**PENNSYLVANIA**

**PUBLIC UTLIITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held April 4, 2013

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Wayne E. Gardner

James H. Cawley

Pamela A. Witmer

Petition of Duquesne Light Company for M-2009-2123948

Approval of Its Final Smart Meter

Procurement and Installation Plan

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Katrina L. Dunderdale, issued on January 14, 2013, relative to the Petition of Duquesne Light Company (Duquesne or the Company) for Approval of Its Final Smart Meter Procurement and Installation Plan (Final SMP). A Joint Petition for Approval of Full Settlement of All Issues (Joint Petition) was filed on December 7, 2012, by Duquesne and the Office of Consumer Advocate (OCA) (Joint Petitioners). For the reasons fully delineated herein, we shall grant Duquesne’s Petition as modified by this Opinion and Order.

**I. Background**

On October 15, 2008, House Bill 2200 was signed into law as Act 129 with an effective date of November 14, 2008. Among other requirements, Act 129 required Electric Distribution Companies (EDCs) to file smart meter plans within nine months after the effective date of Act 129. On June 24, 2009, the Commission issued its Smart Meter Implementation Order at Docket No. M-2009-2092655 (*Implementation Order),* which established the standards that EDCs must meet for providing smart meter technology to customers and also provided guidance for meeting those standards.

On August 14, 2009, Duquesne filed its Initial Smart Meter Procurement and Installation Plan (Initial SMP) with the Commission. The Commission entered an Order on May 11, 2010, approving Duquesne’s Initial SMP, with certain modifications. Pursuant to the May 11, 2010 Order, Duquesne was required to file certain periodic updates with the Commission detailing its smart meter implementation status. First, on July 1, 2010, Duquesne filed a Cost Benefit Analysis for the additional smart meter capabilities identified in the Implementation Order. Next, on December 29, 2010, Duquesne filed its Application for Approval of Assessment of Needs, Technology Solutions and Vendor Selection. In that Application, the Company provided a detailed assessment of its Advanced Meter Infrastructure (AMI) technology requirements, possible solutions and selection of technologies and vendors. Duquesne then filed a Supplement to its Assessment Application on January 31, 2011, wherein it identified Itron, Inc. as its recommended primary contractor to design, construct, implement and oversee the Company’s SMP.

On November 18, 2011, Duquesne filed a status update with respect to its SMP and requested a six month extension, from December 31, 2011 to June 30, 2012, to file the Company’s Final SMP. Duquesne’s request for an extension was granted via a Commission Secretarial Letter issued on December 13, 2011.

**II. Procedural History**

On June 29, 2012, Duquesne filed its Petition for Approval of its Final Smart Meter Plan in which it requested final approval from the Commission of its Final SMP. On July 23, 2012, the OCA and Citizen Power, Inc. (Citizen Power) filed Answers to Duquesne’s Petition. By Secretarial Letter issued August 17, 2012, the Commission notified the Parties that this matter had been referred to the Office of ALJ for further proceedings.

An initial Prehearing conference was held on September 17, 2012, and a further Prehearing Conference was held on November 15, 2012, wherein representatives from Duquesne, the OCA, Duquesne Industrial Intervenors (DII) and Citizen Power attended. Subsequent to the further Prehearing Conference, the Parties were able to reach a settlement in principle of all issues. On December 7, 2012, the Joint Petitioners filed the Joint Petition in which the Parties agreed to resolve all issues related to Duquesne’s Final SMP. The record closed on December 21, 2012, upon expiration of the time in which interested Parties could object or comment on the Petition. All of the active Parties in this proceeding either support or do not oppose the settlement.

On January 14, 2013, ALJ Dunderdale issued an Initial Decision wherein she granted the Joint Petitioners unopposed settlement without modification. No Exceptions to the Initial Decision were received. Nevertheless, we have exercised our right to review the Initial Decision pursuant to 66 Pa. C.S. § 332(h).

