PENNSYLVANIA UTILITY LAW PROJECT

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December 18, 2009

<u>Via Electronic Filing (E-filing)</u>

Secretary James J. McNulty
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
<u>Docket No. M-2009-2123951</u>

Dear Secretary McNulty:

Pursuant to 52 Pa. Code § 5.502, enclosed for filing please find the Main Brief of the Pennsylvania Association of Community Organizations for Reform Now ("ACORN") in the above captioned proceeding.

Copies of this letter have been provided to all parties of record in the manner indicated on the enclosed Certificate of Service.

Please contact me directly if you have any questions. Thank you.

Very truly yours,

Julie George

Julie George
Counsel for ACORN

Encl.
cc: Certificate of Service
The Honorable Mark A. Hoyer

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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**

CERTIFICATE OF SERVICE

I hereby certify that I have today served a Main Brief upon the parties of record in this proceeding listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Dated: December 18, 2009

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MAIN BRIEF OF THE ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW ("ACORN")

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I. INTRODUCTION

Act 129 ("the Act") was signed into law by Governor Rendell on October 15, 2008 and became effective on November 14, 2008. The Act provides for a number of changes to the Public Utility Code and to practice before the Pennsylvania Public Utility Commission ("PUC" or "Commission").

Pertinent to this proceeding, Act 129 requires electric distribution companies ("EDCs") with at least 100,000 customers to file a Smart Meter Technology Procurement and Installation Plan ("Plan" or "SMIP") with the Commission for approval. 66 Pa.C.S. § 2807(f). Each Plan must describe the smart meter technologies the EDC plans to install upon customer request or in new building construction and in accordance with a depreciation schedule not to exceed fifteen (15) years. Id. Act 129 also requires that, with customer consent, EDCs make available direct meter access and electronic access to customer meter data to third parties, including electric generation suppliers and providers of conservation and load management services. Id. The Act also defines the minimum requirements for acceptable smart meter technology. 66 Pa.C.S. § 2807(g).

II. PROCEDURAL HISTORY

On June 24, 2009, the Commission entered an order establishing the standards and guidelines for implementing the smart meter requirements of Act 129. Smart Meter Procurement and Installation, Docket No. M-2009-2092655 (Order entered June 24, 2009) ("Implementation Order"). The Commission established a grace period that would extend up to thirty (30) months following plan approval during which EDCs could explore and test technologies and programs associated with advanced metering infrastructure ("AMI") and smart meters. Implementation Order at 7. The Commission clarified that a fifteen-year depreciation period for smart meters should commence upon plan approval (with the thirty month grace period to be treated as part of that timeframe). Id. at 15. The Commission established minimum smart meter capabilities, including remote connection and disconnection as a basic capability but removing support for service-limiting and prepaid service as a basic capability. Id. at 15-18. The Commission also addressed cost recovery and cost allocation issues. Id. at 28-33. The Commission called for the publication of the Plans in the *Pennsylvania Bulletin* and allowed for the filing of Comments on the Plan by September 25, 2009. Id. at 4. Finally, the Commission directed at least one technical conference be scheduled for each EDC, with a transcript of the technical conference becoming part of the record. Id.

On August 14, 2009, West Penn Power Company ("Allegheny" or "Company") filed a petition for approval of its SMIP. Petition of West Penn Power d/b/a Allegheny Power for Expedited Approval of its Smart Meter Technology Procurement and Installation Plan, Docket No. M-2009-2123951 ("Petition"). On September 25, 2009, the Association of Community Organizations for Reform Now ("ACORN") filed a Petition to Intervene, Pre-hearing Memorandum, and Comments in response to Allegheny's SMIP. A pre-hearing conference was held on September 30, 2009, and on October 5, 2009 Allegheny hosted a technical session on the Initial Phase activities. An evidentiary hearing was held on November 9, 2009, during which ACORN St. No. 1, the Direct Testimony of Mr. Ian Phillips was entered into the record.

