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December 22, 2009

VIA ELECTRONIC FILING

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

**Re: Petition of Duquesne Light Company for Approval of its
Smart Meter Procurement and Installation Plan
Docket No: M-2009-2123948**

Dear Secretary McNulty:

Enclosed for filing please find the Reply Brief of Duquesne Light Company in the above-referenced proceeding.

Copies have been served as indicated below and on the attached Certificate of Service.

Sincerely yours,

A handwritten signature in black ink, appearing to be "EHC" with a long, sweeping underline.

Erin H. Creahan
Senior Attorney

Enclosure

c: Administrative Law Judge Meehan (via E-Mail and Overnight Mail, including a CD)
See Service List (via E-Mail and U.S. First Class Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DUQUESNE LIGHT COMPANY :
Smart Meter Procurement and : Docket No. M-2009-2123948
Installation Program :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Reply Brief of Duquesne Light Company in the above-referenced proceeding has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant):

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Dated December 22, 2009

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DUQUESNE LIGHT COMPANY :
Petition for Approval of Smart : **Docket No. M-2009-2123948**
Meter Procurement and Installation :
Plan :

**REPLY BRIEF OF APPLICANT
DUQUESNE LIGHT COMPANY**

NOW comes Applicant Duquesne Light Company (“Duquesne” or “Company”), and files its Reply Brief in accordance with Administrative Law Judge Robert P. Meehan’s Prehearing Order dated October 7, 2009:

I. Introduction

On December 8, 2009, Duquesne filed its Main Brief in this proceeding. To a large extent, the issues raised in the opposing party main briefs are fully addressed in Duquesne’s Main Brief and extensive further argument is not required nor beneficial. There are, however, several contested areas which require a brief response in order to provide further explanation. Any issues not addressed herein are likely issues on which agreement has been reached between the parties, as discussed in Section D, page 31, of Duquesne’s Main Brief.¹

¹ Two items were inadvertently omitted from this Section. First, the Office of Consumer Advocate (“OCA”) asserts that the costs associated with Duquesne’s final two milestones should not be approved until more detail is submitted. As discussed in OCA’s Main Brief, and in Duquesne’s Brief, the parties agree on this issue. OCA MB, pps. 16-17; Duquesne MB, pps. 20-21. Second, OCA recommends that stranded costs should be addressed in the first base rate case after full deployment. OCA MB, p. 22. Duquesne agrees with this. Duquesne MB, pps. 25-26. This agreement, however, is subject to Duquesne’s reservation of flexibility to seek stranded cost recovery prior to full deployment of smart meters. Both parties agree that this issue can be determined at a later time when presented. Duquesne MB, pps. 25-26; OCA MB, 22.

II. Argument/ Response to Issues Raised in Main Briefs

As clearly set forth in its Main Brief, it is Duquesne's position that the Commission should accept and approve Duquesne's SMPI Plan, as well as the reasonable and prudently incurred costs of the Plan, and requested waivers, because it meets the requirements of Act 129, Section 2807(f) and (g), and meets the additional requirements set forth in the Implementation Order (hereinafter "Order").

A. Duquesne's Overall Plan and Timeline

Several parties re-stated Duquesne's future filing dates in the Main Briefs. However, in some cases, these dates were mis-stated, or certain filings were omitted.² For clarity, Duquesne would like to restate the proposed future filing dates, as recited in the Main Brief (hereinafter for all parties as "MB"), pps. 8-9:

July 1, 2010³ – submit cost and benefit analysis of meter capability

December 31, 2010 – submit the assessment of needs and technological solutions and vendor selection which includes the vendor's related network and system infrastructure

December 31, 2011 – submit final details regarding costs and smart meter implementation and schedule.

Regarding upcoming filings, OCA states in the "Summary of Argument" section of its Brief that "[t]he Company should make one additional filing to the Commission during the Grace Period." OCA MB, p. 9. This statement is worded as though this is still an issue in dispute. However, this issue has been resolved, and the parties have agreed

² Specifically, the OCA omitted the July 1, 2010 milestone (smart meter capability cost benefit analysis and filing). OCA MB, p. 6. Citizen Power omitted Duquesne's December 31, 2010 filing (submit the intended smart meter technological solutions and vendor selection). Citizen Power MB, p. 7.

