

COMMONWEALTH OF PENNSYLVANIA



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December 12, 2013

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, PA 17120

RE: Joint Petition of Metropolitan Edison Company,  
Pennsylvania Electric Company, Pennsylvania Power  
Company, and West Penn Power Company for  
Approval of their Smart Meter Deployment Plan  
Docket Nos. M-2013-2341990, M-2013-2341991,  
M-2013-2341993, M-2013-2341994

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Reply Exceptions to the Recommended Decision in the above-referenced proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely yours,

A handwritten signature in cursive script that reads "Candis A. Tunilo".

Candis A. Tunilo  
Assistant Consumer Advocate  
PA Attorney I.D. # 89891

Enclosures

cc: Honorable Elizabeth H. Barnes  
Certificate of Service

\*169701

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT PETITION OF METROPOLITAN : DOCKET NO. M-2013-2341990  
EDISON COMPANY, PENNSYLVANIA : DOCKET NO. M-2013-2341991  
ELECTRIC COMPANY, PENNSYLVANIA : DOCKET NO. M-2013-2341993  
POWER COMPANY AND WEST PENN : DOCKET NO. M-2013-2341994  
POWER COMPANY FOR APPROVAL OF :  
THEIR SMART METER DEPLOYMENT :

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REPLY EXCEPTIONS OF THE  
OFFICE OF CONSUMER ADVOCATE

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Dated: December 12, 2013

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## I. INTRODUCTION

On November 8, 2013, the Office of Administrative Law Judge issued the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Elizabeth H. Barnes. Exceptions were filed to the R.D. on December 2, 2013 by the Office of Consumer Advocate (OCA) and the FirstEnergy Companies. The OCA files these Reply Exceptions to address the FirstEnergy Companies' Exceptions to the Recommended Decision. Specifically, the OCA replies to the Companies' Exceptions to the ALJ's recommendations regarding: (1) conducting a proper cost benchmarking analysis; (2) conducting a proper investigation into potential savings from smart meter deployment; (3) denying recovery of \$5.1 million for West Penn Power's Customer Information System (CIS) costs; and (5) recovery of legacy meter removal costs. The OCA has provided extensive discussion of these issues in its Main Brief and Reply Brief in this proceeding. The OCA submits that the ALJ reached the right conclusions on these issues in her Recommended Decision. The OCA also replies to the Companies' new proposal, raised for the first time in the Companies' Exceptions to the Recommended Decision, to accelerate deployment of smart meters in its Penn Power Company service territory.

## II. REPLY EXCEPTIONS

**OCA Reply to FirstEnergy Exception No. 1:** The ALJ Was Correct In Recommending That The Companies Perform A Proper Benchmarking Analysis. (FE Exceptions at 5-9; R.D. at 23-26; OCA M.B. at 10-13; OCA R.B. at 4-7).

In her Recommended Decision, the ALJ found that the Companies had not met their burden of proving that the costs they will incur for smart meter deployment are reasonable and prudent in that they had not performed an adequate benchmarking analysis. R.D. at 26. As such, the ALJ recommended:

[T]he Companies shall be directed to conduct a proper cost benchmarking analysis using the seven cost categories identified by the Companies in their Plan

and sub-categories, if available, and using a much larger sample size of utilities. The Companies will be further directed to submit a report with the results of such analysis and any Plan changes stemming from such results in an amended Plan. The cost benchmarking analysis should be completed within 120 days of the Commission's order in this matter, with a report of the results and an amended Smart Meter Deployment Plan, if necessary.

Id.

In their Exceptions, the Companies asserted that the ALJ's recommendations should be rejected because (1) there is no requirement that the Companies submit a benchmarking analysis with its Plan; (2) the Companies' requirement to establish the reasonableness of their Smart Meter Deployment Plan (Plan) was met by the extensive data gathering efforts and review performed by the Companies; (3) the record in this matter casts doubt on the value of the ALJ's proposed benchmarking analysis; (4) the ALJ's recommendation reflects a misunderstanding of the record evidence; and (5) given the significant delay in the resolution of this proceeding, the adoption of the ALJ's recommendation could further delay the implementation of the Companies' Plan. FE Exceptions at 5-9. The OCA submits that the Companies' arguments are without merit and must be rejected.

