

COMMONWEALTH OF PENNSYLVANIA



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February 17, 2010

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

RE: Petition of PPL Electric Utilities
Corporation for Approval of a Smart Meter
Technology Procurement and Installation Plan
Docket No. M-2009-2123945

Dear Secretary McNulty:

Enclosed for filing are the Exceptions of the Office of Consumer Advocate to the Initial Decision issued on January 28, 2010 by the Honorable Wayne L. Weismandel, 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 that reads "James A. Mullins".

James A. Mullins
Assistant Consumer Advocate
PA Attorney I.D. # 77066

Enclosures

cc: Honorable Wayne L. Weismandel

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation :
for Approval of a Smart Meter Technology : Docket No. M-2009-2123945
Procurement and Installation Plan :

EXCEPTIONS
OF THE
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Dated: February 17, 2010

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I. INTRODUCTION

On August 14, 2009, PPL Electric Utilities Corporation (PPL or Company) filed its “Petition of PPL Electric Utilities Corporation for Approval of a Smart Meter Technology Procurement and Installation Plan” (Smart Meter Plan or SMIP). The Company’s filing was assigned to the Office of Administrative Law Judge and further assigned to Administrative Law Judge Wayne L. Weisman for investigation. On August 28, 2009, the Office of Consumer Advocate (OCA) filed its Notice of Intervention and Public Statement in this matter. On September 25, 2009, the OCA filed its Comments in response to PPL’s SMP. On September 29, 2009, a prehearing conference was held in Harrisburg at which time a procedural schedule was established. Pursuant to this schedule, on October 6, 2009, a technical conference was convened in this proceeding. On October 9, 2009, the OCA filed the Direct Testimony of Thomas S. Catlin¹ and Christina R. Mudd² (both of Exeter Associates, Inc.) and, on October 30, 2009, the OCA filed the Surrebuttal Testimony of Mr. Catlin and Ms. Mudd. Evidentiary hearings were held on November 3, 2009.

On December 4, 2009, the OCA, along with PPL, the Commission’s Office of Trial Staff, the Commonwealth of Pennsylvania Department of Environmental Protection, the

¹ Mr. Catlin is a principal with Exeter Associates, Inc. and has previously presented testimony on more than 250 occasions before the Federal Energy Regulatory Commission and the public utility commissions of more than 20 states, including Pennsylvania, and the District of Columbia. Mr. Catlin’s work at Exeter involves the analysis of the operations of public utilities, with particular emphasis on utility rate regulation. Mr. Catlin has also been extensively involved in the review and analysis of utility rate filings, as well as other types of proceedings before state and federal regulatory authorities. His work in utility rate filings has focused on revenue requirements issues, but has also addressed service cost and rate design matters. Mr. Catlin has also been involved in analyzing affiliate relations, alternative regulatory mechanisms, and regulatory restructuring issues.

² Ms. Mudd is a Senior Analyst with Exeter Associates, Inc. She holds a Bachelor of Science degree from James Madison University and a Master of Art degree from Johns Hopkins University, with a Concentration in Energy Policy and Economics. Ms. Mudd’s work at Exeter is primarily related to the analysis of state regulatory and legislative policies for the development of renewable resources, the expansion of energy efficiency and conservation, and the use of distributed resources. Ms. Mudd also has considerable experience with the analysis of climate change mitigation strategies, including the evaluation of various benefits-costs assessments and the Regional Greenhouse Gas Initiative.

PP&L Industrial Customer Alliance and Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. filed its Main Brief in this proceeding and, on December 18, 2009, the OCA, along with PPL, OTS, PPLICA, Constellation, and ACORN filed its Reply Brief in this proceeding.

The Office of Administrative Law Judge issued the Initial Decision (I.D.) of ALJ Weismandel on January 28, 2010. The OCA files these brief Exceptions in response to two positions advanced in the ALJ's Initial Decision.

II. EXCEPTIONS

OCA Exception No. 1: The ALJ Erred In Approving PPL's Proposal To Apply The Return On Equity Approved By The Commission In The Company's 2004 Base Rate Case To The Company's Smart Meter Rate Base. (I.D. at 22).

In his I.D., ALJ Weismandel agrees with PPL that, with regard to establishing the rate of return applicable to the Company's smart meter rate base, PPL should utilize the capital structure ratios, cost components and the overall cost of capital approved by the Commission in the Company's 2004 rate case at Docket No. R-00049255. I.D. at 22. ALJ Weismandel asserts that PPL's proposal, which includes a return on equity of 10.7%, is fully based on the Company's weighted cost of capital and also consistent with the Commission's Implementation Order. *Id.* However, as Mr. Catlin testified:

I would recommend that PPL's actual capital structure and embedded costs of debt and preferred stock at the time of each annual update of the surcharge be utilized, subject to the condition that the debt and equity ratios be reasonably consistent with those found appropriate in PPL's then most recent rate case. With regard to the cost of equity, it is my recommendation that the equity return rate approved by the Commission in PPL's last fully litigated base rate proceeding (or explicitly set forth in a settlement agreement) be utilized if the final order in that proceeding was entered not more than three years prior to the effective date of the updated Smart Meter Surcharge.