³ All dates are on or before the designated date.

that the December 31, 2010 filing as listed above is the more appropriate juncture for an additional filing since the technology has to be determined and the vendor selected before the Company can move forward with the full network design. OCA Witness Mudd agreed that the Company's proposal meets the objective. OCA MB, p. 12; Duquesne MB, p. 33.

The Department of Environmental Protection ("DEP") argues in its Brief that the milestone and filing dates as set forth by Duquesne appear to be too tentative and approximate. DEP MB, p. 9. Thus, DEP asserts that the Commission's ruling must require Duquesne to abide by the dates set forth in its Plan and the dates must be "set in stone" (specifically installation of the smart meter network by the end of the grace period, deployment of 8,000 meters by December 31, 2013, and system wide deployment by January 1, 2019); this is crucial so that the network is in place, and meters can be distributed to consumers to enable them to realize the benefits. DEP MB, pps. 5-6, 8-9. Duquesne agrees that it is important for it to remain on schedule. However, the dates have been set forth in Duquesne's Plan as "approximate," because there are many matters that need analysis, evaluation, and decision making. Duquesne MB, pps. 8-9, 11 (list of future filing dates and milestone deadlines), 9, fn 2, 12, fn 3 ([t]hese dates are approximate, in light of many factors, including Commission approval, uniform decisions, progress, etc."). Like any large scale project with numerous interdependent components, the schedule proposed in this plan will not be exact. Some matters will be resolved sooner than expected – others longer than expected. It is in everyone's best interests, including customers, to allow some flexibility so that accurate and cost effective decisions are made rather than making a decision due to self-proposed dates. Duquesne

agrees to abide by the schedule set forth in its Plan, with the caveat that if delay occurs that affects the schedule Duquesne has proposed, it will notify the Commission and, if appropriate, request any necessary relief.

Duquesne Industrial Intervenors (“DII”) supports Duquesne’s overall Plan and approach. DII MB, p. 12. However, DII believes that stakeholders must be afforded an opportunity to review and comment upon Duquesne’s assessment of meter capabilities, prior to approval of final plan, to ensure that only cost-effective capabilities are implemented (and prior to approval of any recommendations made in the July 1, 2010 filing). DII MB, pps. 4-5, 12-13. Duquesne has and will continue to consider stakeholder input through the Plan process, and will ensure to include stakeholders, including DII, at the appropriate points in the process. Duquesne MB, p. 31; DeLost Rebuttal, DLC Ex. C-R, p. 10.⁴

B. Meters, Capability and Granularity of Data

Meters

OCA asserts that Duquesne should provide a cheaper interval meter during the Grace Period; Duquesne’s current cost does not satisfy the Commission’s requirement to provide a meter in a manner that does not require an unreasonable cost. OCA MB, pps. 13-15. Further, OCA requests that the Commission direct Duquesne to work with its vendor to provide a cheaper alternative during the Grace Period, and Duquesne should be required to submit a report to the Commission identifying its efforts. OCA MB, p. 15. Duquesne knows of no cheaper interval meter, nor has the OCA, or any other party, proposed any cheaper alternative that will work with Duquesne’s current systems. Duquesne will commit, however, to explore other alternatives, and is amenable to report

⁴ Duquesne and OCA have agreed on the stakeholder issues. Duquesne MB, p. 31.

back to the Commission on this issue if so ordered. Duquesne MB, p. 19; DeLost Rebuttal, DLC Ex. C-R, p. 11; Transcript, p. 107. However, Duquesne would like to reiterate that the cost of \$1,305, which is proposed to be charged to customers requesting an interval meter during the Grace Period, is the cost that Duquesne currently charges per its Tariff. Duquesne MB, p. 19; Pfrommer Direct, DLC Ex. D, p. 13; Plan, Ex. A, p. 9. Further, this is the cost incurred by Duquesne in order to provide this meter, which per the Order is recoverable. Order, pps. 9-10; Duquesne MB, p. 19; Pfrommer Direct, DLC Ex. D, p. 13. Accordingly, Duquesne does not agree that the cost is unreasonable.

