

COMMONWEALTH OF PENNSYLVANIA



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December 31, 2009

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

RE: Joint Petition of Metropolitan Edison  
Company, Pennsylvania Electric Company  
and Pennsylvania Power Company for  
Approval of Smart Meter Technology  
Procurement and Installation Plan  
Docket No. M-2009-2123950

Dear Secretary McNulty:

Enclosed for filing is the Reply Brief of the Office of Consumer Advocate, in the above-referenced proceeding.

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

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Afon J. Beatty".

Afon J. Beatty  
Assistant Consumer Advocate  
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Enclosures

cc: Honorable Susan D. Colwell

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition of Metropolitan Edison :  
Company, Pennsylvania Electric Company :  
and Pennsylvania Power Company for : Docket No. M-2009-2123950  
Approval of Smart Meter Technology :  
Procurement and Installation Plan :

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REPLY BRIEF OF THE  
OFFICE OF CONSUMER ADVOCATE

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Dated: December 31, 2009

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## **I. INTRODUCTION**

On December 11, 2009, the Office of Consumer Advocate (OCA) filed its Main Brief (M.B.) regarding its positions on the issues raised in this proceeding. The OCA submits that its Main Brief provides the Pennsylvania Public Utility Commission (Commission) with a comprehensive discussion of the issues in this proceeding. The OCA's Main Brief fully addresses and responds to many of the arguments raised by the FirstEnergy Companies (Met-Ed, Penelec, and Penn Power, collectively the Companies) and the other parties in their Main Briefs.

It is not the purpose of this Reply Brief to respond to all of the arguments contained in the Companies' or other parties' Main Briefs. The OCA will limit its reply to those issues requiring additional clarification and response. Thus, any failure of the OCA to address specific arguments contained in the Companies' or other parties' Main Briefs does not mean that the OCA agrees with the Companies' or the other parties' positions or that the OCA has revised its position.

## **II. PROCEDURAL HISTORY**

The OCA incorporates the Procedural History section of its Main Brief herein.

## **III. OVERVIEW OF SMART METER PLAN**

The OCA incorporates the Overview of Smart Meter Plan section of its Main Brief herein.

## **IV. SUMMARY OF ARGUMENT**

As explained in the OCA's Main Brief and as further set forth in this Reply Brief, the OCA submits that the Companies' Smart Meter Implementation Plan (Plan or SMIP) is generally reasonable, except with regard to cost allocation and cost recovery. The OCA has made several recommendations for improvements to the SMIP and has further clarified some of those

recommendations herein. These recommendations include requiring the Companies to perform specific data collection and analyses during the Assessment Period in order to gather adequate information to develop a full Deployment Plan that is the most cost-effective, reasonable and up-to-date Deployment Plan out of the range of options available to the Companies. The OCA's specific recommendations regarding data collection and analyses outlined in its Main Brief and herein should be adopted.

Also as explained in the OCA's Main Brief and further detailed herein, the Companies should allocate the Assessment Period common costs in a manner that reflects demand and energy usage. According to Act 129, the purpose of installing a smart meter network is to impact the energy usage and peak demand and correspondingly to reduce energy prices. The benefit of the common costs will accrue to all customer groups, based on those customers' total usage and the demand they place on the system. The costs should, therefore, be allocated on a usage and demand basis. The OCA's specific recommendations regarding cost allocation outlined in its Main Brief and herein should be adopted.

Further, as explained in the OCA's Main Brief and further explained herein, the Companies failed to include the savings that the SMIP will generate in their surcharge mechanism, which is contrary to the explicit requirements of Act 129. The OCA has proposed language used by another EDC that would ensure that savings are included in the rates charged through the surcharge mechanism.

Last, the OCA submits that the Companies should adopt a volumetric charge for cost recovery from residential customers. As explained in the OCA's Main Brief and further explained herein, a volumetric charge would allow the Companies to recover their costs while, at the same time, providing customers with incentives to reduce usage. These goals are consistent

with the purposes of Act 129, and consequently, the OCA's recommendations regarding cost recovery should be adopted.

**V. ARGUMENT**

1. Smart Meter Plan.

A. Act 129 Requirements.

No reply necessary.

B. Commission Smart Meter Implementation Order Requirements.

No reply necessary.

C. Data Access, Security and Privacy Issues.

No reply necessary.

D. Issues Concerning Residential and Vulnerable Customers.

i. Issues Concerning Residential Customers.

No reply necessary.

ii. Issues Concerning Vulnerable Customers.

