**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held April 15, 2010

Commissioners Present:

James H. Cawley, Chairman

Tyrone J. Christy, Vice Chairman, Dissenting

Wayne E. Gardner

Robert F. Powelson

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| Petition of Duquesne Light Company for Approval of Smart Meter Technology Procurement and Installation Plan | Docket No. M-2009-2123948 |

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**OPINION AND ORDER**

**BY THE COMMISSION:**

# I. Introduction

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Office of Trial Staff (OTS), the Pennsylvania Department of Environmental Protection (DEP), Citizen Power, Inc. (Citizen Power) and Duquesne Industrial Intervenors (DII) filed on or about February 17, 2010, to the Initial Decision (I.D.) issued in this proceeding by Administrative Law Judge (ALJ) Robert P. Meehan on January 28, 2010. Replies to Exceptions were filed on or about March 1, 2010, by Duquesne Light Company (Duquesne), the OCA, the OSBA, and DII. For the reasons set forth herein, we will adopt the ALJ’s Initial Decision, as modified by this Opinion and Order.

# II. Background

## A. Act 129

Governor Edward Rendell signed Act 129 of 2008 (“the Act” or “Act 129”) into law on October 15, 2008. The Act took effect thirty days thereafter on November 14, 2008. Among other things, the Act specifically directed that electric distribution companies (“EDCs”) with at least 100,000 customers file, with the Commission for approval, a smart meter technology procurement and installation plan. 66 Pa. C.S. § 2807(f)(1). These plans were to be filed by August 14, 2009. Each plan was to describe the smart meter technologies the EDC proposes to install, upon request from a customer at the customer’s expense, in new construction, and in accordance with a depreciation schedule not to exceed 15 years. 66 Pa. C.S. §§ 2807(f)(1) and (2). The Act also established a requirement for EDCs to make available to third parties, upon customer consent, direct meter access and electronic access to meter data. 66 Pa. C.S. § 2807(f)(3). The Act further defined minimum smart meter technology capabilities. 66 Pa. C.S.

§ 2807(g). Finally, the Act established acceptable cost recovery methods. 66 Pa. C.S.

§ 2807(7).

On March 30, 2009, the Commission issued a Secretarial Letter seeking comments on a draft staff proposal and additional questions regarding EDC smart meter procurement and installation. On June 24, 2009, the Commission outlined the standards each smart meter plan must meet and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of each smart meter plan. *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (*Implementation Order*).

## B. The Company

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Duquesne is a public utility as defined under Section 102 of the Public Utility Code (Code), 66 Pa. C.S. § 102. Duquesne is an electric distribution company and provides electric service to approximately 579,000 customers in the City of Pittsburgh, and in Allegheny and Beaver Counties, Pennsylvania.

# III. Procedural History

On August 14, 2009, Duquesne filed a petition seeking Commission approval of its Smart Meter Procurement and Installation Plan (SMP). To recover the costs associated with the Plan, Duquesne filed a Smart Meter Charge (SMC) Rider. The Petition asked the Commission to approve the Plan and authorize the implementation of the proposed tariff rider. Accompanying this Petition were Duquesne’s actual SMP Document and Budget, as well as the direct testimony of Duquesne witnesses Ruth A. DeLost and William V. Pfrommer.

The matter was assigned to ALJ Meehan, who held a Prehearing Conference on October 7, 2009, which, among other matters, set the procedural schedule for this proceeding. Pursuant to that schedule, a technical conference was held on October 27, 2009, in Harrisburg, Pennsylvania. The evidentiary hearing was held on November 17, 2009, in Harrisburg, Pennsylvania. Main and Reply Briefs were filed on December 8, 2009, and December 22, 2009. The following Parties intervened: Pennsylvania Association of Community Organizations for Reform Now (ACORN), Citizen Power, Constellation NewEnergy, Inc./Constellation Commodities Group, Inc. (Constellation), DEP, DII, OCA, OSBA and OTS. I.D. at 1. The ALJ issued his Initial Decision on January 28, 2010. As previously mentioned, the following Parties filed Exceptions to the Initial Decision: Duquesne, the OCA, the OSBA, OTS, DEP, Citizen Power and DII.

# IV. Description of the Plan

According to Duquesne the SMP was designed to meet the requirements of Act 129 and the Commission’s *Implementation Order*. The SMP builds upon Duquesne’s existing Advanced Meter Reading (AMR) system, which currently obtains interval reads on all large Commercial and Industrial (C&I) customers, and daily reads on over 90 percent of residential and small commercial customers. However, it is Duquesne’s position that the SMP is a “plan for a later plan,” because Duquesne believes it would be premature and imprudent to try to assess, evaluate and decide all the major components of its SMP at this juncture. In lieu thereof, Duquesne has provided information known to date which, it believes, demonstrates compliance, either now or in the future, with Commission requirements with respect to smart meters. I.D. at  2.

Duquesne sets forth in its Plan framework for the analysis that will be conducted during the proposed Grace Period[[1]](#footnote-1) to ensure a compliant, fully functioning, efficient and cost-effective smart meter network that benefits Duquesne’s customers, Electric Generation Suppliers (EGSs), and the electric grid as a whole. Additional information will be provided in future filings, as described in the Plan. Duquesne commits to provide a smart meter network that meets all Commission requirements within the designated time frame. I.D. at 2.

## A. Grace Period Analysis

Duquesne’s Plan details its network development and installation plan within the Grace Period. For planning purposes, the scope of work for the Grace Period is comprised of two major components: (a) Billing and Metering System Upgrades (Component 1); and (b) Smart Meter Technology Infrastructure (Component 2). For the Billing and Metering System Upgrades, Duquesne will focus on an upgrade to its existing billing and metering systems required to comply with smart meter requirements, utilizing the Oracle Utility’s Practice project implementation methodology to address application functionality, pricing options mandated by the Act, business transformation, data conversion, deployment, interfaces, IT infrastructure, project management, quality management, testing and training. Component 1 of the SMP is scheduled to begin upon approval of Duquesne’s SMP (estimated to be in April of 2010) and to be completed in

December of 2011. Duquesne has requested that all aspects of its proposed Component

1, Billing and Metering System Upgrades be approved as part of this filing. I.D. at 2-3.