Meter Capabilities

Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (“Constellation”) asserts that Duquesne’s Plan fails to comply with the Order because it fails to conform with the minimum meter capabilities on pages 16 and 17 of the Order. Constellation MB, 4, 5, 10. Constellation states that Duquesne’s position is that the meter capabilities set forth in the Order are not requirements at all, but rather issues to examine. Constellation MB, p. 11. As a result, Constellation has asked the Commission to make a finding that the minimum capabilities set forth in the Order on pages 16 and 17 are required to be included in Duquesne’s plan. Constellation MB, p. 12.

Constellation’s requested finding must be denied, as Constellation incorrectly states the facts in this matter, and ignores clear directives in the Commission’s Order. The Commission set forth the extended meter capabilities, with the recognition that these capabilities go beyond the requirements of Act 129 and may be cost-prohibitive, and ultimately waived or amended. Order, pps. 16-17, 29-31. As a result, the Commission directed EDCs to analyze such capabilities and incremental costs associated with such

capabilities, and provide such information to the Commission. Order, pps. 29-31. Further, the Commission recognized that this analysis may not be available to EDCs at the time of Plan filing on August 14, 2009, and thus permitted EDCs to petition to file such information at a later date. Order, p. 31. If all of these minimum requirements were required today, there would be no need to permit this assessment to be filed at a later date. Duquesne will analyze and report back to the Commission regarding these capabilities on or before July 1, 2010. DeLost Rebuttal, DLC Ex. C-R, p. 6, Duquesne MB, p. 13, 18. Duquesne has requested leave to file this assessment on such date. Petition, DLC Ex. A, p. 5; Duquesne MB, p. 13. Duquesne will ensure that its meters incorporate all capabilities ultimately required by the Commission.

DEP raises a similar concern, and states that Duquesne's Plan fails to identify the technology that it will deploy to meet Commission requirements. DEP MB, pps. 6. More specifically, DEP argues that the Commission must require Duquesne to deploy Home Area Network ("HAN") enabled meters, to ensure that the Plan meets the requirements to enable customers to control consumption and respond to price signals. DEP MB, pps. 5, 7-8, 10. Duquesne states that in order to know what networks and meter technology should be deployed, it has to complete the cost benefit analysis identified above. Duquesne MB, p. 13. Next, Duquesne must analyze the technology solutions and select a vendor, all of which will be filed with the Commission. Duquesne MB, pps. 9, 11. Thus, while the extended capabilities set forth in the Order, such as HAN devices, are alleged to be "mandatory," as set forth by DEP, it is premature to address this issue in light of the analysis yet to take place. DeLost Rebuttal, DLC Ex. C-R, pps. 2-3, 4-5. DEP even acknowledged that the Order provided for a cost benefit

analysis, and that such extended capabilities may be waived if not cost effective. DEP MB, p. 2, 4 (DEP reiterated Duquesne's July 1, 2010 filing). Nonetheless, regarding HAN enabled meters, at this point, Duquesne plans to purchase meters that will enable communications with HAN devices. But since HANs are located inside the home and on the customer side of the electric meter, this device is one for customers to purchase directly or through their authorized third party. The HAN is not necessarily a monopoly service nor can it only be supplied by a utility. Rather, it's an in-home device. However, the Commission does not need to decide this issue at this time. This issue will be further examined during the Grace Period.

