cost of Allegheny Power's Smart Meter Plan to its Pennsylvania customers is \$811. OSBA St. No. 1 page 2
- 5) The gross cost of Allegheny Power's Smart Meter Plan is two to three times the cost of every other Smart Meter Plan before the Commission. OSBA St. No. 1 page 2.
- 6) The cost to benefit ratio of Allegheny Power's Smart Meter Plan is 0.2. OCA St. No. 1 page 19.
- 7) Allegheny Power proposes to recover the cost of its Smart Meter Plan through a monthly surcharge that would start at \$5.86 per month in February 2010, would increase to \$14.34 per month by June 2011, increase to \$15.57 per month in June 2012 and \$15.77 in June 2013. Smart Meter Plan at 98.
- 8) The monthly smart meter surcharge would increase the electric bill of a residential customer who uses approximately 500 kWh per month by 12% in 2010 and 34% by 2013. OCA Statement No. 1, page 27.

- 9) Allegheny Power did not provide quantitative analysis comparing the cost of its plan to the cost of any other EDC smart meter plan.
- 10) The four primary reasons for the over all expense of Allegheny Power's smart meter plan are IHDs, customer information system upgrades, network and information technology costs, and meter costs. OCA St. No. 1 page 16.
- 11) Allegheny Power's Smart Meter Plan states the Allegheny Power will deploy IHDs to all customers. Smart Meter Plan page 44.
- 12) The cost to deploy, operate and maintain IHDs pursuant to Allegheny Power's Smart Meter Plan is approximately \$106 million. Smart Meter Plan page 131.
- 13) Allegheny Power has not provided a cost justification for IHDs. OCA St. No. 1 page 17.
- 14) The total cost to upgrade Allegheny Power's Customer Information System is \$71.4 million.
- 15) Upgrading Allegheny Power's Customer Information System is an activity that occurs in the normal course of business. OCA St. No. 1 page 17.
- 16) The network and information technology costs of Allegheny Power's smart meter plan are significantly higher than the network and information technology costs of EDCs that have installed advanced metering infrastructure in other parts of the country. OCA St. No. 1 pages 15 - 16.
- 17) Allegheny Power has not provided a quantitative analysis to explain the differences between its proposed network and information technology costs and the network and information technology costs of EDCs that have installed advanced metering infrastructure in other parts of the country. OCA St. No. 1S page 9.
- 18) Allegheny Power requests a return on equity of 11.5% which is based on its last base rate case 15 years ago. AP St. No 4, page 9.
- 19) Allegheny Power proposes to recover \$24.6 million in stranded meter costs. Smart Meter Plan at 94.
- 20) Stranded meter costs are incurred because Allegheny Power proposes to deploy smart meters system wide by the end of 2104. Smart Meter Plan at 14.
- 21) Allegheny Power proposes the following asset lives for its smart meters and smart meter infrastructure:

<u>Asset Type</u>	<u>Book Life</u>	<u>Tax Life</u>
IHD	5 years	10 years
Smart Meters	10 years	10 years
Hardware	5 years	5 years
Software w/o CIS	5 years	3 years
Software w/ CIS	7 years	3 years

AP St. No. 4 page 9.

IX. Proposed Conclusions of Law

- 1) Allegheny Power has the burden of proving that the cost of its Smart Meter Plan is reasonable and prudent.
- 2) Allegheny Power has the burden of proving that its Smart Meter Plan is cost effective.
- 3) Allegheny Power has failed to prove that its Smart Meter Plan is reasonable, prudent and cost effective.
- 4) In home displays and in home devices are not “smart meter technology” as defined by 66 Pa. C.S. § 2807(g) or the Commission’s Smart Meter Procurement and Installation Implementation Order.
- 5) The costs of in home displays and in home devices may not be recovered pursuant to 66 Pa. C.S. § 2807(f)(7).
- 6) Allegheny Power has not provided an adequate justification for the proposed level of expenditures on information technology and software.
- 7) A return on equity of 11.5% is not reasonable.
- 8) The asset lives proposed by Allegheny Power are not reasonable.
- 9) Recovery of stranded meter costs due to deployment of smart meters in less than 10 years is not reasonable.