**III. Discussion**

We note that any issue that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that the Commission is 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); *see also*, *generally*, *University of Pennsylvania v.*

*Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

**A. Legal Standards**

As the proponent of a rule or order, the Company has the burden of proof in this proceeding in accordance with Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a). Courts have held that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, the Company’s evidence must be more convincing, by even the smallest amount, than that presented by the other Parties. *Se‑Ling Hosiery, Inc. 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).

Because the Joint Petitioners have reached a full settlement of the issues and claims that arose in this proceeding, the Joint Petitioners have the burden to prove that the Settlement is in the public interest. Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. Settlement terms often are preferable to those achieved at the conclusion of a fully litigated proceeding. In addition, a full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. Regulatory proceedings often are expensive to litigate, and the reasonable cost of such litigation is an operating expense recoverable in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony, cross-examining witnesses in lengthy hearings, and preparing and serving briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision, yielding significant expense savings for the company’s customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985). In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, *supra*.

**B. Joint Petition for Approval of Full Settlement**

**1. Introduction**

As stated previously, on December 7, 2012, the Joint Petitioners filed the Settlement. The Joint Petitioners state that the Settlement has been agreed to, or is not opposed, by all active Parties in this proceeding, noting that the Office of Small Business Advocate (OSBA), DII and Citizen Power have indicated that they do not oppose the Settlement. According to the Joint Petitioners, the Settlement resolves all issues in this proceeding and is in the best interests of Duquesne, the Joint Petitioners and the Company’s customers. Settlement at 6. The Settlement provides for the approval of Duquesne’s Final SMP with certain clarifications and modifications that provide for additional customer education regarding smart meter technology and deployment and that provide for additional protection of customer data and the security of the distribution system. In addition, the Settlement provides that the Company will meet with stakeholders to obtain input on a plan to allow low-income customers to use smart meter technology to reduce their energy bills.

**2. Terms and Conditions of the Full Settlement**

The Settlement consists of the Joint Petition containing the terms and conditions of the Settlement, and five appendices. Appendices A and B to the Settlement are the Statements in Support of Settlement submitted by Duquesne and the OCA, respectively. Appendices C through E to the Settlement are the letters of non-opposition of the OSBA, DII and Citizen Power, respectively.

The essential terms and conditions of the Settlement are set forth in Section II, as follows:

1. **Settlement Terms and Conditions**

19. Duquesne Light’s Final Smart Meter Plan is approved with the following clarifications and/or revisions.

1. *Customer Education and Research Metrics*

20. Within 60 days from the final order in this proceeding, the Company shall arrange to meet with the OCA and interested parties to obtain input on a plan to research the actual experiences of low-income customers to determine how such customers may be able to use smart meter technology to reduce their energy bills and to incorporate information regarding such customers into the Company’s Customer Acceptance and Education Plan performance metrics. The Company also agrees to meet with the OCA and interested parties to obtain input to research the actual experiences of low use (base load usage below 500 kWh), medically needy (customers with Chapter 56 medical certifications at the time a smart meter is installed) and other vulnerable customers to the extent such customers can be reasonably identified, and as agreed to between the Company and the OCA, provided that the Company will not be required to research other vulnerable customers if such agreement cannot be reached. The meeting(s) will establish a review and reporting process and a timeline for deliverables. The timeline in the plan will align with scheduled smart meter deployment estimated to begin in the fourth quarter of 2014. With regard to researching the experiences of customers described above, the parties may consider the Company’s gathering and sharing with interested parties’ non-confidential information regarding such customers’ load shapes and usage characteristics as a means of informing the design of potential programs to enable such customers to benefit from smart meter technology.

21. The Company will propose any potential customer education measures for Time-of-Use (“TOU”) rates when it files for Commission approval of a TOU program under Act 129. The Company will seek Commission approval of such measures in conjunction with such TOU program. All Parties to this Settlement reserve their rights to contest the Company’s proposed allocation of customer education costs in that filing.