With respect to Component 2, the Smart Meter Technology Infrastructure, Duquesne will focus on technical infrastructure, process and systems to support the rollout of smart meters by year end 2012, including an analysis of virtually all functions within Duquesne that will support smart meter operation and functionality. During this phase, Duquesne will perform a gap analysis between the current meter environment and the future smart meter environment, and will develop and implement solutions to result in a final functioning product, including selection of vendors, network design, customer education process, and internal training. Component 2 is scheduled to begin upon SMP approval (estimated to be in April of 2010) and will be completed in the last quarter of 2012. Duquesne requests that this proposed process be approved as part of this case. However, the results of the work of the Smart Meter Technology Infrastructure will be submitted to the Commission at a later time for review and further direction, in subsequent filings within the Grace Period. I.D. at 3.

The SMP is further broken down by milestones. Duquesne will assess meter capabilities, in conjunction with its “smart meter capability cost benefit analysis and filing,” including the extended capabilities identified in the Implementation Order. Duquesne will perform a detailed analysis with respect to the milestone “assessment of needs and technological solutions and selection of technologies and vendors.” In conjunction with this milestone, Duquesne will analyze various communication media (*e.g.* bidirectional - meter to in home and meter to collector, licensed or unlicensed, mesh or tower technology, etc.) and networks (data and security segregated systems and network devices). Additionally, Duquesne will look at the hardware and software that will be necessary for the smart meter rollout, including servers and data storage. Duquesne will review the various meter types/forms (i.e., by service type, whether the meter needs to be a booster, hub, collector, etc.) in conjunction with the necessary software and security parameters. Duquesne will analyze the various components that are tied to the meters and metering infrastructure, such as modems, cellular devices, load control interface equipment, and Home Area Network devices, among other things. Duquesne will design the network in conjunction with the milestone “Establishment of network designs,” and will go through a detailed process to design, test and certify EDI[[2]](#footnote-2) transactions and direct access, working through the Electronic Data Exchange Working Group (EDEWG), in conjunction with the milestone “Establishment of plans to design, test and certify EDI transactions, Web Access and Direct Access capability.” Finally, once all of the analysis discussed above is complete, Duquesne will engage in the installation, testing and rollout of the network, and then the meters. All of this will be done in conjunction with consumer and employee education. I.D. at 3-4.

## B. Future Filings

Duquesne’s SMP proposes at least three additional filings with the Commission for approval. They are:

July 1, 2010 – submit cost benefit analysis of meter capability

Dec. 31, 2010 – submit the intended technology and design of the smart meter infrastructure

Dec. 31, 2011 – submit final details and smart meter implementation and schedule.[[3]](#footnote-3)

I.D. at 4.

# V. Discussion

In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. [Consolidated Rail Corporation v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) see also, generally, [University of Pennsyl­vania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

## A. SMP Costs and Cost Recovery Issues

Although no Party addressed this point, we begin by noting that all Plan costs, including both expenses and capital items (net of tax) and revenues included in Duquesne’s smart meter revenues, shall not be included in the revenue requirement used in future distribution base rate cases and will be subject to Commission review and audit.

### 1. Cost Allocation of Common Costs

#### a. Provisions of the Plan

Duquesne proposed that the SMP common costs be allocated to two groups, customers with single-phase meters and customers with poly-phase meters, based upon the number of meters in each group. Duquesne’s common costs include infrastructure costs such as meter data management system costs, network costs, and administrative costs. Duquesne Exh. D-R at 6. Duquesne’s allocation method was supported by OSBA and DII, and was contested by the OCA and Citizen Power. The OCA proposed to allocate common costs on the basis of energy and demand; an allocator for assigning the common costs should be based on the arithmetic average of the percentage shares of each group’s energy use at the meter and each group’s contribution to Duquesne’s annual single coincident peak. OCA MB at 30, 36. The OCA’s approach was supported by Citizen Power. Citizen Power MB at 8.

While the OSBA supported Duquesne’s cost allocation proposal, it offered a secondary alternative if Duquesne’s allocation was not adopted. The OSBA’s secondary alternative allocates the common costs in proportion to the allocation of the meter costs. OSBA M.B. at 14.

#### b. ALJ Recommendation

The ALJ stated that Duquesne’s proposal, based simply on the number of meters per class results in an unreasonable allocation of common costs to the single-phase meter group, the members of which are primarily residential customers. The ALJ opined that the OCA’s proposal is both theoretical and speculative as to which and how customers in the various classes will “benefit” from the SMP. Further, the ALJ concluded that the OCA’s proposal is not based on reasonable cost of service practices and results in an unreasonable allocation of the common costs to the multi-phase meter group, the members of which are primarily the small and large commercial and industrial group. The ALJ recommended the adoption of the OSBA’s alternative common cost allocation method which allocates the common costs among the customer classes in proportion to the meter costs directly allocated to each customer class. I.D. at 19.

#### c. Exceptions and Replies

The OCA objects to the ALJ’s recommendation on how common costs should be allocated. The OCA argues that instead of allocating common costs on the basis of the number of meters, these costs should be allocated to the meter groups in some reasonable proportion to the benefits received by each group from the planning and implementation of the smart meter system. The OCA contends that such an approach is consistent with the language of Act 129 which makes clear that one of the principal goals of the Act is to reduce the cost and price instability of electric energy. The OCA excepts to the ALJ’s assertion that the OCA’s cost allocation methodology is not based on reasonable cost of service practices. The OCA submits that its proposal is fully consistent with cost of service principles. OCA Exc. at 15-17.