In its Main Brief, the OCA made specific recommendations regarding assessment, analyses and mitigation of impacts *vis a vis* low income and vulnerable customers. See OCA M.B. at 17-19. Specifically, OCA witness Brockway recommended:

The Companies should particularly assess the impacts of their proposed SMIP on vulnerable customers. Working with community groups, the Company should identify to what extent their customers are low-income, low-use, medically challenged, or otherwise at risk, and develop plans to mitigate the risks to such customers of smart metering costs, including consideration of smart metering technologies, price and program designs, and equipment specification. This assessment should include a granular analysis of load shapes and usage characteristics of a sample of identified vulnerable customers before the end of the

grace period to ensure sufficient reliable data and understanding of the needs of these customers.

See OCA St. 2 at 3-4.

In their Main Brief, the Companies assert that Ms. Brockway also recommended that they hold low-income and vulnerable customers harmless, thereby excluding them from the Companies' SMIP. See ME/PN/PP M.B. at 21. It is not the OCA's position that low-income and vulnerable customers should be excluded from the Companies' SMIP. As noted in the OCA's Main Brief, witness Brockway states that her "reference to holding vulnerable customers harmless was perhaps not as clear as it could have been." Ms. Brockway intended that her recommendation was "to minimize any possible adverse impacts of smart metering deployment on such customers." See OCA M.B. at 18; OCA St. 2S at 1. The OCA's recommendation as stated above is designed to gather the necessary information to understand and address the potential adverse impacts on low-income and vulnerable customers.

The Companies note their intent to provide information and other educational tools to low-income and vulnerable customers as recommended by Ms. Brockway. See ME/PN/PP M.B. at 21-22. The Companies, however, assert that if any party believes that additional forms of assistance beyond its Customer Assistance Programs and LIHEAP are necessary to mitigate the impact of smart meter deployment on low-income and vulnerable customers, that the issue should be brought up in the context of a proceeding to revise the Companies' Universal Service Programs. Id. at 22.

The OCA submits that the proper forum to develop methods to mitigate the impacts of smart metering deployment on low-income and vulnerable customers is here in this smart meter proceeding. As Ms. Brockway explained:

With respect to the CAP programs, their budgets may not be sufficient to address the needs that may arise if vulnerable customers experience adverse bill impacts. LIHEAP, for its part is a federal program not within the control of the Commonwealth, whose budget (and thus availability) fluctuates. LIHEAP is only available for home heating applications. For the energy efficiency and smart meter program, while available to low income customers, many such programs require the customer to make an investment to be able to take advantage of the programs.

See OCA St. 2S at 2.

It is during this proceeding that the specific impacts and benefits of smart meter deployment can be assessed and programs beyond CAP, LIHEAP and LIURP can be considered. The assessment of load shapes and usage characteristics of a sample of vulnerable customers recommended by OCA witness Brockway is intended to assist in an analysis of the need and of potential programs.

Moreover, the costs will be quite substantial, and the Companies must show that they have chosen the most cost-effective, reasonable approach for implementation of smart meters in their service territories. Clearly, the time for mitigation of costs on low-income and vulnerable customers is during the Assessment Period and the Deployment Period, not at some *possible* future proceeding *after* the costs have already been incurred.

2. Cost Issues.

A. Cost Effectiveness/Cost-Benefit Issues.

In its Main Brief, the OCA described very specific cost effectiveness and cost-benefit analyses that the Companies should complete prior to submitting their Deployment Plan to the Commission at the end of the Assessment Period. See OCA M.B. at 19-22, citing OCA St. 1 at 12-14 and OCA St. 2 at 3, 8-10. In their Main Brief, the Companies indicated their willingness to carefully consider the recommendations of OCA witness Hornby but that it was far too early

to commit to OCA witness Hornby's proposals. See ME/PN/PP M.B. at 16. Instead, the Companies assert, that the parties can raise these analyses issues when the Companies file their Deployment Plan. Id.

The OCA submits that the specific cost effectiveness and cost-benefit analyses recommended by OCA witnesses Hornby and Brockway must be completed during the Assessment Period in order to properly guide the Companies in selecting the most cost-effective, reasonable approach for smart meter deployment out of the range of approaches available to them. The Companies will have the burden of demonstrating that their chosen Deployment Plan is the most cost-effective option for their service territories. Asking for these analyses after the decisions have been made and the plan has been filed, as the Companies suggest, is an inadequate substitution for having the proper information before a decision is made.

B. Cost Allocation.

i. Introduction.