In its Main Brief, DEP provided a description of Duquesne's Plan, and in doing so, DEP stated that "Duquesne notes that the majority of the "additional" capabilities required by the Installation Order are included in the base meter." DEP MB, p. 3. Duquesne would like to clarify DEP's statement, as DEP's characterization may lead a reader to believe that a smart meter without the supporting communication, network and system infrastructure may meet a majority of the requirements of the Order. Significantly, a "smart meter" installed at a premise will provide no more information or functionality than a 40 year old mechanical meter until the systems, network and communications are put into place to make the meter technology "smart". Plan, DLC Ex. A, p. 9; Duquesne MB, p. 12. So while the capability may be in the base meter, the cost to enable those capabilities is in the communications, network and backend systems. Not until Duquesne performs the assessment and work on its communications, network and backend systems will these meters meet the requirements, whatever they may ultimately be determined to be, of smart meter technology.

Granularity of Meter Data

Regarding granularity of meter data, Constellation renews its argument that smart meters must provide 15-minute interval data, on an hourly basis. Constellation MB, p. 14-16. While the Order only requires that such data be available on a daily basis consistent with the data availability, transfer and security standards adopted by the RTO, Constellation believes that it has provided evidence in its testimony that Duquesne should go beyond the minimum requirements, and make it available hourly. Constellation MB, pps. 15-17. Constellation states that Duquesne has failed to provide evidence as to why 15 minute interval data is not being provided as part of the Plan; similarly, Duquesne has failed to set forth a proposal in its plan to make data available on a daily basis. Constellation MB, p. 15-17. Duquesne does not believe that 15 minute data is warranted, as the power markets rely on hourly data and pricing. But the Commission does not need to decide that issue in this proceeding as Duquesne has committed to analyze further the costs and benefits of the extended capabilities of which the 15 minute interval data is included, and will provide such information in its July 1, 2010 filing. Duquesne MB, pps. 13, 18-19. Constellation's requested findings regarding 15 minute interval data, available on an hourly basis should be denied at this point as premature.

C. Data Access Issues

Constellation asserts that Duquesne's Plan fails to comply with the Order because it fails to provide sufficient information regarding direct access to usage and pricing. Constellation MB, pps. 4-5, 9-10. According to Constellation, Duquesne did not commit to meet direct access requirements of the Order, regarding access to use, price and consumption information, absent guidance by EDEWG. Constellation MB, p. 13.

Constellation has asked the Commission to make a finding that Duquesne must comply with the minimum electronic access provisions of the Order, whether through EDEWG or independently. Constellation MB, p. 14.

Duquesne will ensure that the requirements of the Act and Commission are met, specifically those related to direct access to price and consumption information, separate and apart from EDEWG. Duquesne has even committed to address this as one of its milestones, Establishment of plans to design, test, and certify EDI transactions, web access and direct access, to be completed on June 30, 2011. Duquesne MB, p. 11; Plan, DLC Ex. A, p. 12-13. However, Constellation is correct that Duquesne will work through EDEWG so there is standard data access across all EDCs. Duquesne MB, p. 10. This was contemplated by the Commission, when it ordered EDCs and EDEWG to complete a filing on or before January 2010 to address these very tasks. Order, p. 25.

D. Cost/Cost Recovery Issues

1. Cost/Benefit

OCA reasserts its position that Duquesne's cost/benefit analysis (with respect to the full range of assessment of needs, choice of technology and network, not just meter capabilities) must show a breakdown by customer class, and must be completed based upon functional and on an incremental basis. OCA MB, pps. 18-19. OCA states that this analysis is not as formidable as Duquesne claims it to be, and has asked the Commission to direct Duquesne to perform a cost/benefit analysis in accordance with Ms. Mudd's recommendations, and to continue to remain open to stakeholder input on this issue. OCA MB, pps. 20. Duquesne agrees to perform the cost/benefit analysis, and this will be part of the stakeholder input review. Duquesne MB, p. 21. However, prior to engaging

in this analysis, and cognizant of the associated difficulties, Duquesne is unsure whether the analysis can accurately be performed on a customer class, functional, and incremental basis. Duquesne MB, p. 21. Duquesne does commit, however, to attempt to capture data at these levels, and this will be addressed in supplemental filings. Duquesne MB, p. 21; Pfrommer Rebuttal, DLC Ex. D-R, p. 2-3. Finally, Duquesne has committed to involve stakeholders throughout the process, and this issue will be no exception. Duquesne MB, p. 31; DeLost Rebuttal, DLC Ex. C-R, p. 10.