The OCA argues that the OSBA alternate approach which was adopted by the ALJ did not follow reasonable cost of service practices. In particular, the OCA maintains that the OSBA approach did not follow the principle of cost causation. The OCA opines that rather than replacing the OSBA alternate method with Duquesne’s method, the Commission should replace the ALJ’s recommendation with the OCA’s proposed method for common cost allocation, which is on the basis of the benefits to be received from smart meter implementation in the form of energy and demand savings. The OCA notes that allocating costs on the basis of energy and demand will track the benefits to be realized from smart meters. OCA R.Exc. at 3, 7.

Duquesne contends that the OCA’s proposal to allocate costs based upon unknown and un-quantified benefits cannot be deemed to be based upon reasonable cost of service practices. Duquesne further argues that reasonable cost of service practices would allocate these costs based upon the costs incurred due to the particular customers, not based upon benefits. Duquesne believes this is exactly what it proposed: the costs would be recovered based upon the number of meters, because each meter, regardless of the type, relies equally on the common infrastructure to transmit data. Duquesne R.Exc. at 10-11.

Duquesne avers that although the ALJ did not adopt its original proposal, it believes his determination was reasonable. Duquesne argues that the Commission should reject the exceptions of the OCA, OSBA, DII and Citizen Power. Duquesne contends that if the Commission determines to reject the OSBA’s alternative cost allocation methodology, the common cost allocation methodology proposed by Duquesne based upon the number of meters in each class should be adopted. Duquesne R. Exc. at 9.

DII argues that the ALJ erred in concluding that the Company’s smart meter plan common costs should be allocated among customer classes in the same proportion as the direct costs allocated to each customer class. DII avers that the Commission should adopt Duquesne’s cost allocation proposal. DII Exc. at 5, 9. Citizen Power avers that the ALJ erred in rejecting the OCA’s recommendation that the common costs of the smart meter plan be allocated between single-phase meter group and multi-phase meter group based upon the arithmetic average of the percentage shares of each group’s energy and each group’s contribution to Duquesne’s annual single coincident peak. Citizen Power Exc. at 5.

The OSBA avers that the ALJ erred in rejecting Duquesne’s recommendation to allocate common costs on the basis of the relative number of meters in each rate class group. The OSBA submits that although it proposed the alternative recommended by the ALJ, the OSBA’s preferred allocation was, and is, the one proposed by Duquesne. OSBA Exc. at 4.

#### d. Disposition

With regard to allocation of common costs, we agree with the positions set forth by Duquesne, DII and OSBA that the allocation of common costs should be based upon the number of meters in each group. It is our intention that the costs of the meter data management system, the information technology investments, the communications network and the support and management activities of the Plan, and other common costs be allocated to the customer classes based upon the extent to which these investments and services enable customers to participate in the smart meter program. Since the size of the network needed to read the meters and the size of the system used to store meter data is most closely reflected by the number of meter locations that have to be connected, we find that common costs should be allocated based on the number of meters connected to the system.

Even if we were to adopt the OCA’s position that common costs should be allocated based on the conservation and load management benefits realized by the customers in each rate class, an allocation based on customer energy consumption and demand would not reflect those incremental benefits.

### 2. Cost Recovery

#### a. Interest on Over/Under Collections

##### (1) Provisions of the Plan

In its filing, Duquesne proposed to include interest charges at the rate of six percent applicable to both over and under collections of its SMC. Duquesne SMP, Exh. D – Direct testimony of William V. Pfrommer at 8.

##### (2) ALJ Recommendation

There is some question as to whether the ALJ specifically addressed the issue of how interest should be assessed through Duquesne’s SMC. The sole reference to interest in the Initial Decision can be found in the section addressing the Parties’ various proposals regarding annual reconciliation of quarterly updates of the SMC, where it states, “All over-and under-recovery calculations will include interest at six percent. DLC Ex. D, at 8.” I.D. at 21. It appears this statement merely noted that Duquesne’s Plan calls for all over/under recovery calculations to include interest at six percent. There are no further references to the OTS recommended interest proposal (one directional interest payments and interest charged to over collections at the residential mortgage rate) and no statements indicating express adoption of the Duquesne interest proposal.

##### (3) Exceptions and Replies

The OTS submits that the ALJ’s Initial Decision has not specifically addressed how interest should be assessed through Duquesne’s SMC. The OTS argues that the Commission should modify Duquesne’s plan and provide for one directional interest payments on over-collections. The OTS contends that interest payments on under-collections are not warranted as the Company is already compensated for carrying costs through the rate of return component of its SMC. Conversely, the OTS notes that ratepayers do not earn a rate of return on excess funds paid to the Company; therefore, interest payments on net over-collections are appropriate. OTS Exc. at 7-8.

Duquesne argues that the Initial Decision properly rejects the OTS’s proposed one-directional treatment of interest. Duquesne disagrees with the OTS and submits that if a utility has to pay interest on over-collections, then it should be able to collect interest on any under-collections. Duquesne R. Exc. at 15.

The OTS suggests that the Initial Decision also does not contain a definitive recommendation as to how interest should be calculated. The OTS recommends that the Commission modify Duquesne’s Plan and provide for interest calculated at the residential mortgage rate. The OTS points out that calculating interest at the residential mortgage rate is appropriate for smart meter costs recovery because it reflects the current cost of borrowed funds. The OTS avers that, like Duquesne’s SMC, water utility Distribution System Improvement Charge (DSIC) surcharges recover capital intensive investments and the Commission applies the residential mortgage rate of interest to DSIC surcharges. OTS MB at 17; OTS Exc. at 10-11.

Duquesne submits that it accepts the ALJ’s recommendation of calculating interest at the rate of six percent, but it does not object to the OTS position of calculating interest at the residential mortgage rate. Duquesne R.Exc. at 15-16.