III. DESCRIPTION OF WEST PENN'S PLAN

Allegheny Power's SMIP proposes to replace existing meters over a five year period from 2010 through 2014 with Smart Meters and associated infrastructure. The Company also proposes to install In-Home Displays ("IHDs") in every residential premise. The Company proposes to include six different parts of infrastructure: (a) Home Area Network and IHDs to connect and control various appliances and electronic equipment; (2) Smart Meters which will connect the Home Area Network to the electric system using standard wireless communications and a multi-supplier standard; (3) A Network connecting the Smart Meters to the utility "core systems" using secure collectors, microwave and fiber communications; (4) Core Systems which will collect, store, process, and manage information generated by users, the Home Area Networks and Smart Meters and also calculate and issue customer bills; (5) The Customer Interface which provides the ability for customers and authorized third parties to interact and better manage electric usage via IHDs, an Interactive Voice Response System, or a web portal; and (6) Security which will encompass a set of systems, protocols and processes to allow Allegheny Power to provide secure advanced meter technology. Plan at 12; Petition at ¶ 8.

Allegheny Power estimates that the total cost for development, deployment, and operation and maintenance, including the stranded costs of existing meters and net of Customer Information System (CIS) and Smart Meter & Infrastructure benefits, will be approximately $580 million. AP St. 4 at 4; Plan, Table 4.1 at 94. The Company states that additional benefits of the Smart Meter infrastructure will include an increase in utility energy efficiency and demand response participation, but it has not quantified these benefits. Petition at ¶ 10. The Company states that its proposed Plan will provide customers with "direct access to pricing and consumption information, enabling time-of-use and real-time price programs, and remote programming capability" and will include bi-directional communications capability; remote disconnection and reconnection; ability to provide 15-minute or shorter interval data to customers; minimum of hourly reads delivered once per day; and the ability to upgrade the minimum capabilities. Id. at ¶ 14.

Allegheny Power states that it does not require the 30-month grace period that is provided for in the Smart Meter Implementation Order. Id. at ¶ 13. Rather, the Company has requested that the Commission expedite the approval for the Smart Meter Plan and the activities and expenditures proposed for the initial phase of the Plan, so that it can fully deploy its Smart Meters by 2013. Id. at ¶¶ 20-23.

IV. SUMMARY OF THE ARGUMENT

This Main Brief argues that low income customers in Allegheny's service territory will be impacted negatively by the costs of the SMIP, particularly because those SMIP costs can not be viewed in isolation but must be seen as part of an overall, cumulative increase in utility costs that has taken place over the past year and will continue in the immediate future. This vulnerability among low income customers is unique because of the fragile economic condition of low income customers and because of the particular character of low income usage. This unique vulnerability requires special consideration by utilities as they implement new smart meter programs and rate offerings, and this unique vulnerability requires special protections from the Commission, particularly in the form of a renewed examination of Universal Service program design and implementation.

V. **ARGUMENT**

A. ACT 129 SMIP REQUIREMENTS

1. **DEPLOYMENT SCHEDULE**

A. Company Proposal

No position is taken on this issue.

B. Other Parties' Positions

No position is taken on this issue.

2. **SMART METER CAPABILITIES AND RELATED TECHNOLOGIES**

A. Company Proposal

No position is taken on this issue.

B. Use Of In-Home Displays/Devices (IHDS)

No position is taken on this issue.

C. Remote Disconnection

Mr. Phillips argues the Commission should require new consumer protections to address the novel technology and novel services associated with the SMIP. ACORN St. No. 1 at 17. In particular, Mr. Phillips requests new consumer protections in association with the remote disconnect feature, a feature which increases the risk of a termination of service for low income customers. Id.; OCA St. No. 2 at 44. Mr. Phillips urges the Commission to completely prohibit the use of remote disconnect with low income customers to mitigate this risk of increased termination. ACORN St. No. 1 at 20. Barring the acceptance of the prior recommendation, Mr. Phillips urges the Commission, prior to granting approval for a full roll out of the remote disconnect feature, to require Allegheny to conduct a pilot program to study the impacts of this feature on low income customers. Id. at 20-21.