2. Cost allocation

OCA agrees with Duquesne's proposal to assign meter costs based upon the meter type/customer group. OCA MB, p. 29. However, OCA disagrees with Duquesne's proposed allocation of common costs, which Duquesne proposes to allocate based upon the number of meters per group. *Id.* OCA asserts that Duquesne's allocation has a disparate impact on the single phase meter group (primarily residential and small commercial customers), which will bear 96% of the common costs of the smart meter program, but will not receive associated benefits. OCA MB, p. 29. OCA provides an alternative cost allocation methodology, purportedly supported by Act 129 and the Order, which focuses on benefits and is calculated on the basis of energy and demand as opposed to meters. OCA MB, pps. 29-30. OCA believes that this approach utilizes a cost causation link consistent with cost of service principles; the causal relationship between costs and benefits is an accepted cost of service principle. OCA MB, p. 36-37, 38. In making this proposal, OCA asserts that Duquesne's proposed allocation is wrong because it fails to take into account the different benefits that classes will receive from smart meters, and fails to acknowledge that larger customers will be more likely to utilize smart

meters to participate in dynamic pricing programs, thus will gain greater benefits and savings. OCA MB, pps. 32-34. To support these arguments, OCA relies upon data submitted by Duquesne to the Department of Energy as part of its stimulus application. OCA MB, p. 35-36. Citizen Power supports OCA's and Dr. Swan's cost allocation theories. Citizen Power MB.

As detailed in Duquesne's Main Brief, Duquesne fervently disagrees with OCA's and Citizen Power's positions on this issue. Duquesne Main Brief, pps. 22-24. These costs should be allocated based upon cost causation, using reasonable cost of service practices. Duquesne MB, p. 22; Pfrommer Rebuttal, DLC Ex. D-R, p. 6. Duquesne's cost of service cost allocation method is supported by Commission precedent. See Lloyd v. Pa. Pub. Util. Comm'n., 904 A.2d 1010, 1020 (Pa. Commw. Ct. 2006). Cost based upon meter is appropriate, because it is tangible, and fairly divides the costs of the common infrastructure among all (as all are required to have a smart meter), as opposed to relying upon hypothetical or speculative benefits. Duquesne MB, pps. 22-23. Further, OCA's assumptions and statements regarding participation in dynamic pricing programs, and the benefits that will follow, are unfounded. Duquesne MB, pps. 23-24. Finally, OCA's reliance on the stimulus filing, and associated figures, is in error; that assessment was based upon different criteria, roll-out, and a control group of meters, etc., and cannot be utilized to predict benefits – even if the test were to be benefits - in the smart meter roll-out. Duquesne MB, pps. 23-24. Duquesne reiterates its belief that the appropriate way to allocate the common costs is based upon the actual number of meters, and asks the Commission to reject OCA's and Citizen Power's cost allocation proposal. Duquesne MB, p. 24. Importantly, DII and the Office of Small Business Advocate (“OSBA”)

support Duquesne's cost allocation method, for both direct and indirect costs, and reject the theory asserted by OCA and Dr. Swan. DII MB, pps. 4-12 (Duquesne's method accurately assigns costs to all classes based upon reasonable cost of service and cost causation principles; similarly, DII disagrees with OCA's theories); OSBA MB, pps. 8, 11-13 (OCA's theory is flawed for several reasons: (1) it ignores the fact that the Commission mandated that meters be provided to all customers, regardless of how many customers will be able to save money; (2) Swan erroneously assumes that customers in the poly-phase group will better be able to reduce their bills, but offered no evidence for this; and (3) Swan assumes that the primary reason for smart meters is to save money, but ignores the environmental benefits).