The Companies, the OSBA, and the Industrials, which include the Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, and Penn Power Users Group (collectively MEIUG *et al.* or Industrials), object to the allocation of common costs on the basis of energy and demand as recommended by OCA witness Hornby. Each argues that these costs are "customer-related" and therefore, should be allocated on the basis of metered customers. ME/PN/PP M.B. at 39-43; Industrials M.B. at 7-16; OSBA M.B. at 11-16. The OCA submits, however, that this position overlooks the true cost causation of the Companies' smart meter network – and the benefits anticipated by the General Assembly in passing Act 129. The cause of these costs is Act 129. The primary purpose of installing a smart meter network pursuant to Act 129 is to impact the energy usage and peak demand of customers to reduce and stabilize energy prices. Act 129,

66 Pa.C.S. § 2806.1 *et seq*, pmb1.; OCA St. 1S at 5. The benefit of that impact will accrue to all customer groups, based on those customers' total energy usage and the demand they place on the system. The costs of the Assessment Period, therefore, should be allocated on a usage and demand basis, as proposed by OCA witness Hornby and detailed in the OCA's Main Brief. See OCA M.B. at 22-32.

The OCA detailed the rationale for allocating Assessment Period costs on the basis of energy and demand in its Main Brief and will not repeat each argument in this Reply Brief. The OCA will reply here to certain arguments of those parties supporting a customer-related allocation as appropriate.

ii. The OCA's Proposed Allocation Of Assessment Period Costs Is Based On Cost Causation And Reasonable Cost Of Service Principles.

a. Introduction.

The Companies, OSBA and Industrials argue that the OCA's proposed energy/demand related allocation of Assessment Period costs is not reasonable. ME/PN/PP M.B. at 38; OSBA M.B. at 13-16; Industrials M.B. at 11. For example, the Companies argue that the Assessment Period costs are akin to traditional metering and meter-related costs that should be allocated based on the number of customers in each class. See ME/PN/PP M.B. at 39. The OSBA argues that there is insufficient cost basis to allocate Assessment Period costs based on energy usage and demand. See OSBA M.B. at 13-16. The Industrials provide a similar argument to that of the Companies, arguing that the OCA's proposed allocation results in "value of service" ratemaking. See Industrials M.B. at 12-16. For the reasons detailed below and in its Main Brief, the OCA submits that these arguments are without merit.

Reasonable cost of service practices require that costs be allocated among rate classes according to cost causation. See OCA St. 1 at 15; OCA St. 1S at 3. The Companies and the Industrials argue that the cost of providing service must be the guiding principle in utility ratemaking. See ME/PN/PP M.B. at 39-41; Industrials M.B. at 8-13. The OCA submits, however, that these parties fail to recognize the cause of these smart meter related costs.

b. The Assessment Period Costs Are Being Caused By The Companies' Implementation Of Act 129's Smart Metering Provisions.

The Companies and Industrials argue that the OCA's position is a "value of service" allocation. See ME/PN/PP M.B. at 38; Industrials M.B. at 12-16. This argument is without merit. These parties misinterpret the rationale for the OCA's proposal, where the Companies argue that the OCA's proposal is a "proxy for the 'benefits' that Mr. Hornby assumes each class will realize," and the Industrials argue that the OCA's proposal relies on "intangible and unquantified 'benefits' that they might receive under the Plan." See ME/PN/PP M.B. at 38; Industrials M.B. at 12. These parties argue, essentially, that it is impossible to determine what benefits will accrue. See Industrials M.B. at 13.

Contrary to these arguments, the OCA's proposal is not based on value of service. The Companies have acknowledged that the Assessment Period costs at issue here are required to effectuate Act 129. OCA witness Hornby addressed the causes of cost incurrence in this proceeding noting that smart meter costs are being incurred, or "caused," primarily by Act 129. Mr. Hornby testified as follows:

[T]he Companies are incurring these costs solely to comply with the smart meter plan requirements of Act 129 and the primary goals of that Act are to reduce annual energy use, peak load and the costs and environmental impacts associated with those two factors.

Act 129 is clearly “causing” the Companies to incur incremental costs to deploy smart meter technology. The Companies note that they are submitting a smart meter plan to comply with the Act in their petition on page 3, in their Plan on pages 1 and 3, in the Direct Testimony of Mr. Paganie on page 7 at lines 7 and 8 and in the Direct Testimony of Mr. Mills on page 12 at lines 16 to 18.