*b. Reasonable and Adequate Service*

22. Duquesne Light shall comply with all provisions of Chapter 14 of the Pennsylvania Public Utility Code (66 Pa. C.S.A. Chapter 14) and Chapter 56 of the Commission’s regulations (52 Pa. Code Chapter 56) with respect to the application of remote connect and disconnect. Specifically, Duquesne Light will:

1. Send an appropriately trained representative to the customer premise before any termination is scheduled to occur. The representative will use reasonable efforts to make personal contact with a responsible adult occupant of the premise prior to the termination.
2. Where personal contact is not made prior to termination, the representative shall leave conspicuously at the residence a notice informing the customer that utility service is being disconnected and how the customer can effect reconnection. The notice shall include the number of a hotline where low-income and vulnerable customers can receive information on all Duquesne Light Universal Service and Energy Conservation programs and related payment information.
3. Service shall not be terminated if the customer can show confirmation of payment through either authorized agent or automated payment systems. The representative shall be fully trained to direct low income and vulnerable customers to a hotline where they can receive information on all Duquesne Light’s Universal Service and Energy Conservation program and related payment information.
4. On or before October 1, 2016, Duquesne Light shall make a tariff filing with the Commission to reduce its restoration fee for reconnection where the remote feature is used.

23. Duquesne Light will investigate alternatives for Voltage Monitoring functionality if the capability doesn’t exist within the Oracle software solution by 2016.

*c. Privacy and Security*

24. During the first quarter of 2013, the Company shall hire a third party consultant to assist the Company in developing a privacy policy for customers’ smart meter data. The development of said policy shall be carried out in consultation with interested stakeholders and shall be the subject of at least semiannual meetings with stakeholders during the development of the privacy policy. The third party consultant will be asked to report on the range of practices of other U.S. EDCs with respect to privacy policies for smart meter data. The allowed cost for this study shall not exceed $40,000.

25. Duquesne Light will conduct a vulnerability assessment across the entire Advanced Metering Infrastructure (AMI) solution including penetration testing at the meter to validate the cyber security of its AMI system.

*d. Miscellaneous Issues*

26. Duquesne Light will adopt the “Green Button Initiative” in providing consumption data to customers. This standardized data format will enable customers to utilize smart phone applications developed by third parties.

27. The Company shall be permitted to recover any additional costs associated with implementing the terms and conditions of this Settlement through its SMC, except as limited herein.

28. The Joint Petitioners aver that the petitions and applications at Docket No. M-2009-2123948, that preceded the Company’s Final Smart Meter Plan, have been incorporated therein, as modified by the Final Smart Meter Plan, and all issues associated with those filings have been fully resolved by the instant Settlement. The Joint Petitioners further aver that no further action is required on the petitions and applications that preceded the Final Smart Meter Plan.

Settlement ¶¶ 19-28 at 6-10.

On the basis of these and other provisions of the Settlement, the Joint Petitioners request that the Commission approve the Company’s Final SMP including all the terms and conditions embodied in the Joint Petition for Settlement, without modification.

**3. Disposition of the Full Settlement**

The Joint Petitioners assert that approval of the Settlement is in the public interest because it provides for: (1) additional customer education regarding smart meter technology and deployment and ensures stakeholder input on these issues, and (2) the protection of customer data and the security of the distribution system. The Joint Petitioners further assert that the Settlement reduces administrative burden on the Parties and the Commission by avoiding the expense and uncertainty attended with a fully litigated proceeding and administrative adjudication. Settlement at 10.