With regard to the Companies' first four assertions, the OCA submits that the Companies do have the burden of proving that the Plan is reasonable and prudent. Act 129 permits the recovery of only the "reasonable and prudent costs of providing smart meter technology." 66 Pa. C.S. § 2807(f)(7). Further, in its Implementation Order, the Commission specifically stated that each Electric Distribution Company (EDC) has the burden to provide sufficient support to demonstrate that all such costs incurred with respect to its smart meter plan are reasonable and prudent. Re: Smart Meter Procurement and Installation, Docket No. M-2009-2092655, Implementation Order at 29 (June 24, 2009) (Implementation Order). See also 66 Pa. C.S. § 315(a). The OCA further submits that since the Companies determined to perform a cost

benchmarking analysis in order to meet their burden of proof in this regard, the Companies have the obligation to properly perform the analysis.

As discussed in the OCA's Main Brief, in the Companies' cost benchmarking analysis, the Companies compared the meter costs of only three other utilities, which made the analysis too limited and general. See OCA M.B. at 11-13. OCA witness Hornby explained why the Companies' analysis was inadequate as follows:

Mr. Fitzpatrick's comparison is limited to the total cost of each company's AMI plan despite the fact that the total cost of the FirstEnergy Companies' Deployment Plan is composed of seven categories of expenditures: Meter & Local Network, Information Technology, Systems Integration, Network & Network Management, Program Management, Business Staffing Requirements and Communications/Change Management. The comparison Mr. Fitzpatrick presents does not provide a comparison of costs for each of these categories, or even for the two largest categories of Meter & Local Network and Information Technology.

OCA St. 1 at 11-12. Mr. Hornby, therefore, concluded that without a cost comparison by category, the Companies' cost comparison study did not provide useful information as to the reasonableness of the estimated expenditures that a properly conducted comparison could have provided. Id. at 12.

OCA witness Hornby provided the smart meter plan filings of twelve utilities in response to the Companies' discovery requests and testified that these utilities have provided various categories of costs in their filings, including Meter & Local Area Network, Information Technology, System Integration, Network and Network Management, Program Management, Business Staffing Requirements and Communication Change Management. OCA St. 1-SR at 4, Table 1. Mr. Hornby testified that he performed a similar analysis as recommended in this proceeding in West Penn's Smart Meter proceeding at Docket No. M-2009-2123951. Specifically, Mr. Hornby found:

I was able to demonstrate that the projected capital cost of West Penn's proposed Smart Meter Plan was more than twice as high as AMI projects of other utilities primarily due to its costs for Information Technology, in-home devices and Customer Information Service ("CIS").

OCA St. 1-SR at 3.

The OCA submits that a proper cost benchmarking analysis would show whether the Companies' Plan expenditures are in line with those of other utilities that have deployed or are currently deploying smart meters. Further, the OCA submits that a properly performed analysis would provide the Companies with valuable cost and pricing information as they examine proposals from vendors to provide smart meter-related goods and services. As such, a properly performed benchmarking analysis is crucial for the Companies to meet their burden of proof that their Plan is reasonable and prudent.

With regard to the Companies' assertion in their Exceptions that given the significant delay in the resolution of this proceeding, the adoption of the ALJ's recommendation could further delay the implementation of the Companies' Plan (FE Exceptions at 9), the OCA submits that a possible delay in implementation does not relieve the Companies of their burden of proving that their Plan is reasonable and prudent. As discussed in Reply to FirstEnergy Exception No. 2 below, the Companies took steps to address the OCA's concerns regarding the Companies' Plan savings estimates during the pendency of the Recommended Decision in this matter. The OCA submits that the Companies could have taken action regarding the benchmarking analysis during the pendency of the proceeding or while waiting for a Recommended Decision. As such, the Companies' assertions regarding the delay should be disregarded, and the Commission should direct the Companies to conduct a proper cost benchmarking analysis using the seven cost categories identified by the Companies in their Plan and sub-categories, if available, and using a much larger sample size of utilities. The

Commission should direct the Companies to submit a report with the results of such analysis and any Plan changes stemming from such results in an amended Plan.