##### (4) Disposition

The recovery of interest within a 1307(e) reconciliation mechanism is not specifically provided for within the statutory language. However, the Commission does require Group I gas utilities to pay its customers interest on over-collected gas costs. 52 Pa Code § 53.66. The Commission has also provided for the imputation of interest, at the legal rate of six percent per year, within other 1307(e) type recovery mechanisms such as Universal Service Cost Riders; Default Service Charge Riders and Consumer Education Program Cost Recovery Riders. By providing for the imputation of interest within the SMC Rider, the utility is then able to recover all allowable costs, including the time value of money, on a full and current basis, as allowed by Act 129. 66 Pa. C.S. § 2807(f)(7). If the recovery of interest were not allowed the utility would not recover all of its allowable costs.

Duquesne’s Plan calls for interest on net over- and under-collections at the legal rate of six percent per year. 41 P.S. § 202. Prior Commission decisions regarding 1307(e) recovery mechanisms have provided for the imposition of interest, at the legal rate, on both over and under-collections. We recognize that the residential mortgage interest rate is used in the reconciliation of other types of costs incurred by various utilities. However, we believe that the legal rate, as requested by Duquesne, is reasonable and fulfills the requirement of the Act regarding full and current recovery. Accordingly, finding that interest calculated at the legal rate on both over and under-collections of Plan costs is reasonable and satisfies the full and current recovery provision of the Act, we shall grant the Company’s request and deny the Exception of the OTS on this issue.

#### b. Rate Base Valuation for Quarterly Smart Meter Charge

##### (1) Provisions of the Plan

With respect to annual reconciliation of Duquesne’s SMC, it is Duquesne’s position that the reconciliation should reflect the actual timing of when an investment was placed in service and not an average rate base for the period as proposed by the OCA. DLC Ex. D-R at 4.

##### (2) ALJ Recommendation

The ALJ recommended that Duquesne be permitted, as part of the annual reconciliation, to calculate the prospective SMC on the basis of historic and projected plant in service. The ALJ did not specifically address whether the projected plant in service should be valued at the projected end-of-quarter level or at the level of the projected average plant balance for the quarter when setting the SMC prospectively. I.D. at 21-23.

##### (3) Exceptions and Replies

The OCA recommends the use of the projected average plant balance for the quarter when setting the SMC prospectively. The OCA argues that setting the rate on the basis of projected average plant balances will ensure that the collections match the costs incurred and will minimize the annual over and under recoveries that are experienced when the annual reconciliations are conducted. OCA Exc. at 4-6.

Duquesne maintains that the projected end-of quarter plant in service value should be utilized. Duquesne disagrees with the OCA’s contention that end of quarter projections will lead to over-recovery. Duquesne submits that under-recovery situations could also occur, and the OCA’s average method will lead to under-recovery. Finally, Duquesne argues that calculating a projected average plant in service value for a ninety day period adds to an additional level of complexity and uncertainty because it will require monthly projections which are not part of the overall plan. Duquesne R. Exc. at 16-17.

##### (4) Disposition

We agree with the position of the OCA that Duquesne should use the projected average plant balance for the quarter when setting the SMC prospectively since setting the rate on the basis of projected average plant balances more closely reflects the actual costs. Therefore, the annual over and under recoveries when the annual reconciliations are conducted should be minimized.

#### c. Implementation Schedule

##### (1) Parties’ Positions

The OTS recommended establishing a uniform Commission designated twelve month reconciliation period ending on June 30 each year, such that the annual filings will occur on August 1 of each year. The OTS also recommended that the Commission require filing of a quarterly smart meter rate update report showing projected revenues and recoverable costs for each calendar quarter, to be submitted a minimum of ten days prior to the next calendar quarter, with effective dates January 1, April 1, July 1 and October 1. Duquesne did not object to this OTS proposal. Duquesne MB at 32.

##### (2) ALJ Recommendation

The ALJ did not address the OTS recommendation of establishing a uniform Commission designated twelve month reconciliation period.

##### (3) Exceptions and Replies

No Parties filed exceptions addressing this specific issue.

##### (4) Disposition

Finding it otherwise reasonable, the uniform procedural schedule advocated by the OTS, with a 12 month reconciliation period ending June 30 of each SMP year, requiring annual filings, effective January 1 of each year, using average plant balances for projected plant in service, shall be adopted with one modification: the annual reconciliation shall include monthly breakdowns. Hearings will be held by October 1. Specifically, Duquesne shall not be required to incorporate quarterly filings, but may file for interim or quarterly adjustments as necessary to maintain a balance between SMP net costs and revenues collected under a separate cost recovery mechanism under its tariff.

#### d. Capital Structure

##### (1) Provisions of the Plan

In its SMP, Duquesne proposed using its actual equity capitalization so long as it falls within a zone of reasonableness of 45%-59%. According to Duquesne, its actual equity ratio is 67%, as shown on OTS Ex. 1. Duquesne proposed that a 59% equity ratio be used so long as its actual equity ratio is above that level. Duquesne MB at 29; I.D. at 29.

##### (2) ALJ Recommendation

The ALJ opined that Duquesne established the reasonableness of the use of its claimed 59% common equity ratio in future smart meter cost recovery proceedings. The ALJ recommended that the Commission should permit the use of Duquesne’s recommended 59% common equity ratio so long as Duquesne’s actual common equity ratio exceeds that level. I.D. at 31.

##### (3) Exceptions and Replies

The OCA excepts to the ALJ’s adoption of a 59% common equity ratio. The OCA points out that Duquesne’s claimed 59% common equity ratio came from its FERC transmission formula rate proceeding. The OCA opposes using the common equity parameters from a FERC settled case since those values were agreed upon as part of an overall settlement of the FERC case. The OCA argues that the case was not fully litigated and the settlement terms were not intended to be used for Pennsylvania ratemaking purposes. The OCA points out that the ALJ rejected Duquesne’s proposed 10.9% equity return from the FERC proceeding and the OCA submits that the same reasoning that led the ALJ to reject the use of the return on equity from the FERC proceeding should have led the ALJ to reject the equity ratio that was agreed upon in that proceeding as well. OCA Exc. at 11-12.