The proposed Settlement is conditioned upon Commission approval of its terms and conditions without modification. According to Paragraph 31 of the Settlement, in the event that the Commission modifies the Settlement, any Joint Petitioner may elect to withdraw from the Settlement and proceed with litigation. In that event, the entire Settlement automatically shall be void and of no effect. Paragraph 31 provides that this Settlement may be withdrawn upon written notice to the Commission and all Parties five days from the date of the entry of the Commission Order denying or modifying the Settlement. The Settlement is made without any admissions against, or prejudice to, any position that any Joint Petitioner may adopt in any future litigation. In addition, the Joint Petitioners have agreed that the terms of the Settlement may not be cited as precedent in any future proceeding, and that the Commission’s approval of the Settlement shall not be construed to represent approval of any Joint Petitioner’s position on any issue, except as required to implement the terms of the settlement in this and future proceedings involving Duquesne. The Joint Petitioners agree that the Settlement is a compromise, and does not necessarily represent the position that a Joint Petitioner would advance in a litigated proceeding. *Id.* at 11.

As stated above, all Parties to this proceeding either support, or do not oppose, the terms of the Settlement. The Settlement provides for certain modifications to the Final SMP Plan initially proposed by Duquesne, and represents a compromise among the Joint Petitioners that resolves all of the issues that have been raised in this proceeding. The Parties are to be commended for reaching an amicable Settlement on such a complex filing.

Based on our review of the record, we conclude that the proposed Settlement is in the public interest, and we shall approve it with the exception of several issues which remain to be addressed in order for Duquesne’s SMP to comply with its statutory objectives. First, pursuant to Act 129 of 2008, Smart Meter Technology must enable the use of time-of-use (TOU) rates and real time pricing (RTP). 66 Pa. C.S. § 2807(g). Customers can elect to participate in TOU rates and real time pricing. See 66 Pa. C.S. § 2807 (f) (5). In our *Implementation Order*, we established additional meter capability requirements including, *inter alia,* that the smart meter must have the capability to support the net metering of customer generators. It is unclear whether Duquesne’s SMP satisfies these criteria.

To satisfy the statutory smart meter capability requirements and requirements set forth in the *Implementation Order*, it is necessary that Duquesne’s SMP provide for changes to Duquesne’s settlement and customer profile processes. Currently, for monthly metered customer accounts, Duquesne uses a standard customer class average profile when allocating energy costs to customers. Individual customer hourly usage is interpolated from this standard class profile. As such, if an individual customer reduces usage during an on-peak hour, that monthly metered customer does not get the benefit of any cost savings for that on-peak reduction when Duquesne allocates hourly energy payment responsibility to the electric generation supplier serving that customer. This is why TOU rates and RTP programs cannot be effectively implemented without using hourly interval meters.

However, the meter alone is not enough for Duquesne to be capable of providing TOU rates and RTP and supporting net metering of customer-generators. Duquesne must also modify its settlement processes to allocate energy to each customer according to their actual usage profile, for each hour, as recorded by the installed smart meter. This is exactly what Duquesne does for its existing large customers with currently installed interval meters. Without adjusting these settlement and profiling processes, incentives and efforts for customers to receive TOU and RTP offers, as well as the successful marketing of net metering offers, will be thwarted in contravention of the statute and the *Implementation Order*.

Duquesne proposes to gradually install smart meters between 2014 and 2020. Because of this long installation period, it will be necessary for Duquesne to implement these settlement and profiling process changes prior to the completion of all smart meter installations. Accordingly, Duquesne should file a supplemental SMP with the Commission providing a reasonable period, after installation of each smart meter, in which it will ensure that each customer gets its energy and capacity assignments based on the actual hourly energy usage of that customer. Customers should not be forced to wait years to be capable of receiving TOU, RTP and net metering pricing products.

The second unresolved issue with Duquesne’s SMP relates to third-party access to customer meter data. This filing is designed as Duquesne’s “Final Smart Meter Procurement and Installation Plan.” Duquesne’s Final SMP properly provides for the development of a web portal for the purpose of efficiently sharing certain limited customer authorized usage and service data with service providers of that customer.[[1]](#footnote-1) However, the Final SMP does not provide the specifics of the web-based solution or how and when it will implemented.