As mentioned above, OSBA supports Duquesne's cost allocation methodology, and rejects Dr. Swan's and OCA's theories regarding allocation based upon benefits. OSBA MB, pps. 3-5, 8, 11-14-15. However, with the recognition that the Commission may be persuaded by OCA's arguments, OSBA has proposed a cost-based alternative to Duquesne's approach: allocate the common costs in proportion to the allocation of the meter costs; i.e. let the common costs follow the meter costs. OSBA MB, p. 5, 14. According to OSBA, this alternative would provide some relief to the Residential and Small C&I customers in the single phase meter rate class group, without causing a dramatic shift in costs to the Small and Large C&I customers in the poly phase meter rate class group. OSBA MB, p. 5, 14. Duquesne has no objection to this proposal.

3. Cost Recovery

a. Smart Meter Charge

Both DII and OSBA support Duquesne's rate design/cost recovery. DII MB, pps. 4, 12; OSBA MB, pps. 5-6, 15. However, recognizing that the Commission could accept OCA's proposal to allocate common costs on the basis of energy consumption (as discussed in Section D2 above), OSBA requests that meter costs be recovered within each rate class group via a customer charge and that the common costs be recovered within each rate class group via a per kWh charge. OSBA MB, p. 6, 17. Duquesne disagrees with this proposal. While Duquesne has indicated it could agree to allow some variable kWh charge to become part of the rate design, it does not agree that all common costs should be assigned a kWh charge. That would cause too large of a proportion of costs to be allocated to a kWh charge, when Duquesne feels that most, if not all, costs should be recovered through a fixed charge. Duquesne must recover the cost regardless of whether or not the customer uses electricity, and the cost of the meter and infrastructure is not variable with consumption. Thus, OSBA's proposal should be rejected.

OTS disagrees with Duquesne's proposed interest treatment; rather, OTS proposes that the assessment of the reconciliation year's cumulative interest amount be one directional. Thus, net under-collection would not have interest associated with it; over-collection would have interest associated with it. OTS MB, pps. 6-7, 16-19. OTS attempts to justify two-directional application in the Energy Efficiency case, but not in this matter, as the costs in the Energy Efficiency matter were primarily expenses, whereas with respect to smart meters the expenses will be capital intensive. OTS MB, p. 19. As

stated in its Brief, Duquesne disagrees with this approach, as under-collection without interest creates a cost by not allowing the Company to recover smart meter costs on a full and current basis as permitted by Act 129. Duquesne MB, p. 26; Pfrommer Rebuttal, DLC Ex. D-R, p. 8. Further, the precedent set by the Commission in the recent Energy Efficiency cases perhaps should govern, and both under and over collections should be treated uniformly. Order, p. 62, Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation and Demand Response Plan, Docket No. M-2009-209317, Oct. 22, 2009.

OCA's initial position was that average rate base during the reconciliation period should be used. OCA MB, p. 22. While there was some discussion among the parties regarding whether this should be adjusted annually or quarterly, it is OCA's position that whether it is adjusted annually or quarterly, the annual reconciliation should account for the actual timing of the investment. OCA MB, p. 22. While OCA believes that there is agreement on this issue, Duquesne is not confident on this. Duquesne believes that Pennsylvania is a terminal rate base state, so Duquesne believes due to precedent it should use projected plant in service as of the end of the reconciliation period, which with respect to Duquesne's plan is each quarter. Penn. Public Util. Comm. V. Pennsylvania Power and Light Co., 54 Pa. PUC 645 (1981). That is Duquesne's request. However, if rejected, Duquesne would not object to using the OCA's proposed average rate base.

OCA believes that after full deployment of smart meters, the SMC should be rolled into base rates only as part of a base rate proceeding. OCA MB, pps. 23. OCA also believes that there is agreement between the parties on this issue. Id. OCA is partially correct. While Duquesne did agree that rolling meters into base rates at the end

of full deployment and at the first rate case thereafter is an option, this should not be the only option. Duquesne should also have the option to roll the surcharge into base rates without having to file a complete base rate case, if appropriate. Duquesne MB, p. 25. OCA Witness Catlin acknowledged that this could be accomplished. Id.; Hearing Transcript, pps. 118-121. The Commission does not need to decide this now for something that the OCA acknowledges, under its proposal, is more than a decade away. To decide that now and limit options would not be in any party's best interest.