The OTS contends that the ALJ erroneously rejected the OTS recommendation that the Commission use a representative capital structure for Duquesne in the recovery of smart meter costs that is based upon a Commission established barometer group used for the Quarterly Earnings Report. The OTS argues that the ALJ failed to provide references to the record evidence that the OTS recommended hypothetical capital structure would deny Duquesne the opportunity to earn a fair rate of return. OTS Exc. at 15-16.

Duquesne supports the ALJ’s finding with respect to Capital Structure. Duquesne submits that although the 59% common equity ratio does not match Duquesne’s actual common equity ratio of 67%, it is within a zone of reasonableness and supported as an upper limit. Duquesne avers that the exceptions filed by the OCA and the OTS with regard to Capital Structure should be rejected. Duquesne strongly disagrees with the OCA that the 51% equity ratio should be applied from the Met-Ed and Penelec base rate cases since the equity ratio from Met-Ed and Penelec is not representative of Duquesne’s actual capital structure nor the costs that it incurs for financing. Duquesne R.Exc. at 5-6.

Duquesne agrees with the ALJ’s finding that the “OTS made no showing that the use of a representative capital structure would result in each EDC recovering its reasonable and prudent smart meter costs, a result permitted by Section 2807(f)” and argue that this result should stand. Duquesne R.Exc. at 8.

##### (4) Disposition

We will modify the decision of the ALJ. Although we prefer a company-specific approach, we are concerned about the use of stale information when the EDC’s most recent base rate case is dated. Consequently, we find that the capital structure for Duquesne will be determined as follows: If Duquesne has a capital structure from a litigated base rate case that is less than three years old, the capital structure ratios used for the purposes of the base rate case shall be used for Duquesne’s smart meter cost recovery.[[4]](#footnote-4) If Duquesne’s last litigated base rate case is more than three years old, the capital structure that will be used is Duquesne’s actual capital structure included in the then most recent Quarterly Earnings Report.[[5]](#footnote-5) If the company’s actual capital structure from the Quarterly Earnings Report is outside the zone of reasonableness for the electric utility industry,[[6]](#footnote-6) the capital structure ratio that will be used is the average of the electric utility barometer group as reflected in the then most recent Quarterly Earnings Report. The applicable capital structure ratio shall be refreshed after the results of the next base rate case for Duquesne. To the extent that Duquesne’s subsequent base rate case is settled, the parties are to establish the applicable capital structure ratio to apply for the purposes of the SMP recovery mechanism in that proceeding.

#### e. Return on Common Equity

##### (1) Provisions of the Plan

Act 129 provides that an EDC such as Duquesne may properly recover all prudent and reasonable costs related to the provision of its smart meter technology.[[7]](#footnote-7) One of those costs that Duquesne may recover is a return component on capital assets acquired and reflected in Duquesne’s SMC.[[8]](#footnote-8) Specifically, one of the return components is a return on common equity. In its SMP, Duquesne proposed to use a common equity return of 10.9% based on an approved return on equity that was established in Duquesne’s most recent Federal Energy Regulatory Commission (FERC) transmission proceeding at Docket No. EL06-000. I.D. at 24.

The OTS and the OCA are the only Parties opposing Duquesne’s proposed return on equity.

##### (2) ALJ Recommendation

The ALJ noted in his Initial Decision that he does not approve of the use of settled Pennsylvania EDC base rate cases since seldom do such cases result in a Commission determination on a reasonable return on equity. The ALJ did not accept Duquesne’s 10.9% return on equity from its settled FERC proceeding. In addition, the ALJ did not accept the recommendation for a generic proceeding to determine a return on equity, as proposed by the OTS and the OCA. I.D. at 27-28.

The following is the ALJ’s recommendation for a return on equity to be used in Duquesne’s rate of return calculation of its SMC: First, the primary consideration should be the return found reasonable in its most recent fully-litigated base rate proceeding, provided such proceeding was concluded within three years of the effective date of the time Duquesne seeks to update its SMC. Second, this return on equity should be compared to the equity returns for electric utilities in the Commission’s Quarterly Earnings Report. If the equity returns in the Quarterly Earnings Report deviate more than 0.50% above or below the equity return from the most recent fully-litigated rate case, the lesser of the determined or published equity return shall be used for the rate of return calculation for the SMC for the next quarter. In the event Duquesne has not had a fully-litigated rate case within three years of the effective date of a change in its SMC, then the equity returns for electric utilities in the Quarterly Earnings Report shall be used as a proxy for the equity return in the rate of return calculation of the SMC, and continue to serve as a proxy for that calculation until such time as the Commission determines a reasonable return on equity for Duquesne in a fully-litigated rate case. I.D. at 28.

##### (3) Exceptions and Replies

The OTS requests that the Commission reject the ALJ’s proposed cost of common equity recommendation and adopt the OTS recommendation. The OTS proposed that the Commission’s Bureau of Fixed Utility Services (FUS) should calculate a representative EDC cost of common equity for all smart meter plans in the same manner that FUS currently calculates a representative water utility cost of common equity for Distribution System Improvement Charge (DSIC) surcharges. The OTS opines that its recommendation closely tracks the current cost of capital and recommends that the Commission reject the ALJ’s multistep proposal.

OTS Exc. at 11-12.

The OTS argues that a return on common equity accepted two or three years ago does not reflect current economic conditions and therefore, the Commission should reject all portions of the ALJ’s proposal relying on returns on common equity from fully-litigated base rate cases dating up to three years from an SMC update. OTS Exc. at 14.

The OCA contends that the ALJ erred by not accepting its recommendation that a 10.1% return on equity be used for computing the SMC until such time as the Commission conducts a generic proceeding to establish the procedure for determining the return on equity to use when there has been no recently litigated base rate case. OCA Exc. at 6.