**OCA Reply to FirstEnergy Exception No. 2:** The ALJ Was Correct In Recommending That The Companies Conduct A Comprehensive Savings Potential Investigation. (FE Exceptions at 9-13; R.D. at 30-32; OCA M.B. at 17-20; OCA R.B. at 9-11).

In her Recommended Decision, the ALJ found that “[i]t is unclear how the Companies will know if there are savings in categories other than the four they have identified in the Plan if the Companies do not properly analyze all potential categories of savings now.” R.D. at 32. As such, the ALJ recommended:

[T]he Companies shall be directed to hire an independent consultant with experience in identifying the potential for savings as a result of smart meter deployment to: (1) conduct a comprehensive savings potential investigation of categories of savings achieved by other companies that have deployed smart meters, including the seven categories identified by Nevada Power described above, and (2) prepare and submit a report to the Commission of his or her finding within 90 days of the Commission’s order in this matter. Further, the Commission should direct the Companies to file an amended Plan detailing the potential categories and estimates of savings identified by such consultant within 30 days thereafter.

R.D. at 32.

In their Exceptions, the Companies assert that such a savings investigation is of limited value because no two EDCs have identical characteristics, and the ALJ understates the Companies’ commitment to quantifying smart meter savings. FE Exceptions at 10-11. Additionally, the Companies assert that a comprehensive savings investigation of categories of savings achieved by other utilities cannot be done because relevant data will not be available for several years. *Id.* at 11-12. All that stated, however, the Companies agreed that a proper savings analysis should be conducted to ensure the Companies meet their obligation to offset savings realized from the installation of smart meters against their Plan costs. *Id.* at 12. See 66 Pa. C.S. § 2807(f)(7). Additionally, the Companies noted that they have already retained Accenture, a

nationally recognized consulting firm, to assist the Companies in identifying and quantifying all savings realized from the deployment of smart meters. FE Exceptions at 11.

The OCA commends the FirstEnergy Companies for taking action to conduct a proper savings analysis during the pendency of the Recommended Decision. Although the Companies do not believe it is necessary to identify in their Plan categories of savings in addition to the four categories<sup>1</sup> already identified, the OCA submits that it is important to identify all categories of potential savings in the Plan now. Otherwise, it is unclear how the Companies will know if there are savings in categories other than the four they have identified in their Plan. Further, in the WPP Settlement<sup>2</sup>, West Penn was required to conduct a projected savings analysis similar to that conducted by Nevada Power, wherein Nevada Power identified seven categories<sup>3</sup> of potential savings in its smart meter deployment plan. OCA St. 1 at 16.

The OCA submits that since it appears that the Companies have already hired an independent consultant to investigate additional categories of savings, the ALJ's recommendation should be adopted.

**OCA Reply Exception to FirstEnergy Exception No. 4:** The ALJ Was Correct In Denying West Penn's Claim For \$5.1 Million For Customer Information System (CIS) Costs. (FE Exceptions at 15-20; R.D. at 49-52; OCA M.B. at 35-38; OCA R.B. at 20-26).

In her Recommended Decision, the ALJ denied the Companies' request to recover \$5.1 million for expenditures related to West Penn's abandoned Customer Information System (CIS). R.D. at 52. As part of West Penn SMIP filing at Docket No. M-2009-2123951, West Penn

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<sup>1</sup> The four categories of savings identified in the Companies' Plan are meter reading, meter services, back-office and contact center. FE Companies Exh. GLF-4.

<sup>2</sup> See Petition of West Penn Power Company for Expedited Approval of its Smart Meter Technology Procurement and Installation Plan, Docket No. M-2009-2123951, Settlement (March 9, 2011) (WPP Settlement).