See OCA St. 1S at 4-5. For example, the Companies’ SMIP begins as follows:

#### 1.1 Introduction

On October 15, 2008, Governor Rendell signed House Bill 2200 into law as Act 129 of 2008 (“Act 129”), which became effective on November 14, 2008. Among other things, Act 129 directed each electric distribution company (“EDC”) with more than 100,000 customers to file with the Pennsylvania Public Utility Commission (“Commission”) by August 14, 2009, its Smart Meter Technology Procurement and Installation Plan (“Plan”).

See ME/PN/PP Exh. JEP-2 at 4. In addition, the Companies’ witness, Robert A. Mills, noted:

The [Assessment Period] costs identified above represent costs that are necessary to prepare the Deployment Plan for deploying smart meters in Pennsylvania in order to meet the Companies’ statutory obligations under Act 129.

See ME/PN/PP St. 2 at 12.

The Companies’ cost recovery witness, Raymond I. Parrish, explained the purpose of their proposed rate recovery mechanism, as follows:

The purpose of my testimony is to introduce and explain the Companies’ proposed cost recovery mechanism that will be used to recover the costs incurred by the Companies during the planning and implementation of the Companies’ Smart Meter Technology Procurement and Installation Plan (“Plan”) that is being filed pursuant to Act 129 of 2008, 66 Pa. C.S. §2807(f) (“Act 129”).

See ME/PN/PP St. 3 at 2. (Emphasis added). As Mr. Parrish testified, the Companies have developed a cost recovery plan to collect those costs that they are required to incur due to the

passage of Act 129. As explained by OCA witness Hornby and acknowledged by the Companies' witnesses, Act 129 is the direct cause of the current filing.

Act 129 was passed for the purpose of reducing and stabilizing the cost of energy, to the benefit of all customers. Act 129, 66 Pa.C.S. § 2806.1 *et seq*, pmb1. Importantly, the Companies do not dispute this fact. Mr. Hornby testified that the Companies themselves have acknowledged that the purpose of Act 129 is to achieve public policy goals to the benefit of all customers, noting:

Act 129 is also explicitly trying to achieve important public policy goals of reducing annual energy use, reducing the air emissions associated with that annual energy use, and reducing peak load. The General Assembly obviously expects that achieving these public policy goals will provide benefits to all customers in all rate classes. The joint and common costs associated with smart meter technology and energy efficiency are ultimately being caused by current levels of energy and demand, and the goal of Act 129 to reduce those current levels. For example, Mr. Paganie lists "...achieving Energy Efficiency and Demand Response" as the first benefits of the Companies' Plan (Paganie Direct, page 7 at line 23).

See OCA St. 1S at 5. The General Assembly stated that one of the main goals of the Act is to reduce the cost and price instability of electric energy:

The General Assembly recognizes the following public policy findings and declares that the following objectives of the Commonwealth are served by this act:

(1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time and the impact on the environment.

Act 129, 66 Pa.C.S. § 2806.1 *et seq*, pmb1. It is not disputed that the purpose of smart meter deployment is to reduce peak demands and overall energy usage. The purpose of this massive

new investment is not simply to count kilowatt hours and provide accurate bills to each individual customer. Rather, it is to reduce overall demand and energy costs for the benefit of all customers to meet the purposes of the Act.

c. Contrary To The Companies' Argument, The OCA's Proposal Is Consistent With Cost Causation.

In support of its preferred allocation methodology, the Companies cite examples of how the costs of traditional meters have been allocated in base rate proceedings. See ME/PN/PP M.B. at 39-40. As discussed above, however, these are not traditional meters, and the costs at issue here are not meter costs at all. What is at issue here are common costs that are needed to deploy a smart meter infrastructure designed to bring the benefits anticipated by Act 129 to all customers.

A review of the language quoted by the Companies themselves in their Main Brief from the Rate Case Handbook contradicts the other parties' assertion that the OCA's allocation methodology is inconsistent with cost of service principles. Cawley, James H. and Norman James Kennard, Rate Case Handbook- A Guide to Utility Ratemaking Before the Pennsylvania Public Utility Commission, 1983. The Rate Case Handbook excerpt specifically addresses the breakdown of principal cost classifications into demand/capacity costs, commodity/energy costs, and customer costs. As to the demand/capacity costs, the Rate Case Handbook provision quoted in the Companies' Main Brief states:

1. Demand/Capacity Costs- These are the capital and operating expenses incurred to provide sufficient capacity to meet peak demand. These costs are not affected by the number of customers or annual usage, but rather are put in place to serve the peak;

See ME/PN/PP M.B. at 41. With respect to demand/capacity costs, the smart meter network technology is to be installed to ensure that the Companies' peak demand can be met. The smart meter technology is to enable demand response programs that will assist in meeting peak demand obligations and reduce peak demand costs.