Allegheny notes that its remote disconnection feature will be voluntary and will not be used for involuntary service disconnection that results from non-payment. AP St. No. 8-R at 12. While supporting Allegheny's decision to forgo using remote disconnection for involuntary terminations involving nonpayment, the practice of using a remote disconnect feature and the abandonment of a physical company presence at the time of disconnect is sufficiently different from past practice to, at the least, merit a practical review. Prior to granting approval for a full roll out of the remote disconnect feature the Commission should require Allegheny to conduct a pilot program to study the impacts of the remote disconnect feature on low income customers, specifically. ACORN St. No. 1 at 20-21.

D. Prepayment Service

Mr. Phillips argues the Commission should require new consumer protections to address the novel technology and services associated with the SMIP. ACORN St. No. 1 at 17. In particular, Mr. Phillips requests new consumer protections in association with the prepayment service feature, a feature which exposes low income customers to potentially unacceptable service risks. Id. at 22. OCA witness, Ms. Brockway, offers support to Mr. Phillips' argument. She argues that prepayment may allow for service termination without notice and involve other degradation of consumer protections. OCA St. No. 2 at 46. As examples of the problems with prepayment service, Ms. Brockway notes several issues that occurred in Texas with prepay service, which placed customers' health and welfare in danger. Id. at 47-48.

Mr. Phillips urges the Commission to completely prohibit the use of prepaid service with low income customers to mitigate the risks associated with the service. ACORN St. No. 1 at 24. Barring the acceptance of the prior recommendation, Mr. Phillips urges the Commission, prior to granting approval for a full roll out of the prepay feature, to require Allegheny to conduct a pilot program to study the impacts of this feature on low income customers. Id. at 20-21.

Company witness, Ms. Spoljarick, disagrees with Mr. Phillips' recommendation that low income households be exempted from prepaid service because the Commission has already approved Allegheny's Pay Ahead Smart Service Rate in another proceeding. AP St. No. 8-R at 15. However, Ms. Spoljarick fails to address any of the potential dangers to customers raised by Mr. Phillips or Ms. Brockway. These unanswered critiques demand attention and the Commission should require Allegheny to issue guarantees that prepaid service will not result in degradation to consumer protections or to consumer health and welfare.

3. SMART METER AND DATA ACCESS

A. Company Proposal

No position is taken on this issue.

B. Customer And 3rd-Party Access

No position is taken on this issue.

C. Security And Privacy

No position is taken on this issue.

B. <u>COST ISSUES</u>

1. REASONABLENESS/PRUDENCY

A. Company Position

No position is taken on this issue.

B. Total Benefits And Costs

No position is taken on this issue.

C. Individual Plan Component Costs (Including IHDS)

No position is taken on this issue.

D. Low Income Impact

Low income customers in Allegheny's service territory will be impacted negatively by the costs of the SMIP, particularly because those costs can not be viewed in isolation. SMIP costs must be seen as part of an overall, cumulative increase in utility costs that have taken place over the past year and will continue into the immediate future. This vulnerability among low income customers is unique because of the fragile economic condition of low income customers and because of the inability of low income households to shift usage sufficiently. This unique vulnerability requires special protections from the Commission, particularly in the form of a renewed examination of Universal Service program design and implementation.

(1) SMIP costs must not be viewed in isolation.