<sup>3</sup> The seven categories are: meter reading, revenue protection, load research, distribution planning, credit & collections, billing, and meter operations. OCA St. 1 at 16.

included approximately \$45.1 million for costs related to smart meter activities, including amounts for modernizing West Penn's CIS. R.D. at 49; OCA M.B. at 36; OCA St. 1 at 23. The parties to the proceeding ultimately entered an Amended Joint Petition for Settlement (WPP Settlement) in that proceeding, which stated:

The Joint Petitioners recognize that the Company made expenditures between 2009 and 2010 in support of the development of a smart meter deployment plan. These costs are related to activities defined as Phase 1 and Phase 2, activities in the accompanying Appendix A. To date, the Company has expended \$45.1 million, of which the parties agree that \$40 million can be recovered in the smart meter surcharge...The additional \$5.1 million represents certain costs related to the CIS system that the Joint Petitioners dispute should be recovered through the smart meter surcharge. The Company may file for recovery of these disputed amounts in its next distribution base rate case and/or as part of the smart meter surcharge in connection with its Revised SMIP filing. All parties reserve all rights to dispute the reasonableness of the \$5.1 million in disputed charges and to oppose any recovery of those costs.

WPP Settlement at ¶ 19. See also OCA St. 1 at 23-25. West Penn sought recovery of the remaining \$5.1 million in this proceeding, and the ALJ's Recommended Decision denied that recovery.

In Exceptions, the FirstEnergy Companies assert that the ALJ's recommendation should be denied because: (1) Section 2807(f)(7) provides that the EDC may recover the reasonable and prudent costs of providing smart meter technology, including the costs of system upgrades; (2) the expense was not a normal business expense; (3) the ALJ's reliance on the allocation of CIS costs to West Penn's sister utilities as support is "misplaced;" and (4) the CIS was "used and useful" in the smart metering design solution and supported West Penn's ability to deploy the approximately 25,000 smart meters that enable West Penn's Energy Saver Rewards Program. FE Exceptions at 15-20. These arguments are incorrect and as such, do not support the Companies' claim.

In Exceptions, the FirstEnergy Companies claim that the \$5.1 million for replacement of West Penn's outdated CIS system qualifies as a "system upgrade" under Section 2807(f)(7) of Act 129. FE Exceptions at 16-18. See also 66 Pa.C.S. § 2807(f)(7). The OCA opposed the inclusion of these costs for two reasons: (1) the system upgrade was of the type that should have been undertaken in the normal course of business and was not specifically related to smart metering and (2) West Penn's CIS has been abandoned and is not used and useful. OCA R.B. at 21.

The FirstEnergy Companies argue that the only reason for the CIS expenditure was the requirements of Act 129. FE Exceptions at 16-17. As discussed in this proceeding and in West Penn's prior SMIP proceeding, West Penn's CIS changes were not a smart meter technology "system upgrade" recoverable through the SMT-C Rider. Instead, the changes made to the older CIS system were an investment that a utility would make in its normal course of business. OCA witness Hornby recounted his position on this issue:

My position in that proceeding was based upon, and supported by, various admissions made by West Penn. First, West Penn stated that the CIS, which is its billing system, was installed in the 1970s and that prior to the Company's 2009 modernization investment, the Company had not made any major investments to upgrade that system since 1999. West Penn also acknowledged that the CIS used by all of its parent corporation's distribution operating companies, including West Penn's sister companies operating in Maryland and West Virginia. West Penn further acknowledged that 52 percent of the CIS costs would be allocated to its sister companies in Maryland and West Virginia, and those sister companies would seek to collect those allocated costs through distribution base rate proceedings in their respective states.

In rebuttal, West Penn witnesses Heasley and Arthur each stated that the Company needs to modernize its CIS in order to support the deployment of smart meter technology and the rate offerings enabled by that technology. However, neither Mr. Heasley nor Mr. Arthur explicitly denied that modernizing the CIS was an investment that West Penn would make in its normal course of business. Instead, both Company witnesses simply stated that they understood Act 129 to allow recovery of those capital costs as part of the implementation of smart meter technology.

OCA St. 1 23-24. See also OCA M.B. at 22; R.D. at 50. It is important to note that 52% of the costs were allocated to West Penn's sister companies, Potomac Edison in Maryland and Monongahela Power in West Virginia. Neither Potomac Edison nor Monongahela Power had any smart meters nor did they have any statutory or regulatory obligation to deploy smart meters.