It is OCA's position that the SMC should be updated on an annual, not quarterly basis. OCA MB, p. 28. OCA states that there has been no showing that quarterly filings are appropriate, thus it should be annual. Id. Duquesne believes that the SMC should be updated on a quarterly basis to reflect projected quarter-end plant in service which will more closely reflect rate base versus an annual filing. Duquesne MB, p. 24. OTS also supports a quarterly filing. OTS MB, pps. 9-10. While Duquesne requests quarterly updates, as stated in the Main Brief, Duquesne is agreeable to an annual adjustment, provided that it takes into account projected plant dates. Duquesne MB, p. 24.

b. Return on Equity

OTS stated in its Brief that it disagrees with Duquesne's proposal to use the cost rate of common equity from its most recent proceeding that had an approved cost rate to determine the rate of return; rather, OTS believes that the cost rate of common equity should be calculated by Commission staff, based upon the Commission established barometer group, and then presented in the Quarterly Earnings Report of jurisdictional utilities. OTS MB, p. 6, 13-14. As stated in the Main Brief, Duquesne is uncertain of this approach as it is unclear that such a proceeding would result in Duquesne (or any

other utility) achieving an acceptable level of return on its investment. Duquesne MB, pps. 28-29. See Emporium Water Co. v. Pa. PUC, 955 A.2d 456, 461 (Cmmw. Ct. 2008) (“a utility has a constitutional and statutory right to a reasonable rate of return”). Further, there has been no evidence submitted into the record by OTS regarding the methodology that FUS will utilize to achieve this calculation. Id. Absent more information, Duquesne is unable at this point to consent to this proposal. Duquesne MB, pps. 28-29.

OCA also disagrees with Duquesne’s proposal to rely on the figures established in FERC in Docket No. EL06-109-000. OCA MB, pps. 24-25. It is OCA’s position that the best method would be to use the common equity return established in a litigated base rate case, if within the last three years of the effective date of the updated SMC. OCA MB, p. 24. If there was no rate case within three years, OCA proposes to rely upon the most recent “Report on the Quarterly Earnings of Jurisdictional Utilities” (Quarterly Earnings Report) prepared by the Commission’s Bureau of Fixed Utility Services (FUS). Id. However, because existing returns published did not appear appropriate, OCA’s final recommendation was to calculate the return on equity through a generic proceeding conducted by the Commission. Id. at 24-25. In the interim, pending development of this rate, the return on equity used should be 10.1%, which is the figure authorized in the most recent fully-litigated base rate proceeding for a Pennsylvania EDC (Met Ed and Penelec). OCA MB, p. 25. Duquesne agrees with OCA as it relates to utilizing an actually determined ROE for Duquesne, whether it is the result of a litigated or settled matter. Duquesne MB, p. 27; Bordo Rebuttal, DLC Ex. E, pps. 4-5. Duquesne believes that the rates established in the FERC proceeding are sufficient, and that a return on equity of 10.9% should be utilized in this instance. Duquesne MB, p. 27. See PUC v.

PPL Electric Utilities Corp., 237 PUR 4th 419, 103 (Pa. P.U.C. 2004) (found range of reasonableness from 10.25% to 11.0% for return on equity). Duquesne is not supportive of a generic proceeding, unless it would take into account the unique attributes of Duquesne. Duquesne MB, p. 28. However, in the interest of efficiency, Duquesne can agree to the use of a barometer group, assuming that the barometer group is made up of companies similarly situated to Duquesne. Duquesne MB, p. 28. Finally, Duquesne does not support utilizing the ROE from Met Ed and Penelec; it is not reflective of Duquesne's cost of equity, credit rating, etc. Duquesne MB, p. 28.