As to the commodity/energy costs, the Rate Case Handbook provision quoted in the Companies' Main Brief states:

2. Commodity/Energy Costs- Costs which vary in direct proportion to the volume of service consumed. These costs are not related either to capacity or customer costs;

See ME/PN/PP M.B. at 41. With respect to the commodity/energy costs, the new metering technology is intended to affect the energy consumed by all customers. The meters will enable and allow for programs targeted at consumption.

As to the customer costs, the Rate Case Handbook provision quoted in the Companies' Main Brief states:

3. Customer Costs- The costs addressed directly by the number of customers served regardless of usage are included in this category. They include the cost of meter, meter reading, billing and some portion of the distribution system.

See ME/PN/PP M.B. at 7. Unlike traditional customer costs, the purpose of the Companies' smart meter investment is directly tied to customer usage. Accordingly, rather than call the OCA's proposal into question, as the Companies' assert, the Rate Case Handbook supports the OCA's methodology.

Additionally, as the OCA explained in its Main Brief and Testimony, the OCA's proposed allocation is consistent with both the language and intent of Act 129, as well as the Commission's Implementation Order. The Commission required that all measures associated with an EDC's smart metering plan be financed by the customer class that receives the benefits

of such measures. See Smart Meter Procurement and Installation, Docket No. M-2009-2092655 at 32 (Order entered June 24, 2009) (Implementation Order). The Commission stated:

...we will require the EDC to allocate those costs to the classes whom derive the benefit from such costs.

Implementation Order at 32. The Commission went on to say:

Any costs that can be clearly shown to benefit solely one specific class should be assigned wholly to that class. Those costs that provide benefit across multiple classes should be allocated among the appropriate classes using reasonable cost of service practices.

Id. As indicated in the Implementation Order, smart meter plan costs are appropriately allocated to those customer classes who derive the benefits from such costs. Implementation Order at 32. The number of customers is neither a measure of the benefits derived from the smart meter system nor the causation of the system costs.

d. The OCA's Allocation Proposal Is Consistent With Pennsylvania Law And Appropriate Ratemaking Principles.

The Industrials cite the Commonwealth Court's decision in Lloyd v. Pa. Public Utility Commission in support of their position that the OCA's cost allocation should be rejected. See Lloyd v. Pa. Public Utility Commission, 904 A.2d 1010 (Pa. Commw. Ct. 2006)(Lloyd). The OCA submits, however, that rather than preclude consideration of the OCA's allocation proposal, the Lloyd decision supports its implementation.

While the Industrials cite Lloyd for the proposition that cost of service is the "polestar" of utility ratemaking and argue that allocating costs on the basis of benefits violates cost of service principles, the Court's decision in Lloyd does not support the Industrial's argument. Notably, the Industrials fail to mention another section of the Lloyd decision which upholds the allocation of Sustainable Energy Fund (SEF) costs to all distribution ratepayers on the basis that all

ratepayers benefit from the Fund's activities. Lloyd at 1024-1027. The SEF costs were charged to all customers through the same per kwh charge. In the face of an argument by industrial customers that the SEF provides no demonstrable benefits to ratepayers, the Court stated: "What the core of that argument ignores is that the General Assembly has specifically authorized that public service programs such as SEF be funded." Lloyd at 1025. The Court noted that the purpose of the SEF is "to promote the development and use of renewable energy and clean energy technologies, energy conservation and efficiency which promote clean energy." Lloyd at 1024. Act 129, which established the smart metering program, likewise seeks to further the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account the benefits of price stability over time and the impact on the environment. Act 129, 66 Pa.C.S. § 2806.1 *et seq*, pmb1.

Additionally, as detailed in the OCA's Main Brief, the causal relationship between costs and benefits is an accepted cost of service principle that is directly applicable here. See OCA M.B. at 28-30. As was discussed above, the OCA's proposal is consistent with cost of service principles—principles that are the foundation for normal cost of service studies. Indeed, FERC requires the demonstration of a causal relationship between costs and benefits for approval of rates to be shared by utilities. Id. Additionally, no party to this proceeding has demonstrated that the supposed "difficulty" of measuring benefits in the smart meter context exceeds the difficulty of measuring benefits in any other type of proceedings. See e.g. Illinois Commerce Commission v. FERC, 576 F.3d 470, 475 (Seventh Cir. 2009).<sup>1</sup>