FirstEnergy Companies witness Valdes and OCA witness Hornby both agree that West Penn had not changed its CIS system for over thirty years. FE Companies M.B. at 33; OCA R.B. at 22. Where OCA witness Hornby and Companies witness Valdes diverge is about whether the expenditure was one that was typically incurred in the normal course of business. FirstEnergy Companies witness Valdes claims that the system was a "home-grown, customized system that was specifically tailored to meet the needs of West Penn" and that but for the requirements of Act 129, West Penn would not have changed its system. FE Companies St. 5-R at 16. See also FE Exceptions at 18. The upgrades to the system, however, were to be used by West Penn's sister companies that had no smart meter deployment plans. As OCA witness Hornby testified, West Penn's sister companies could seek to recover the expenses of the upgrades as a normal business expense in their respective base rate proceedings. OCA St. 1 at 24. As mentioned, West Penn allocated 52 percent of the system to its sister utilities Potomac Edison Company in Maryland and Monongahela Power in West Virginia. OCA St. 1 at 24; Tr. 52.

The FirstEnergy Companies claim that the allocation to the two sister companies is irrelevant to whether the costs were in the normal course of business. The OCA submits, however, that allocation to the sister companies without smart meter deployment for recovery in their respective base rate proceedings shows that they are expenditures in the normal course of business. This was also the case for other Pennsylvania utilities. Most every other utility in Pennsylvania made similar modernization investments to their CIS systems between 1970 and

2008 as a part of the normal course of business and recovered the costs of those projects through base rate proceedings. For these reasons, the ALJ correctly found that the expenditure was one that is typically incurred in the normal course of business:

There is substantial evidence of record to show that the West Penn CIS upgrade was a normal business expense and was not solely for the purposes of Act 129. Importantly, the Company allocated 52 percent of the costs of that system to its sister utilities Potomac Edison Company in Maryland and Monongahela Power in West Virginia. OCA St. 1 at 24; Tr. 52. Neither of the two sister utilities had a requirement to deploy smart meters or AMI, nor were either engaged in any smart meter deployment. OCA St. 2 at 24; Tr. 53. Both of these companies chose to include the cost recovery for the customer information system in distribution base rates and not through surcharges. OCA St. 1 at 24.

R.D. at 51. The OCA submits that as the ALJ found, there is no reason that West Penn should be treated differently because it incurred this expense after Act 129 was passed.

The FirstEnergy Companies also argue that the ALJ's assertion that the \$5.1 million claim should be denied on the grounds that it is not "used and useful" is factually and legally erroneous. FE Exceptions at 18-19. The FirstEnergy Companies argue that the CIS system was "used and useful" in that it supported West Penn's ability to deploy 25,000 smart meters that enabled West Penn's Energy Saver Rewards Program for the summer of 2012 as part of its Energy Efficiency and Conservation (EE&C) Plan.<sup>4</sup> FirstEnergy Companies witness Valdes stated that due to the EE&C Plan, West Penn planned to roll out the smart meter design solution in 2010 and "because of that, West Penn needed to proceed with its smart metering plan which includes the CIS upgrades during 2009 prior to actually receiving Commission approval." Tr. 42; OCA M.B. at 25. However, that Energy Saver Rewards program was not implemented until the summer of 2012, over a year after West Penn's parent company, Allegheny Power merged

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<sup>4</sup> The OCA notes that West Penn agreed to deploy the 25,000 smart meters as part of its Final Amended Settlement of the 2009 SMIP filing "to support customer requests and the Amended EE&C/DR Plan offerings." WPP Settlement at ¶ 17. This Final Amended Settlement was not filed until March 9, 2011, nearly a year following the filing of West Penn's merger with the FirstEnergy Companies.

with the FirstEnergy Companies. The OCA submits that the Companies' argument does not overcome the fundamental fact that while West Penn expended the dollars for the CIS system in anticipation of deploying its smart metering design solution and to deploy the smart meters for its EE&C Plan, West Penn's original smart meter plan and original EE&C Plan were never adopted by the Commission and the CIS system was retired.<sup>5</sup>