X. Proposed Ordering Paragraphs

- 1) Allegheny Power’s Petition for Expedited Approval of its Smart Meter Technology Procurement and Installation Plan is denied.
- 2) Allegheny Power is ordered to resubmit a Smart Meter Technology Procurement and Installation Plan that meets the following minimum requirements within 60 days of this order.
 - a. All reasonable and prudent costs of the Smart Meter Plan shall be recovered through base rates.
 - b. Every smart meter installed by Allegheny Power shall enable a Home Area Network that meets nationally recognized open standards and protocols.
 - c. The cost of any in home display or in home device provided by Allegheny Power may not be recovered as part of Allegheny Power’s Smart Meter Plan.
 - d. Smart meters that provide the functions required by the Commission’s Smart Meter Procurement and Installation Order, unless otherwise waived by the Commission, shall be provided to all customers who request a smart meter and agree to pay the incremental cost of the meter after the 30 month grace period but in advance of system wide deployment.
 - e. Smart meters that provide the functions required by the Commission’s Smart Meter Procurement and Installation Order, unless otherwise waived by the

Commission, shall be installed on all new construction after the 30 month grace period.

- f. Smart meters that provide the functions required by the Commission's Smart Meter Procurement and Installation Order, unless otherwise waived by the Commission, shall be deployed throughout Allegheny Power's service territory within 10 years.

Respectfully submitted,

/s/ Scott Perry

Scott Perry (Pa. No. 86327)
Assistant Counsel
scperry@state.pa.us

Aspassia V. Staevska (Pa. No. 94739)
Assistant Counsel
astaevska@state.pa.us

Commonwealth of Pennsylvania
Department of Environmental Protection
RCSOB, 9th Floor
400 Market Street
Harrisburg, PA 17101-2301
717-787-7060
717-783-7911 (Fax)

Dated: December 18, 2009

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 :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, Main Brief of the Commonwealth of Pennsylvania, Department of Environmental Protection in Opposition to the Petition for Interlocutory Review and Answer to a Material Question of West PennPower Company d/b/a Allegheny Power, 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 upon the persons listed below:

SERVICE BY FIRST CLASS MAIL

The Honorable Mark A. Hoyer
Administrative Law Judge
Pennsylvania Public Utility Commission
Pittsburgh State Office Building Rm 1103
300 Liberty Avenue
Pittsburgh, PA 15222

John F. Povilaitis, Esquire
Ryan, Russell, Ogden & Seltzer PC
800 North Third Street, Suite 101
Harrisburg, PA 17102-2026

Richard A. Kanaski, Esquire
Adeolu A. Bakare, Esquire
Pennsylvania Public Utility Commission
Office of Trial Staff
P O Box 3265
Harrisburg, PA 17105-3265

John L. Munsch, Esquire
Allegheny Energy
800 Cabin Hill Drive
Greensburg, PA 15601-1689

Harry S. Geller, Esquire
John C. Gerhard, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101

Pamela C. Polacek, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P O Box 1166
Harrisburg, PA 17108-1166

Susan E. Bruce, Esquire
Barry A. Naum, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P O Box 1156
Harrisburg, PA 17108-1166

Divesh Gupta
Constellation NewEnergy
111 Market Place
Suite 500
Baltimore, MD 21202

Lauren M. Lepkoski, Esquire
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101

Christopher A. Lewis, Esquire
Christopher R. Sharp, Esquire
Melanie J. Tambolas, Esquire
Blank, Rome, LLP
One Logan Square
Philadelphia, PA 19103

Tanya McCloskey, Esquire
Christy M. Appleby, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Theodore S. Robinson, Esquire
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217

Respectfully submitted,

/s/ Scott Perry

Scott Perry (Pa. No. 86327)
Assistant Counsel
scperry@state.pa.us

Commonwealth of Pennsylvania
Department of Environmental Protection
RCSOB, 9th Floor
400 Market Street
Harrisburg, PA 17101-2301
717-787-7060
717-783-7911 (Fax)

Dated: December 18, 2009