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<sup>1</sup> In addition, the OSBA argues that the OCA has ignored the fact that "environmental benefits" are also a goal of Act 129 and that environmental benefits will accrue to all citizens regardless of their energy use. See OSBA M.B. at 15. OSBA also states its concerns about how these benefits would be allocated. See OSBA M.B. at 15. OSBA uses this argument to support its assertion that any customer benefit standard for cost allocation "can lead to endless speculation, analysis, and litigation." See OSBA M.B. at 15; OSBA St. 1 at 4-5. This notion that an allocation analysis, if difficult, should not be performed completely ignores the fact that cost of service analysts

The Companies have acknowledged that the purpose behind Act 129 (which is driving the costs) is to reduce usage and peak demands on their system. The Act is designed to provide benefits to all customers through the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at least cost. See Act 129, 66 Pa.C.S. § 2806.1 *et seq*, pmb1.; see also OCA St. 1 at 15. As detailed below and in the OCA's Main Brief, industrial and commercial customers will enjoy approximately two-thirds of the benefits of the smart meter network. See OCA M.B. at 27. The OCA submits that it is unreasonable for residential customers to foot almost the whole bill for the common costs associated with smart meter deployment.

iii. The Primary Benefits Of The SMIP Will Accrue To Each Class On An Energy And Demand Basis.

The Industrials argue that the OCA has failed to accurately depict the benefits of the SMIP or to quantify how commercial and industrial customers will benefit. Industrials M.B. at 15. The OSBA argues that there is no reason to believe that commercial customers will be able to shift load to benefit from the SMIP. See OSBA M.B. at 14-15. The OCA submits, however, that the commercial and industrial classes will benefit in relation to their energy usage and peak demand as the price of energy is reduced and stabilized. In addition, as discussed below in Section B.iv. of this Reply Brief, the smart meter network will benefit commercial and industrial

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must always make interpretations and utilize their judgment regarding multi-purpose cost elements. The benefits here, however, are not difficult to discern as the specific goal of the smart meter initiative is to affect the cost of energy and capacity. Act 129, 66 Pa.C.S. § 2806.1 *et seq*, pmb1.

Moreover, the OSBA fails to recognize that the environmental benefits, if quantified, would be in the form of avoided environmental compliance costs. For example, if there is legislation limiting the emission of carbon dioxide, the costs to comply with that legislation will become part of the cost of energy. Thus, environmental benefits will be tied to energy usage as well.

customers through enhanced innovation and efficiencies in energy use. See Constellation M.B. at 12.

As the OCA noted in its Main Brief, industrial and commercial customers each account for approximately a third of the energy usage of the Companies. See OCA M.B. at 27. The following chart shows the percentage of each Companies' total energy usage:

	Met-Ed	Penelec	Penn Power
Residential	39.4%	31.6%	35.5%
Commercial	33.6%	36.0%	29.9%
Industrial	27.0%	32.4%	34.6%

Source: OCA St. 1, Exh. JRH-3 (page 2 of 2).

As the chart demonstrates, the energy consumed by each Company's customers is spread somewhat evenly among the customer classes. This is the case despite the fact that residential customers are 88%, 86%, and 87% of Met-Ed, Penelec and Penn Power's total customer base, respectively. See ME/PN/PP St. 1 at 4-5. The industrial customers also account for between 21 percent and 29 percent of the peak demand placed on the Companies' system. See OCA St. 1S, Exh. JRH-3. The commercial customers account for between 29 percent and 40 percent of peak demand. Id. The Companies' allocation, however, places almost 90% of the Assessment Period costs, which are necessary to achieve the energy and demand savings, on the residential class.

Since the primary purpose of installing the smart meter network is to shift usage and drive down wholesale costs, the benefit of that endeavor will be realized through lower usage and correspondingly lower cost kilowatt hours, roughly two-thirds of which are consumed by industrial and commercial customers. The Industrials and OSBA, however, support an allocation that requires them to pay under 15% of the costs of the network, for 61 to 68 percent of the benefit. The OCA submits that such an allocation is unreasonable.

iv. The Implementation Of Smart Meter Technology Will Bring Additional Benefits To Commercial and Industrial Customers.