One of the key points in ACORN witness Ian Phillips' testimony is that SMIP costs must not be viewed in isolation. SMIP costs are only one of several new costs Allegheny customers will be asked to absorb in the next several years. Allegheny's SMIP costs are proposed to run in excess of a half billion dollars and will increase customers' monthly bill by over $15 by as early as 2012. <u>ACORN St. No. 1</u>, at 6-7. In addition, Allegheny customers soon will begin absorbing the new costs of Allegheny's Act 129 Energy Efficiency and Conservation Plan ("EE&C Plan"), which, now that the Commission has rendered a final decision in the proceeding, will have costs in excess of $90 million. ACORN St. No. 1 at 7; Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan, Docket No. M-2009-2093218 (Order entered October 23, 2009) at 10. Moreover, Allegheny's rate caps are set to expire on December 31, 2010, which will entail at least a 10% bill increase for Allegheny customers. ACORN St. No. 1 at 7-8.

Mr. Phillips' clear testimony is that the *"cumulative* effect of these increases will be higher levels of low income service terminations." Id. at 8 (emphasis added). It is not the SMIP costs alone that are troublesome, although those costs are quite dramatic and problematic; it is the *cumulative* nature of all of these costs that will cause low income customers, particularly those customers with fixed incomes, to have problems paying their utility bill and increase involuntary termination levels.

In none of its testimony does Allegheny address this forward looking issue of the cumulative totality of costs. Rather, Allegheny focuses its testimony on the SMIP costs in isolation. In particular, in none of her Rebuttal Testimony does Allegheny witness Rosemary Spoljarick, whose testimony focused exclusively on low income issues, address the cumulative nature of the new costs being imposed on low income households. See AP St. No. 8-R at 4-9. While Ms. Spoljarick asserts that "the savings attained through changing customer behaviors will mitigate or offset SMIP costs," it remains doubtful whether changing behaviors can mitigate all of the cumulative costs Allegheny customers face over the next few years. Id. at 5.

Allegheny clearly fails to address the real issue that the cumulative effect of several new costs, including but not limited to SMIP costs, is certain to increase the level of low income terminations and place low income families in harm's way.

(2) Low income customers will be negatively impacted by the increased costs, including SMIP costs.

Mr. Phillips' testimony convincingly illustrates low income households will be impacted negatively by increasing utility charges, particularly because there is unlikely to be any corresponding increase in these households' incomes, which tend to be fixed. Mr. Phillips notes the devastating impact of the economic recession on low income families, whose ranks are swelling as the crisis persists. ACORN St. No. 1 at 5. Mr. Phillips points to the real financial struggle of families with wage earners making minimum wage. Id. Mr. Phillips makes clear that low income families often "steal from Peter to pay Paul" when they shift money from other necessities – food, medicine, clothing – to pay for utility service. Id. at 8.

Furthermore, Mr. Phillips' testimony shows it is unclear whether low income households really can shift energy usage so as to accrue sufficient energy and cost savings to offset the new cumulative costs they will have to absorb over the next few years. Id. at 9-10. Mr. Phillips argues that because low income household electric usage is driven by essential uses, the reduction of that usage may negatively impact household health and welfare. Id. Furthermore, Appendix A to Mr. Phillips' Direct Testimony, a report by Roger Colton entitled *Home Energy Consumption and Expenditures by Income: Pennsylvania*, illustrates that low income households in

Pennsylvania use much less electricity than do their more affluent counterparts. ACORN St. No. 1 at Appendix A; See also OCA St. No. 2-S at 16. This leaves low income families with less excess electric usage to reduce to save money; basically, since low income families already use less electricity as a basic course of life, they have less opportunity to reduce "excess" usage.

Mr. Phillips' position is supported in several ways by the testimony of Nancy Brockway, witness for the Office of the Consumer Advocate. Ms. Brockway concurs with Mr. Phillips' assertion that vulnerable customers (including low income customers) tend to use the electricity they need for essential uses, such as lighting and refrigeration. OCA St. No. 2 at 31. Because of this already low usage, these vulnerable customers have difficulty in reducing or shifting usage, and not all of these customers can reduce load safely. Id. at 31-32.

Allegheny does not sufficiently address or refute these points, either that low income customers cannot afford the new costs or that low income customers cannot shift enough electric usage to accrue sufficient savings to offset the new costs associated with SMIP, much less shifting or reducing enough usage to deal with the cumulative costs of SMIP, EE&C programs, and increases due to rate cap expiration.