The OCA submits that it has offered and the ALJ should adopt its three-part alternative to Duquesne’s proposed cost of equity return rate. The OCA avers that the first part of its proposal is to set an interim return on equity of 10.1% for use in calculating the SMC. The OCA points out that the second part of its alternative recommends that the procedure for calculating the return applicable to EDC Smart Meter Charges be the subject of a generic proceeding. The OCA notes that the third part of its alternative cost of equity proposal is that until such time as the Commission establishes the appropriate equity rate of return through a generic proceeding or a more recent equity return is available from a Duquesne-specific distribution base rate case, the equity return that should be used in calculating Duquesne’s SMC is the equity return of 10.1%, which was established in the most recent fully litigated base rate proceeding among Pennsylvania EDCs, the 2006 (decided in early 2007) rate cases of Metropolitan Edison Company (Met-Ed) and Pennsylvania Electric Company (Penelec) at Docket Nos.

R-00061366 and R-00061367. The OCA avers that it recommended a 10.1% return on equity because Duquesne has not had a litigated rate case since 2004 and a generic proceeding for determining a procedure for the use of the Quarterly Earnings Reports has not yet been conducted. OCA Exc. at 7-8.

The OCA argues that a generic proceeding involving interested stakeholders would solve transparency concerns, address issues unique to the SMC and yield a procedure that would dampen volatility to the extent possible. In summary, the OCA avers that the Commission should direct that a generic proceeding be held to establish a proxy return on equity for setting Duquesne’s SMC rates when there has been no recently litigated base rate case and, until such a proceeding is completed, the Commission should adopt the OCA’s recommended interim cost of common equity rate of 10.1%. OCA Exc. at 10-11.

Duquesne avers that the ALJ properly rejected the OCA’s return on equity proposal, and devised a fair method of determining return on equity. With respect to the OCA’s arguments that the ALJ should have ordered a generic proceeding to determine an equity return rate for Duquesne, Duquesne agrees that such an approach could result in a workable solution. However, in the interest of time and with the knowledge of what has occurred with the water company DSIC, Duquesne submits, the OCA’s proposal would not result in a determination superior to the ALJ’s recommendation. Duquesne R.Exc. at 2-3.

Regarding the OCA’s argument to utilize the 10.1% equity return rate from the Met-Ed and Penelec cases, Duquesne disagrees. Duquesne points out that the OCA’s recommended 10.1% return on equity rate is not reflective of the credit rating, the cost of equity, nor the risk profile of Duquesne. Duquesne posits that the return on equity for one utility cannot be applied to another utility, as many issues are involved including customer service, operational performance and management. Duquesne R.Exc. at 3.

##### (4) Disposition

Based upon our review of this issue, we conclude that the cost of common equity for Duquesne will be determined as follows: if Duquesne has a Return on Equity (ROE) from a litigated base rate case that is less than three years old, that ROE is to be used to determine the weighted average cost of capital under the Plan. If, however, the last litigated base rate case is more than three years old, the Quarterly ROE as calculated and recommended by the Bureau of Fixed Utility Services for the electric utility barometer group included in the then most recent Quarterly Earnings Report is to be utilized until an ROE is determined in a subsequent litigated base rate case, to be effective for the subsequent three year period. To the extent that the subsequent base rate case is settled, the parties are to establish the applicable ROE to apply for the purposes of the Plan recovery mechanism in that proceeding.

While the water company DSIC ROE computation is based upon a litigated allowance unless two years has passed since that ROE was established, we believe that a span of three years for those EDCs filing smart meter plans is reasonable. Although the three year period may not represent the historic filing of our EDCs over the last two decades, we believe that, given today’s economic uncertainty, the use of a three year period to establish this component of rate recovery is also reasonable.

Accordingly, we shall reject the recommendation of the ALJ and adopt the OTS’s position with regard to ROE.

## B. Meter Capabilities

### 1. Provisions of the Plan

With regard to the issue of whether Duquesne should be required to install Home Area Network (HAN) smart meters at this time, Duquesne has indicated that it is evaluating this matter and it will be addressed in its July 1, 2010 filing to the Commission. Duquesne plans to purchase meters that will enable communications with HAN devices, however, it is Duquesne’s position that 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. Duquesne indicated that the Commission does not need to decide this issue at this time. I.D. at 32-34.

### 2. ALJ Recommendation

The ALJ rejected the position of DEP on requiring the installation of HAN smart meters at this time. I.D. at 34.

### 3. Exceptions and Replies

DEP contends that the ALJ erred in not requiring that Duquesne’s smart meters meet the definition of “Smart Meter Technology” in Act 129 and the Commission’s *Implementation Order*. DEP submits that, while Duquesne’s SMP does indicate that Duquesne will evaluate HANs, Duquesne has not expressly stated it will deploy smart meters with this functionality. DEP avers that the Commission’s Order approving Duquesne’s SMP should explicitly require Duquesne to deploy smart meters that enable a HAN or similarly capable method with open protocols. DEP Exc. at 4-5.

Duquesne submits that the ALJ correctly decided not to require Duquesne to deploy smart meters that include HAN at this time. Duquesne argues that DEP’s attempt to interpret the plain language of Section 2807(g) to include a requirement for HAN or similarly capable method with open protocols is flawed. Duquesne avers that section 2807(g) makes no mention of HAN or any similarly capable method of open protocols. Duquesne argues that this issue is specifically to be examined during the Grace Period, and may be waived after the cost-benefit analysis, as correctly determined by the ALJ. Duquesne R. Exc. at 19-20.

Duquesne reiterates that it intends to analyze the HAN capability and will submit information on HAN in future filings. Duquesne agrees with the ALJ that the Commission does not need to decide this issue at this time. Duquesne R. Exc. at 20.