By Order entered on December 6, 2012, at Docket No. M‑2009‑2092655, we directed the Electronic Data Exchange Working Group (EDEWG) to initiate a web-portal working group to develop a standardized solution for acquisition of interval usage data via a secure web-portal. It is our expectation that Duquesne and the other EDCs will be directed to update their smart meter technology and implementation plans when the work of this web-portal group has concluded. Any such updates would be for the purpose of implementing a standardized web-based solution, arising out of the working group and approved by the Commission, to provide authorized third parties with secure access to customer interval usage data.

Finally, we note that we previously directed that each plan shall include the individual costs for deploying and operating nine additional smart meter technology capabilities. *Implementation Order* at 30. Duquesne has indicated that the cost of the Voltage Monitoring and Communication of Outages and Restorations capabilities are not justified at this time. However, Duquesne failed to provide specific cost effectiveness data supporting its decision not to include these capabilities in the SMP.[[2]](#footnote-2) Based on the record as developed, we are unable to determine whether Duquesne’s circumstances merit a waiver of these capabilities.

Therefore, we shall direct Duquesne to make a compliance filing within ninety days of the date of entry of this Opinion and Order, specifying its proposed changes to settlements and profile processes, and providing data supporting whether or not inclusion of the Voltage Monitoring and Communication of Outages and Restorations capabilities are cost effective. We shall approve Duquesne’s Final Smart Meter Plan as modified by the Joint Petition for Full Settlement of all Issues in all other respects. We direct that the Parties to the Joint Petition provide written notice to the Commission and all Parties within five days from the date of the entry of this Opinion and Order whether they intend to withdraw from the Settlement based upon our directed modifications.

**IV. Conclusion**

For the reasons set forth, *supra,* we will grant Duquesne’s Petition, approve the Joint Petition for Full Settlement, and approve Duquesne’s Final Smart Meter Plan, as modified by, and consistent with, this Opinion and Order. Duquesne is directed to make a compliance filing within ninety days of the entry of this Opinion and Order, specifying its proposed changes to settlements and profile processes, and providing data supporting whether or not inclusion of the Voltage Monitoring and Communication of Outages and Restorations capabilities are cost effective; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition of Duquesne Light Company seeking approval of its Final Smart Meter Plan is granted, as modified by this Opinion and Order.

2. That the Joint Petition for Approval of Full Settlement of All Issues filed on December 7, 2012, is approved, as modified by this Opinion and Order.

3. That the Parties to the Joint Petition for Approval of Full Settlement of All Issues provide written notice to the Commission and all Parties within five (5) days from the date of entry of this Opinion and Order, whether they intend to withdraw from the Settlement based upon the Commission directed modifications. In the event no adverse comments are filed regarding the directed modifications, this Order shall be deemed final without further Commission action.

4. That Duquesne Light Company shall make a compliance filing within ninety (90) days of the date of entry of this Opinion and Order, specifying its proposed changes to settlements and profile processes, and providing data supporting whether or not inclusion of the Voltage Monitoring and Communication of Outages and Restorations capabilities are cost effective.

5. That any other interested Parties are directed to file comments on Duquesne Light Company’s compliance filing submitted in response to Ordering Paragraph No. 4, above, within 120 days of the date of entry of this Opinion and Order.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 4, 2013

ORDER ENTERED: May 6, 2013

1. Information sharing does not include sensitive customer financial data. Data access is limited to usage data required to efficiently and accurately price service offerings to customers. [↑](#footnote-ref-1)
2. The Commission directed that deployment and operating costs of the additional capabilities be presented including a breakdown of all incremental costs and any associated potential operational and maintenance cost savings. *Id.* “All cost estimates must be supported by estimates from at least two vendors where available. To the extent that an EDC or another party demonstrates that a particular Commission imposed requirement is not cost-effective, the Commission will have the option of waiving a particular requirement for that EDC or all EDCs.” *Id.* at 30-31. [↑](#footnote-ref-2)