The Industrials argue that the quantifiable benefits provided under the SMIP to commercial and industrial customers are minimal. The OCA submits, however, that the increased information about usage that will result from the new smart meter installation will bring competition with many more pricing options specific to each commercial and industrial customer's usage. Indeed, Constellation New Energy and Constellation Energy Commodities Group (Constellation) filed testimony in this proceeding addressing how the new smart meter technology will increase the amount of data being collected and will allow Electric Generation Suppliers (EGSs) to better understand usage patterns and help customers with functions such as energy efficiency and peak load reductions. See Constellation St. 1 at 8-9. Constellation specifically discussed these "increasingly sophisticated energy strategies" and specifically stated:

Overlaying Smart Meter technologies onto existing open platforms makes it possible to more successfully harness and shape load whether the load is distributed across a single facility, college campus or retail chain with multiple locations throughout a large geographic area. This ability to shift and shape load across multiple buildings is going to reveal itself to be the smartest and most efficient way to create the virtual peaking plans and intelligent buildings of the greener energy grid of the future....This shift in direction, however, while *possible* is only *likely* to occur if the proper access to data is available to customers and their EGSs in quick, easy and straightforward manners, and if the data provided by such new Smart Meter technologies is as specific and frequent as possible.

See Constellation St. 1 at 8-9 (Emphasis in original). Further, in its Main Brief, Constellation, which argued for 15-minute interval data to be made available to EGSs on an *hourly* as opposed to a *daily* basis, stated:

...providing 15-minute data on a *daily basis at a minimum* will encourage new innovation and efficiencies in energy use, but

providing such 15-minute data *on an hourly basis* will go even further to allow all C&I customers to take advantage of new energy infrastructure and shape new energy and resource management innovation.

See Constellation M.B at 12. (Emphasis in original). The testimony and Main Brief of Constellation provide persuasive evidence that the benefits of smart metering have not been fully tapped by commercial and industrial customers. To argue that the large commercial and industrial customers have already reaped all of the benefits of smart meters is simply incorrect.

v. Conclusion.

For the reasons detailed above and those contained in its Main Brief, the OCA submits that the Companies' allocation is not reasonable. Neither the Companies nor the Industrials, nor the OSBA, can justify the Companies' allocation of almost ninety percent of the Assessment Period costs to residential customers. The Companies' smart meter network is being built pursuant to the passage of Act 129. The General Assembly passed Act 129 in order to reduce energy usage and peak demands. The benefits of such reductions will accrue to all customer classes. The OCA's proposed allocation is consistent with reasonable cost of service practices and should be adopted.

C. Cost Recovery Issues.

i. The Companies' Rate Recovery Mechanism Does Not Provide For The Offsetting Savings As Required By Act 129.

In its Main Brief, the OCA argued that Act 129 explicitly requires the Companies to net the operating and capital cost savings realized as a result of each Company's installation and use of smart meter technology from the costs of its smart meter deployment. See 66 Pa. C.S § 2807(f)(7); OCA M.B. at 33-36. Act 129 provides the Companies with two options to recover these net costs. The Companies can recover net costs through base rates or a reconcilable

automatic adjustment clause under section 1307. See 66 Pa. C.S § 2807(f)(7). The OCA recommended that tariff language be added to the the Company's cost recovery rider in order to reflect the proper accounting of savings. See OCA M.B. at 36.

In their Main Brief, the Companies argue that they will not have any offsetting savings during the Assessment Period and thus, did not include tariff language. See ME/PN/PP M.B. at 37. The Companies further argue that a base rate proceeding will be the best place to recognize savings because they will be difficult to quantify. Id. OCA witness Hornby testified, however, that the Companies' position was flawed, as follows:

As I anticipated in my Direct Testimony, Mr. Parrish begins by stating there will not be any such savings during the Assessment Period. He then indicates that the best mechanism through which to reflect any operational savings would be new base rates established in future distribution rate proceedings. The approach that Mr. Parish is proposing is not consistent with either the Act or the Commission's Implementation Order.

The Act, in Section 2807 (f) (7), specifies the Company may recover reasonable and prudent smart meter technology costs net of operating and capital cost savings it realizes from that technology. That Section also gives electric distribution companies (EDCs) the option of recovering their net costs either through deferral and recovery in future base rates or a reconcilable automatic adjustment clause. The Companies have chosen the automatic adjustment clause option, i.e., the SMT-C rider. In its Implementation Order, the Commission states that EDCs such as the Companies who have chosen the adjustment clause option shall include a tariff for that rate mechanism that reflects "...operating and cost savings realized by the EDC from the installation and use of smart meter technology".

See OCA St. 1S at 11.