OCA. St. No. 1 at 4 (*Emphasis Added*). The positions of the OCA and the Company do not differ significantly in this respect. However, as PPL's last fully-litigated rate case was in 2004—nearly six years ago--the OCA submits that data from that case is outdated and should not be used. In the absence of sufficiently current data, OCA witness Catlin recommended two possible approaches. First, Mr. Catlin recommended that the Commission establish a procedure that would allow for the use of the most recent "Report on the Quarterly Earnings of Jurisdictional Utilities" (Quarterly Earnings Report) prepared by the Bureau of Fixed Utility Services (FUS)

and released by the Commission at the time of the filing. OCA St. No. 2 at 5. As set forth by Mr. Catlin, the Commission has adopted a similar approach for establishing the return on equity for other surcharges under automatic adjustment clauses. Id. at 5. Specifically, Mr. Catlin testified:

In allowing the implementation of Distribution System Improvement Charges (DSICs) for water utilities under Section 1307 of the Public Utility Code, the Commission established a requirement that if a return on equity had not been established in a litigated rate case within two years of the effective date of the DSIC, then the equity return rate calculated by the Commission Staff (now Bureau of Fixed Utility Services) was to be utilized.

OCA St. No. 2 at 5. However, recognizing that a transparent procedure for determination of the equity return by FUS for electric utilities has not yet been established, Mr. Catlin's alternate recommendation is that a return on equity of 10.1% be used.³ OCA St. No. 2S at 6. As Mr. Catlin testified, this return is consistent with the most recent litigated Pennsylvania electric distribution cases filed by Metropolitan Edison Company (Met-Ed) and Pennsylvania Electric Company (Penelec) in 2006 and decided by the Commission in early 2007.⁴ Id. at 6.

In his I.D., ALJ Weismandel rejects the OCA's position by stating that the OCA's approach does not rely on PPL specific data. I.D. at 22. ALJ Weismandel further asserts that the Commission has given no indication that it intends to establish a generic proceeding to establish return on equities (ROEs) for smart meter costs, and consequently the OCA's proposal could not be implemented in a timely fashion. As to the 2006-2007 Metropolitan Edison Company (Met-

³ Mr. Catlin noted that the equity cost rates for electric utilities have been inconsistent and volatile in the Quarterly Earnings Reports over the past several years. Given this volatility--and lack of transparency--the existing electric utility returns published in the Quarterly Earnings Reports do not appear to be appropriate for use in establishing the return on equity to be used for PPL's and other electric distribution utilities' smart meter charges.

⁴ The OCA submits that the Commission should develop a procedure for FUS to begin publishing a return on equity that would be specifically applicable for smart meter charges in instances where an electric distribution company (EDC) has not had a base rate case in three years. OCA St. No. 2 at 6. As Mr. Catlin explained, for the long term, the procedure for calculating the return on equity should be established through a generic proceeding in which the FUS participates. OCA St. No. 2 at 6.

Ed) and Pennsylvania Electric Company (Penelec) rate proceeding, ALJ Weismandel asserts that the proceeding reflected unique circumstances for those companies, and the ROE does not reflect PPL's cost of capital. *Id.* ALJ Weismandel further criticizes use of this Commission decision as it does not meet the OCA's three-year test (the case was decided by the Commission on January 11, 2007). *I.D.* at 22. ALJ Weismandel finally notes that PPL's ROE of 10.7 is lower than the ROE of 11.00 established by the Commission in 2008 for Aqua Pennsylvania and is not too far removed from the OCA's 10.1 recommendation.

The OCA continues to submit that a return on equity of 10.1% should be used until the Commission establishes a standardized return on equity for SMP charges or until PPL has another base rate case. ALJ Weismandel's stated reasons for rejecting the OCA's proposal are not persuasive. With respect to utilization of the 10.1 ROE established in the Met-Ed/Penelec proceeding, although the data is not PPL-specific, it is based on the cost components of a similarly large EDC—unlike the Aqua water proceeding noted by ALJ Weismandel. As to the unique circumstances of the Met-Ed/Penelec proceeding, ALJ Weismandel provides no basis for such uniqueness that should bar reliance on this Commission decision. Further, rejection of this case because it was decided 3 years and one month ago is unreasonable. The OCA, therefore, submits that ALJ Weismandel's position on this issue should not be adopted. The Commission should, instead, adopt the position of the OCA and direct PPL to use a ROE of 10.1% until the Company's next base rate proceeding or a generic proceeding.

OCA Exception No. 2: The ALJ Erred In Approving PPL's Service Limiting and Pre-Pay Metering Pilot Programs. (I.D. at 28).