Allegheny fails to rebut the argument that low income customers will not be able to afford the *cumulative* increases to their electric bills, including but not limited to the additional SMIP costs. In its testimony, Allegheny argues that SMIP cost increases will not increase low income service terminations. AP St. No. 8-R at 5. Allegheny also goes to considerable lengths comparing Allegheny to other EDCs in reference to percentage of customers who are low income customers, percentage of payment arrangements with low income customers, arrearages of low income customers, and dollars in debt for low income customers. AP St. No. 8-R. at 6-8. Ms. Spoljarick draws the conclusion, based on Allegheny's performance in the above mentioned categories, that Allegheny low income customers will not be overwhelmed by SMIP charges. Id. at 8.

For a number of reasons, this historical information about Allegheny's performance does not respond to ACORN's argument. First, Allegheny's arguments that low income customers can afford SMIP costs miss the point that ACORN's argument is that the *cumulative costs*, of which SMIP costs make up a part but not the whole, are what will overwhelm low income customers. Secondly, Allegheny's recital of its historical performance does not address the forward looking nature of ACORN's critiques. While it is admirable that Allegheny views its work with low income customers as outstripping some of its counterpart EDCs, this historical activity does not necessarily apply to the future situation where costs will be escalating in unique and alarming ways.

Allegheny also fails to address sufficiently the concern that low income families may not be able to shift enough load to offset the costs of SMIP *and* the other cumulative costs low income families will face in the next few years. Allegheny's responses focus on the hope that the savings attained through changing customer behaviors will mitigate or offset SMIP costs. AP St. No. 8-R at 5; AP St. No. 5-R at 10-11. These optimistic expectations, although admirable, have two basic flaws in reasoning. First, they focus on the ability of low income customers to shift

SMIP costs; this misses the larger point of Mr. Phillips that it is the cumulative increase in costs that will be the problem. Allegheny offers little or no support for their argument that low income customers can shift sufficient electric usage to offset the numerous increases in their electric bills including and in addition to SMIP costs.

Secondly, these expectations are flawed because they are overly optimistic about the ability of low income customers to shift load. Ms. Brockway clearly argues that studies about the impact of direct feedback on customer electric usage reduction do not offer a clear picture of the effectiveness of the direct feedback. OCA St. No. 2 at 27-31; OCA St. No. 2-S at 12-14. Ms. Brockway asserts these studies "cannot support robust predictions about energy conservation responses to direct feedback on electricity usage and bills." OCA St. No. 2 at 30. Neither of Allegheny's witnesses, Ms. Spoljarick nor Mr. Cohen, offer arguments that sufficiently counter those of Mr. Phillips and Ms. Brockway that it is unlikely low income customers can shift sufficient usage to offset the cost increases they face.

Allegheny witness, Mr. Frank Graves agrees with Ms. Brockway that the studies are ambiguous in just how much low income customers can shift usage. AP St. No. 6-RJ at 6. Mr. Graves asserts that it is unreasonable to assume that consumption feedback – specifically feedback from IHDs – provides zero benefits in terms of consumption reductions. Id. at 7. However, he does not address whether low income customers can reduce, conserve, or shift sufficient usage to mitigate the impacts of the cumulative increases that Allegheny customers face from SMIP, Allegheny's EE&C Plan, and rate cap expiration.

Although Ms. Spoljarick rejects Ms. Brockway's argument that low income customers tend to have lower usage than other customers, she bases her assertion on usage observed from low income customers who have participated in the company's LIURP. AP St. No. 8-RJ at 3. This argument lacks merit, however, because the LIURP specifically targets the highest users among low income customers. See 52 Pa. Code § 58.10. Ms. Spoljarick's reliance on the LIURP program as a basis for assuming low income users generally have high usage is, therefore, misplaced. AP St. No. 8-RJ at 3. Furthermore, Ms. Spoljarick's reliance on the energy savings generated by LIURP as evidence that low income customers can indeed save energy is equally lacking. Id. LIURP savings are skewed precisely because LIURP targets the highest users who have the most opportunity to accrue considerable energy savings after conservation treatment. This bias in selection almost assures that participants will have significant savings; it does not illustrate that the average low income user can accrue comparable savings, especially savings sufficient to offset the cumulative cost increases.