### 4. Disposition

We will deny DEP’s Exception that Duquesne be required to deploy smart meters that include HAN at this time. As previously discussed, Duquesne has indicated that it is evaluating this matter and it will be addressed in its report to the Commission. Also, Duquesne has stated that it plans to purchase meters that will enable communications with HAN devices. We agree with the ALJ and Duquesne that it is premature to address this issue in light of further analysis that Duquesne intends to make. Therefore, we will not require Duquesne to install smart meters with HAN capabilities at this point in time.

## C. Milestones and Implementation Schedule

### 1. Provisions of the Plan

Duquesne’s SMP and petition state that Duquesne will complete the installation of the smart meter network by October 1, 2012, complete the rollout of 8,000 smart meters by December 31, 2013, and complete system-wide deployment of smart meters by December 31, 2018. Petition at 12; Duquesne SMP at 13. Duquesne’s SMP also states that the “dates are approximate” and that it is simply Duquesne’s “intent” to meet the 15 year deployment schedule provided by Act 129. Petition at 10; SMP, DLC Ex. A, at 37.

### 2. ALJ Recommendation

In his Initial Decision, the ALJ noted that DEP did not present any witness proposing any change, modification, revision, etc., to Duquesne’s SMP. The ALJ also noted that DEP’s position in this proceeding was set forth for the first time in its Main Brief and thus all Parties were deprived from testing the reasonableness of its position during the hearing or of addressing it in their respective Main Briefs. The ALJ pointed out that proposed adjustments of a Party appearing for the first time in briefs should be rejected because other Parties have been denied the opportunity to question and test the premises of the adjustment.[[9]](#footnote-9) The ALJ recommended that DEP’s proposal to require Duquesne to implement its SMP by a date certain to complete the installation of the smart meter network by the end of the 30 month grace period be rejected. I.D. at 34-35.

### 3. Exceptions and Replies

DEP avers that the ALJ erred in declining to order Duquesne to meet the deadlines established in Duquesne’s SMP, Act 129 and the *Implementation Order*. DEP argues that the Commission should explicitly direct Duquesne to implement its SMP by a date certain to complete the installation of the smart meter network by the end of the 30 month Grace Period, as required by the *Implementation Order*, and to complete system wide deployment of smart meters by January 1, 2019. DEP suggests that if Duquesne cannot meet its target date, it can request relief from the Commission at the time such need arises. DEP Exc. at 6-8.

Duquesne agrees with the ALJ’s rejection of DEP’s position. Duquesne submits that it has every intention to meet the deadlines set forth in its SMP. Duquesne points out that it has proposed dates that could change based upon a variety of factors, including Commission approvals, unforeseen circumstances, and other matters out of Duquesne’s control. Duquesne R. Exc. at 21-22.

### 4. Disposition

In the Commission’s *Implementation Order*, we required utilities to fully install, test and rollout support equipment and software, and to have the smart meter networks up and running.[[10]](#footnote-10) We note that Duquesne has proposed to achieve these objectives within the Commission recommended Grace Period. Duquesne has further committed to completing installation of its smart meters in a reasonably timely fashion by January 1, 2019. Furthermore, Duquesne has stated that it has every intention of meeting its proposed deadlines, and has further committed that it would submit issues, such as any future delay, to the Parties and the Commission for review.[[11]](#footnote-11)

## D. Fifteen Minute Interval Data

### 1. Provisions of the Plan/Parties’ Position

Duquesne’s SMP does not include a provision for providing to all customers meters capable of furnishing fifteen minute interval data on a daily basis. I.D. at 32.

It is Constellation’s position that the *Implementation Order* requires Duquesne to provide meters to all customers capable of furnishing fifteen minute interval data on a daily basis. Constellation does not request that Duquesne be directed to include such a capability in its approved SMP. It requests that Duquesne be ordered to provide such information on a daily basis. At the least, Constellation requests that Duquesne be ordered to provide this information on a daily basis. Constellation M.B. at 14-17.

Duquesne does not agree with Constellation that such detail is necessary. According to Duquesne such level of data is not utilized in the industry; PJM utilizes hourly data for the hourly pricing, demand peaks (1 Coincident Peak, 5 Coincident Peak), scheduling, and payment. Duquesne further argues that fifteen-minute data interval creates communication, backhaul, access and storage issues, and that such data incrementally increases the costs of the supporting communication, network and system infrastructure. Duquesne asserts that the Commission does not need to decide this issue in this proceeding as Duquesne has committed to analyze further the costs and benefits of the extended capabilities of which the fifteen minute interval data is included, and to provide such information in its July 1, 2010 filing. Duquesne Ex. C-R, at 6-7; Tr. at 97-99.

### 2. ALJ Recommendation

The ALJ concluded that there is no basis for directing Duquesne to provide fifteen minute interval data on an hourly basis, at this time. The ALJ pointed out that this is something that Duquesne will be studying and will be included in its July 1, 2010 filing. The ALJ noted that a determination to require such a provision in Duquesne’s SMP should be deferred pending evaluation of the information to be submitted by Duquesne. I.D. at 33.

### 3. Exceptions and Replies

No Parties filed Exceptions that specifically address this issue.

### 4. Disposition

The *Implementation Order* requires parties to address the ability to provide hourly *or more frequent* energy usage data. *Implementation Order* at 16. In this proceeding, the Parties only addressed fifteen-minute sub-hourly metering. While Duquesne is correct in its assertion that energy markets only require information on hourly usage, these requirements may not be responsive to the regional transmission organization requirements of *ancillary* services. Therefore, the Parties are asked to address the need, ability, and cost for sub-hourly metering. The Parties shall address the following issues for residential, small commercial and industrial and large commercial and industrial customers:

1. What are the capabilities and limitations of proposed smart meters to measure and record sub-hourly usage?
2. What are the capabilities and limitations of proposed smart meter communication and data storage systems to transmit and store sub-hourly usage information?
3. What are the sub-hourly PJM requirements for participation in ancillary service markets?
4. What are the Companies’ incremental smart meter, communication, data storage, and data sharing costs associated with these sub-hourly requirements for ancillary services?
5. What are the incremental equipment and installation costs of pulse data recorders used to measure sub-hourly meter data?
6. Is a pulse data recorder attached to the Companies’ meter sufficiently accurate for use by PJM in its ancillary markets, or is redundant metering required to meet PJM standards?
7. What are the additional customer costs associated with (1) transferring pulse meter information from the meter to inside the customer’s premise, (2) processing this data into usable format, (3) communicating the data to a third party or PJM?
8. To the extent a customer requests sub-hourly data, what, if any cost recovery charge is appropriate. For example, would it be appropriate to have a customer charge that varies with the level of sub-hourly metering requested, and, if so, what would those sub-hourly metering charges be?