In his I.D., ALJ Weismandel approves of the Company's service limiting and pre-pay metering pilot programs. I.D. at 28. ALJ Weismandel asserts that the Commission's Implementation Order does not preclude PPL from offering these voluntary programs. Id. at 28. However, the OCA continues to submit that, as set forth by Ms. Mudd, these programs raise significant public policy implications that need to be addressed and resolved by the Commission prior to any PPL pilot programs. Ms. Mudd highlighted some of these issues:

there are important policy issues, including public safety issues, related to the Utility's use of these capabilities. Should these pilot programs be approved by the Commission in the current proceeding, which I do not recommend, the Commission should require the development of a complete set of procedures that ensures that the pilot targets an appropriate customer segment and is completely voluntary. The Company should implement a rigorous screening to ensure that customers such as low income, elderly, ill, and disabled customers, who could be placed at risk by such a program, are not selected for participation. In particular, participation in service-limiting and prepay programs should in no sense be a precondition imposed by the utility for reconnection of service following disconnection for customer non-payment.

OCA St. No. 1 at 15. While the Commission may not have precluded EDCs from including these capabilities, the Commission indicated its clear intent to have a separate proceeding to investigate these many public policy issues: Specifically, the Commission stated that:

the Commission agrees that the significant policy implications of service limiting and prepaid service should be addressed in another proceeding prior to requiring such capability in smart meters. Therefore, we have removed support for service-limiting, and prepaid service as a minimum capability requirement.

See, Smart Meter Procurement and Installation, Docket No. M-2009-2092655 (Order entered June 24, 2009)(Implementation Order) at 18.

ALJ Weismandel asserts that this provision indicates that the referenced proceeding applies before the Commission will require EDCs to offer these capabilities. The OCA submits, however, that such investigation of the potential risks to consumers from employing service limiting and prepayment capabilities should be a precursor to any pilot or implementation. For example, the Company proposes to exclude households with children, the elderly or seriously ill individuals from its service limiting program, but not from its prepayment program. Potential ramifications of this lack of exclusion for the pre-payment program need to be considered. Further, Company witness Godorov concedes that, with respect to the service limiting pilot, PPL: 1) has not “done any in-depth due diligence”, 2) has not “gotten into specific details on the design”, and 3) has not determined the type of notice to be given prior to disconnection (and when). Tr. at 117-122. As to the pre-payment pilot, Mr. Godorov also conceded that PPL has not: 1) undertaken any studies addressing whether energy usage declines from pre-payment programs are the result of concerted efforts to reduce usage or simply going without electricity once the pre-payment expires, 2) identified safeguards to be employed to assure that customers can recharge their meters, and 3) reviewed any materials addressing low-income customers. Id. at 123-126. The Company’s lack of analysis on these points is of concern to the OCA.

Additionally, as Ms. Mudd stated, the extent to which service limiting and prepayment programs conflict with regulations that require an on-site visit on the day of termination need to be resolved prior to the Company engaging in any pilot project. OCA St. No 1S at 4. Ms. Mudd further explained that smart meter technology provides several options that can potentially be used to assist payment-troubled customers without placing them at the undue risk of service limitation or automatic termination. OCA St. No. 1 at 14. For example,

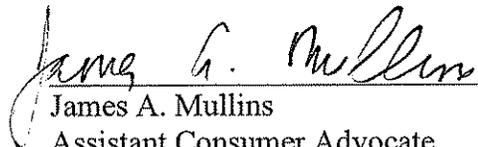
technology can be used to collect data to assist the payment troubled customer in understanding their energy usage or assist in targeting conservation or weatherization services. Id. Therefore, the OCA submits that there are more fruitful and beneficial applications of such technology that can be explored until the Commission rules on the public policy implications of such pilots as those being considered by the Company.

The OCA, therefore, continues to submit that PPL's service limiting and prepay pilot programs should not be approved as part of this proceeding.

III. CONCLUSION

For the reasons set forth above, and for the reasons set forth in the OCA's Main Brief and Reply Brief, the OCA respectfully submits that the ALJ erred in: 1) approving PPL's proposal to apply the return on equity approved by the Commission in the Company's 2004 rate case to the Company's smart meter rate base, and 2) approving PPL's service limiting and pre-pay metering pilot programs at this time. Accordingly, the OCA respectfully submits that these two determinations in the ALJ's I.D. should not be adopted and that the Commission should accept the OCA's positions on these issues.

Respectfully Submitted,



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Dated: February 17, 2010
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CERTIFICATE OF SERVICE

Petition of PPL Electric Utilities Corporation :
for Approval of a Smart Meter Technology : Docket No. M-2009-2123945
Procurement and Installation Plan :

I hereby certify that I have this day served a true copy of the foregoing document, Exceptions of the Office of Consumer Advocate to the Initial Decision issued on January 28, 2010 by the Honorable Wayne L. Weismandel, 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:

Dated this 17th day of February 2010.

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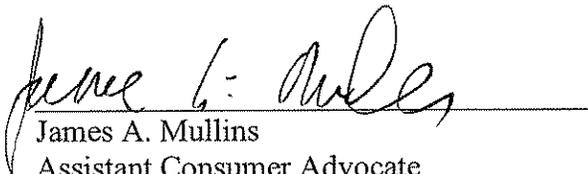
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