(3) Low income customers require Commission action to ensure existing Universal Service programs can meet their new needs.

Mr. Phillips' testimony offers a compelling argument that increased cumulative costs, including SMIP costs, will drive low income customers toward involuntary service termination. A logical corollary of this is that more and more low income customers will seek assistance from Commission mandated Universal Service programs, particularly CAP. Mr. Phillips recommends that Allegheny should proactively fully enroll all low income customers into percentage of income plans to shield those families from the increasing electricity costs. ACORN St. No. 1 at 10-11.

Mr. Phillips argues the Commission should require better outreach and a reduced maximum CAP monthly payment level. ACORN St. No. 1 at 12-14. Each of these steps can counter the increase in low income service terminations by making service more affordable for low income families.

Ms. Brockway testifies that under current funding, Allegheny's CAP and LIURP may have insufficient funds with which to address the need driven by the expected $15 smart meter charge, and LIURP reductions would not produce sufficient savings to offset the smart meter charge. OCA St. No. 2-S at 17-18. Mr. Phillips proposes that adding these additional SMIP cost burdens onto low income payment troubled customers, who are already struggling to keep current, will require that the Commission take steps to assess the impact of the increased financial need resulting from the addition of SMIP costs. An assessment of how CAP can be adapted to address these needs is both prudent and appropriate.

2. COST ALLOCATION

A. Company Proposal (Including Single Versus Three Phase Non-Residential Proposal)

No position is taken on this issue.

B. Cost Of Service Study

No position is taken on this issue.

C. Allocation Of Joint And Common Costs

No position is taken on this issue.

D. Allocation Of Costs To WV And MD

No position is taken on this issue.

3. RATE DESIGN

A. Company Proposal, Including Variable Rate Proposal Regarding Residential Customers

No position is taken on this issue.

B. Cost Of Service Study

No position is taken on this issue.

4. REVENUE REQUIREMENT

A. Company Proposal

No position is taken on this issue.

B. Rate Of Return

No position is taken on this issue.

C. Meter Asset Life

No position is taken on this issue.

D. Recovery Of Stranded Investment

No position is taken on this issue.

E. Capital Structure

No position is taken on this issue.

F. Cost Rate For Debt And Preferred Stock

No position is taken on this issue.

5. INTEREST

A. Company Proposal

No position is taken on this issue.

B. Interest For Over- And Under- Collections

No position is taken on this issue.

C. Applicable Rate And Computation Of Rate

No position is taken on this issue.

D. One Directional Interest

No position is taken on this issue.

E. Deferral

No position is taken on this issue.

6. COST RECOVERY MECHANISM REVIEW PROCESS

A. Annual Review Schedule Proposed By OTS

No position is taken on this issue.

B. Quarterly Updates Proposed By OTS

No position is taken on this issue.

VI. CONCLUSION

In conclusion, it is clear that low income customers in Allegheny's service territory will be negatively impacted by the costs of the SMIP, particularly because those SMIP costs can not be viewed in isolation, but must be seen as part of an overall, cumulative increase in utility costs that have taken place over the past year and will continue into the future. This vulnerability among low income customers is unique because of the fragile economic condition of low income customers and because of the particular character of low income usage. This unique vulnerability requires special consideration by utilities as they implement new smart meter programs and rate offerings, and this unique vulnerability requires special protections from the Commission, particularly in the form of a renewed examination of Universal Service program design and implementation.

Respectfully submitted,

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Dated: December 18, 2009