A ratepayer should only bear the costs of items which are reasonably and prudently incurred and used and useful. Using the CIS as the basis for the "smart meter design solution" or as the basis for rolling out smart meters in its EE&C program is not the same as being "used and useful" for ratemaking purposes. The evidence presented demonstrates that the \$5.1 million West Penn expended for the now retired CIS system is not used and useful for ratepayers. The Companies' claim is that the CIS system was "used or useful" in the past as it was used to design a program. In Pa. PUC v. Metropolitan Edison, the Commission defined this important distinction between being used or useful to the Company and being "used and useful" for ratemaking purposes:

In our opinion, the legislature anticipated and intended a difference in those phrases. "Used or useful" has a broader, more inclusive connotation and is employed to define the types of property which are subject to the reporting, accounting, and certification requirements. See 66 Pa. C.S. §§ 1102(a)(3), 1702, and 1703(a). Whereas, "used and useful" has a narrower, less inclusive connotation and is employed to define and describe the types of property which are includable in the utility's rate base for purpose [sic] of fixing rates. 66 Pa. C.S. §§ 1102(a)(3)(iii), 1307(a), 1301(a), 1301(d), and 1311. Since our present focus is on the status of TMI-1 for rate-making purposes, the phrase "used and useful" is appropriate.

Pa. PUC v. Metropolitan Edison Co., 1980 Pa. PUC Lexis, \*18-19 (Order entered May 23, 1980), remanded on other grounds, Metropolitan Edison v. Pa. PUC, 437 A.2d 76, 79, 81 (Pa.

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<sup>5</sup> ALJ Hoyer's Initial Decision in the West Penn SMIP, upon which the Companies rely, was never addressed by the Commission because the Initial Decision was issued on April 29, 2010, and on May 14, 2010, FirstEnergy filed for its proposed merger with West Penn's parent company. The proposed CIS system anticipated in ALJ Hoyer's Initial Decision was subsequently "retired."

Commw. Ct. 1981). The Commission went on to conclude that although TMI-1 had an operating history, the question of whether TMI-1 was related to the provision of utility service was not the issue. Id. at 21-22.

The FirstEnergy Companies also argue that the Pittsburgh v. Pa. PUC case should apply here to assess whether the Companies should have gone forward with the expense in light of West Penn's merger with FirstEnergy. FE Exceptions at 19, citing Pittsburgh v. Pa. PUC, 370 Pa. 305, 88 A.2d 59 (1952). The FirstEnergy Companies state that the "utility management can only be judged on what it knew or ought to have known at the time it exercised its managerial discretion." FE Exceptions at 19, citing Pittsburgh at 319. The OCA submits that under this standard as well, recovery of the \$5.1 million should be denied. The timeline for this case is particularly important and does not support the Companies' claim. The ALJ described the timeline in her Recommended Decision:

Since the initial WPP SMIP, much has also changed. FirstEnergy acquired West Penn's parent Company. Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a Change of Control of West Penn Power Company and Trans-Allegheny Interstate Line Company, Docket Nos. A-2010-2176520, A-2010-2176732, Order (March 8, 2011). West Penn has now "retired" its CIS system and transitioned to using the CIS system of the FirstEnergy Companies. Companies' witness Valdes testified "[s]o even though the merger occurred, yes, the merger occurred, therefore the CIS system merged with FirstEnergy's billing system." Tr. 53. West Penn is no longer using the system for which it expended the \$5.1 million. Tr. 53.

The timeline for this case is particularly compelling. West Penn filed its initial plan for approval of its SMIP on August 14, 2009. Companies witness Valdes stated in cross-examination that due to the Energy Efficiency and Conservation Plan, West Penn planned to roll-out smart meters in 2010 and "because of that, West Penn needed to proceed with its smart metering plan which includes the CIS upgrades during 2009 prior to actually formally receiving Commission approval." Tr. 42. On May 14, 2010, FirstEnergy filed for its proposed merger with West Penn's parent company, Allegheny Power. The merger was subsequently consummated on March 8, 2011. West Penn expended

the \$5.1 million for a CIS system, which was ultimately abandoned and is not used or useful to ratepayers for smart metering purposes. See Barasch v. Pa. PUC, 516 Pa. 142, 532 A.2d 325 (1987), aff'd Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989).