As OCA witness Hornby explained, the Companies' proposal is inconsistent with Act 129. In order to comply with the Act, the Companies must include tariff language similar to that included by other utilities that have selected a reconcilable automatic adjustment clause for the

recovery of SMIP costs. See OCA St. 1 at 17-18. The OCA submits that the Companies should be required to reflect savings in their surcharge, and must adopt appropriate language in their tariff that states as follows:

Any reductions in operating expenses or avoided capital expenditures due to the Smart Meter Program will be deducted from the incremental costs of the Smart Meter Program to derive the net incremental cost of the Program that is recoverable. Such reductions shall include any reductions in the Company's current meter and meter reading costs.

The OCA submits that the Companies are required by law to reflect savings in their cost calculation and must incorporate those savings in their selected rate recovery mechanism.<sup>2</sup> The Companies should be directed to include this language in their tariffs to ensure that ratepayers receive the credited savings they are entitled to under the law.

ii. Return On Equity.

In its Main Brief, the Companies argue that the return on equity (ROE) used to calculate their SMIP rates should be set at 10.1%, which is the currently authorized rate for Met-Ed and Penelec. See ME/PN/PP M.B. at 28. The Companies further argue that a 10.1% ROE is an appropriate rate because it was determined after extensive investigation of the Companies rather than an investigation of a barometer group of companies that may or may not share the same business risks as the Companies. Id. The Companies further argue that, if their proposed 10.1% ROE is rejected, the Commission should consider a "generic" ROE only in the context of an industry-wide rulemaking proceeding where all parties can weigh in on the process to be employed in deriving the "generic" rate. Id. at 29.

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<sup>2</sup> The OCA recognizes that there may not be savings during the Assessment Period. The Companies proposed tariff, however, is designed to continue in operation beyond the Assessment Period. As such, the OCA submits that the proposed tariff language should be included at this time.

In its Main Brief, the OCA supported the Companies' proposed use of its currently authorized ROE as a reasonable starting point. See OCA M.B. at 36-37. The OCA further noted that, as time passes, the Companies ROE may no longer reflect the Companies' cost of capital. OCA witness Hornby testified that a mechanism should be developed to update the return on equity. The OCA supports the Companies' alternative position that any procedure used to adjust the Companies ROE for the purpose of setting SMIP rates should be done on an industry-wide basis.

iii. The Companies' Fixed Charge Proposal Should Be Rejected.

In their Main Brief, the Companies argue that all of their SMIP costs should be recovered through fixed rates, i.e. a fixed customer charge. See ME/PN/PP M.B. at 5, 9, 14-15, 22, 44. As the OCA detailed in its Main Brief, the Companies' position is inconsistent with Pennsylvania ratemaking principles and should be rejected. See OCA M.B. at 37-39. The Commission has limited the costs that can be included for recovery in the customer charge to "basic customer costs" necessary to customer service. See e.g. Pa. PUC v. West Penn Power Co., 69 PUR 4<sup>th</sup> 470, 521 (1985)(West Penn). The Commission has defined "basic customer costs" to include the costs for the meter and service drop, meter reading and billings. See West Penn at 521.

OCA witness Hornby testified that the Companies consider the costs it will incur during the Assessment Period to be joint and common costs. See OCA St. 1S at 2. As such, the Commission should adopt traditional ratemaking principles and exclude those costs from the fixed customer charge. Additionally, fixed charges do not promote conservation, which is a key goal of Act 129. The Commission should not approve a rate structure that will decrease customers' incentive to decrease usage. Finally, OCA witness Brockway testified that vulnerable customers that are unable to effectively take advantage of SMIP tariff benefits will

not be as burdened by a volumetric charge as they would be by a fixed charge. See OCA St. 2 at 13. For all of these reasons, as explained more fully in the OCA's Main Brief, the OCA submits that the Companies' proposed rate design should be rejected, and the Assessment Period costs should be recovered as a usage-based charge.

**VI. CONCLUSION**

For the reasons discussed above, and those set forth in the Main Brief of the OCA, the OCA submits that the Commission should adopt the recommendation set forth in this Brief and the OCA's Main Brief.

Respectfully Submitted,



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Dated: December 31, 2009

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CERTIFICATE OF SERVICE

Joint Petition of Metropolitan Edison :  
Company, Pennsylvania Electric Company :  
and Pennsylvania Power Company for : Docket No. M-2009-2123950  
Approval of Smart Meter Technology :  
Procurement and Installation Plan :

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

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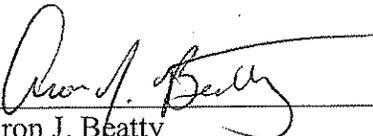
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