c. Capital Structure

OTS disagrees with Duquesne's proposed capital structure. OTS MB, p. 15. Rather, OTS believes that capital structure should be representative of the electric industry and based upon the barometer group in the Quarterly Earnings Report of jurisdictional utilities. Thus, the Commission would calculate the appropriate capital structure and publish it in the Quarterly Earnings Report. Until the next Quarterly Earnings report establishes the capital structure for smart meter cost recovery, the Commission could identify the capital structure to be utilized in its Order resolving this proceeding. OTS MB, pps. 6, 15-16. OTS states that some electric companies have capital structures that are not representative of the industry norm. OTS MB, p. 16. As such, using a uniform representative capital structure will provide neither an advantage nor a disadvantage to any EDC or its ratepayers. Id. OTS justifies this position, as well as its similar position with respect to common equity, on the basis that it appropriately matches financial risk to cost, as well as on efficiency and fairness. OTS MB, p. 14. While Duquesne does agree that the capital structures of electric utilities vary based upon

each utility, Duquesne strongly disagrees with this approach suggested by OTS. Duquesne MB, pps. 30-31. Unless chosen very carefully, utilizing a barometer group will exacerbate the very issue that OTS raises in its brief, with respect to varying capital structures among companies. Duquesne MB, p. 31. It is Duquesne's position that recovery should be aligned with actual costs to the extent possible; thus, actual capital structure of the representative utility should be used. Duquesne MB, p. 30; Bordo Rebuttal, DLC Ex. E, pps. 3-4. See also Emporium Water Co., 955 A.2d at 462-462 (cost of capital should give consideration to a utility's financial structure, credit standings, interest, risks, and any other peculiar factors of the utility involved); Pa. PUC v. Pennsylvania Gas and Water Co., 1993 Pa. PUC LEXIS 135, 107-108 (Pa. PUC 1993) (PG&W's capital structure was deemed reasonable, as it was representative of the capital structure that PG&W would experience during the life of the requested rate relief). This will result in ultimate fairness and efficiency.

OCA believes that per the terms of the settlement in the Duquesne-Macquarie Consortium merger proceeding, Duquesne should be required to demonstrate that its claimed equity capitalization ratio is within a reasonable range when compared with other similar companies. OCA MB, p. 27. Until Duquesne demonstrates this, and until a generic proceeding can be conducted, it is OCA's belief that the equity ratio should be 51%, which is the capital structure of Metropolitan Edison. *Id.* Duquesne disagrees with this ratio, as it is not representative of Duquesne's capital structure nor the costs it incurs for financing. Duquesne MB, p. 30; Bordo Rebuttal, DLC Ex. E, pps. 5-6; Sears Rebuttal, OTS St. 1-R, pps. 6-7 (OTS disagrees with this proposal); Transcript, p. 124. See also Emporium Water Co., 955 A.2d at 462-462. Rather, Duquesne believes that the

numbers presented are reasonable and should be used, which in this case is 59% capital structure, and is lower than its actual equity ratio of 67%, shown in the Rebuttal Testimony of David Bordo, p. 3. See Catlin Direct, OCA Statement 2, Schedule TSC-2 (Alliant Energy common equity ratio of 58.6%). Duquesne lowered its request to 59% because it was reflective of an agreed capital structure and fell below a 60% equity ratio which Duquesne believes is reasonable.

Accordingly, Duquesne believes the actual capital structure should be utilized for companies, as it is today with water companies with respect to the distribution system improvement charge, so long as it falls within a reasonable range. Duquesne MB, p. 30: Sears Rebuttal, OTS Statement No. 1-R, p. 9.

III. Conclusion

For the reasons set forth above, as well as in Duquesne's Main Brief filed on December 8, 2009, Duquesne's Smart Meter Procurement and Installation Plan meets the requirements of Act 129, 66 Pa.C.S. § 2807(f) and (g), and the Commission's Implementation Order dated June 18, 2009, and is hereby approved and authorized for implementation, including its proposed budget, tariff to be effective April 1, 2010, schedule and requested waivers.

Respectfully Submitted,



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