R.D. at 51. See also OCA St. 1 at 38. The fact is that the West Penn CIS system is not used and useful in service to Pennsylvania ratepayers. West Penn retired this CIS system and transitioned to the FirstEnergy Companies' CIS. The Energy Saver Rewards program was not implemented until the summer of 2012, after the merger occurred. Even under the cited Pittsburgh case, the \$5.1 million claim should be denied.

Finally, in the last sentence of its Exceptions, the FirstEnergy Companies state that the preponderance of the evidence shows that the \$5.1 million CIS-related expenses could not have been bifurcated from the overall \$45.1 million expense. FE Exceptions at 20. FirstEnergy argues in its Exceptions that the \$5.1 million was an “ancillary benefit” of the \$45.1 million. FE Exceptions at 17. The OCA submits that as described in the Paragraph 19 WPP Settlement language cited above, the parties agreed in the WPP Settlement to bifurcate the \$5.1 million and to separate out those disputed costs. See WPP Settlement at ¶ 19. See also OCA St. 1 at 23-25. As a party to that Settlement, West Penn (and the subsequent owner of West Penn, FirstEnergy) cannot now attempt to come back and say that a preponderance of the evidence shows that the bifurcation they agreed to could not have been. Further, there has been no evidence presented in this proceeding to indicate that the \$5.1 million provided any “ancillary benefit.” To the contrary, the evidence presented demonstrates clearly that West Penn’s system is not used and useful to ratepayers.

For the reasons cited above and in the OCA’s Main Brief and Reply Brief, the Commission should deny the Companies’ request to recover the \$5.1 million for expenditures

related to West Penn's abandoned CIS system. See OCA M.B. at 35 to 38; OCA R.B. at 20 to 26.

**OCA Reply Exception to FirstEnergy Exception No. 5:** The ALJ Was Correct In Denying The FirstEnergy Companies' Proposed Recovery Mechanism For Their Legacy Meters. (FE Exceptions at 21-25; R.D. at 52-55; OCA M.B. at 39-41; OCA R.B. at 26-31).

In her Recommended Decision, the ALJ denied the FirstEnergy Companies' request to recover the Companies' incremental costs of the Legacy Meters through its SMT-C surcharge. R.D. at 54-55. In Exceptions, FirstEnergy argues that the ALJ's recommendation should be denied because it is (1) inconsistent with traditional Pennsylvania ratemaking; (2) has no significant customer benefits; (3) attempts to substitute the ALJ's judgment for the Companies' in the election to recover smart meter costs through an automatic adjustment clause; and (4) denies the Companies full recovery of the costs. FE Exceptions at 24-25. The OCA submits that the ALJ's decision is consistent with both Act 129 and the Commission's Final Implementation Order on the issue; provides customer benefits by symmetrically treating the costs of removal and salvage value with the regulatory asset; prevents double recovery of the costs through base rates and the surcharge; and provides full recovery.

In Exceptions, the Companies argue that the ALJ incorrectly adopted the OCA's description of the Companies' proposal to recover the incremental Legacy Meter removal costs. FE Exceptions at 21. In fact, the ALJ correctly described the Companies' proposal and its impact and quoted directly from OCA witness David Effron's explanation of the Companies' proposal, which the Companies did not challenge. Mr. Effron testified:

The Companies are seeking authorization to create regulatory assets for the Legacy Meters being retired. The regulatory assets would then be amortized over the remaining depreciable lives of the meters, with recovery of that depreciation expense continuing through base rates (Met-Ed/Penelec/Penn Power/West Penn Statement No. 5, page 17).

Any salvage value realized from the disposition of the Legacy Meters will be credited to the regulatory asset. The Companies are proposing to treat the cost of removal for Legacy Meters as operation and maintenance (“O&M”) expense and to recover that cost as a component of the Smart Grid rider.