Given the current lack of evidence regarding the benefits and costs of the fifteen-minute interval data, we shall not require Duquesne to provide fifteen-minute interval data at this time.

Interested parties shall, therefore, file comments on the above-listed topics within 30 days of the entry of this Order, with replies to those comments due 15 days thereafter.

## VI. **Conclusion**

For the reasons set forth above, we will grant the Petition of Duquesne Light Company for Approval of Smart Meter Technology Procurement and Installation Plan, consistent with this Opinion and Order. Duquesne is permitted to implement its Plan, as modified herein. Duquesne shall file with the Commission, for its approval, a tariff supplement containing a revised Smart Meter Charge Rider, which is consistent with this Opinion and Order. Copies shall be served on all Parties to this proceeding. Duquesne shall not begin collecting rates pursuant to its tariff until it is approved by this Commission; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition of Duquesne Light Company for Approval of Smart Meter Technology Procurement and Installation Plan is granted, consistent with this Opinion and Order.

2. That the Smart Meter Technology Procurement and Installation Plan filed by Duquesne Light Company on August 14, 2009, is approved, as modified by this Opinion and Order.

3. That Duquesne Light Company is permitted to implement the Smart Meter Technology Procurement and Installation Plan, as modified by this Opinion and Order.

4. That upon entry of this Opinion and Order, Duquesne Light Company is permitted to file tariffs and tariff supplements to implement a Smart Meter Charge Rider, consistent with this Opinion and Order. Duquesne Light Company shall also file supporting documentation reflecting the calculation of these charges. Copies shall be served on all Parties to this proceeding.

5. That Duquesne Light Company’s tariff supplements may be filed upon less than statutory notice and, pursuant to the provisions of 52 Pa. Code §§ 53.31 and 53.101, may be filed to be effective for service rendered on and after the date of entry of the instant Opinion and Order.

6. That any directive, requirement, disposition or the like contained in the body of this Opinion and Order that is not the subject of an individual Ordering Paragraph shall have the full force and effect as if fully contained in this part.

7. That the Initial Decision issued by Administrative Law Judge Robert P. Meehan on January 28, 2010, is adopted as modified, consistent with this Opinion and Order.

8. That the Exceptions filed by the Office of Consumer Advocate are granted in part and denied in part.

9. That the Exceptions of the Office of Trial Staff are granted in part and denied in part.

10. That the Exceptions of the Department of Environmental Protection are denied.

11. That the Exceptions of the Office of Small Business Advocate are granted.

12. That the Exceptions of Duquesne Industrial Intervenor are granted.

13. That the Exceptions of Citizen Power, Inc. be denied.

14. That all smart meter plan costs, including both expense and capital items (net of tax) and revenues included in Duquesne Light Company’s smart meter revenues, will not be included in the revenue requirement used in future Duquesne Light Company distribution base rate cases and will be subject to Commission review and audit.

15. That interested parties shall file comments on the need, ability, and cost for sub-hourly metering within 30 days of the entry of this Order, with replies to those comments due 15 days thereafter.

16. That upon after acceptance and approval by the Commission of the tariff revisions filed by Duquesne Light Company, the Secretary’s Bureau shall mark this case closed.

** BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 15, 2010

ORDER ENTERED: May 11, 2010

1. Upon recognition that it will take time to fully develop and install the entire smart meter network, the Commission granted a grace period of 30 months following plan approval (“Grace Period”). [↑](#footnote-ref-1)
2. This acronym is undefined in either Duquesne’s Main or Reply Brief. We are presuming that it refers to “electronic data interchange.” [↑](#footnote-ref-2)
3. It is Duquesne’s position that these dates are approximate, in light of many factors, including Commission approval, uniform decisions, progress, etc. Thus, the filings will be made “on or about” the dates proposed. Tr. 105; DLC Ex. C-R, at 9. [↑](#footnote-ref-3)
4. This includes a hypothetical capital structure if one is used in place of an actual capital structure in the disposition of the rate case. [↑](#footnote-ref-4)
5. We note that prior Quarterly Earnings Reports did not include certain data discussed in this Opinion and Order, such as Duquesne’s actual capital structure. Consistent with this Opinion and Order, this information will be included in the Quarterly Earnings Report beginning with the report for the period ending December 31, 2009. [↑](#footnote-ref-5)
6. The zone of reasonableness is defined by the capital structures of the electric barometer group included in the most recent Quarterly Earnings Report. [↑](#footnote-ref-6)
7. 66 Pa. C.S. § 2807(f)(7). [↑](#footnote-ref-7)
8. *Implementation Order* at 29. [↑](#footnote-ref-8)
9. *See* *Pa. PUC v. UGI Corporation,* 58 Pa. P.U.C. 155, 202 (1984); *Pa. PUC v. Pennsylvania Power & Light Co.,* 57 Pa. P.U.C. 559 (1983); and *Philadelphia Electric Company,* Docket No. R-811626. (Order entered May 21, 1982). [↑](#footnote-ref-9)
10. *Implementation Order* at 8. [↑](#footnote-ref-10)
11. Duquesne Reply Exceptions at 22. [↑](#footnote-ref-11)