OCA St. 3 at 3; R.D. at 52. In this case, the Companies have proposed to separately account for the removal of the meters and the salvage value of the meters.<sup>6</sup>

In her Recommended Decision, ALJ Barnes specifically adopted Mr. Effron’s proposal to separately account for the cost of removal of the meters and the salvage value of the meters. As Mr. Effron discussed above, the Companies have historically dealt with the cost of removal and salvage value of meters through base rates. In order to address the double recovery caused by recovering the cost of removal and/or salvage value through base rates and the SMT-C surcharge, Mr. Effron recommended:

I recommend that rather than being treated as O&M and being recovered as a current component of the Smart Grid rider, the cost of removal incurred by Penn Power and the incremental cost of removal incurred by Met-Ed, Penelec, and West Penn should be charged to the regulatory asset account containing the remaining cost of the retired Legacy Meters and be amortized over the remaining depreciable lives of the metering assets along with the remaining costs of those meters. This will result in removal being treated symmetrically with salvage value. In addition, charging the cost of removal to the regulatory asset and amortizing those costs accordingly will tend to smooth year-to-year variations in those costs.

OCA St. 3 at 5. See also OCA R.B. at 27; R.D. at 53-54.

The Companies state in Exceptions that “current base rates only cover traditional depreciation of Legacy Meters, salvage value and the Operation and Maintenance (O&M) expense of removing these meters during the course of business.” FE Exceptions at 21. The Companies claim that this means that they would be allowed to recover the “incremental”

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<sup>6</sup> The OCA notes that the FirstEnergy Companies also raised an alternative proposal in which the Companies would “use salvage value received as an offset to the incremental costs of removal collected in the SMT-C Rider.” FE M.B. at 36. The OCA is opposed to recovering these costs through the SMT-C Rider. For the reasons set forth regarding the Companies’ primary proposal to recover the costs of removal through the SMT-C Rider, the OCA also opposes the Companies’ alternative proposal to recover both the salvage value and the costs of removal through the SMT-C Rider.

increased costs of meter removal that are different in timing and magnitude from what is currently being recovered. FE Exceptions at 21. Under the FirstEnergy Companies' proposal, the Companies would be separating out the salvage and removal expense from the regulatory asset by recovering them through the SMT-C surcharge rider, but still recovering these same removal costs through base rates as well.

The FirstEnergy Companies claim that OCA witness Effron misunderstands that the Companies are claiming that this ratemaking treatment would involve new, incremental legacy meter removal costs and not double recovery. FE Exceptions at 21-22. The Companies attempt to frame the issue as one about incremental recovery of the costs through the surcharge. The OCA submits that the Companies' argument, however, does not address the fact that the cost of removal and salvage value of the Legacy Meters are currently recovered through base rates. OCA witness Effron recommended that the Companies' proposed treatment of the cost of removal should be modified such that the cost of the removal of the meters and the salvage value of the meters are handled together as part of the regulatory asset to avoid any double recovery. OCA St. 3 at 4-5. Mr. Effron has recognized that there is an incremental cost, but has recommended that the incremental cost be tied to the regulatory asset to prevent a double recovery of the costs through base rates and the surcharge. Id. OCA witness Effron explained how the Companies' proposal would in fact result in a double recovery:

In response to OCA Interrogatory IV-6, the Companies explained that Met-Ed, Penelec, and West Penn presently treat the cost of removal as O&M expense, with Penn Power accruing for the cost of removal as part of its depreciation rate. (The Companies subsequently clarified that Met-Ed, Penelec, and West Penn actually charge the cost of removal to Account 403, which is depreciation expense, not technically an O&M account; however, the cost of removal for those companies is treated as if it were an O&M expense, that is to say as a cash expense.)

If Met-Ed, Penelec, and West Penn have historically treated the cost of removal of meters as O&M and that cost is being recovered in base rates, then the inclusion

of the cost of removal of the Legacy Meters as a current O&M expense in the Smart Grid rider would constitute a double recovery. That, the Companies would be recovering the cost of removal in base rates and also recovering that cost of removal in the Smart Grid rider. Therefore, Met-Ed, Penelec and West Penn should be allowed to recover the cost of removal of Legacy Meters only to the extent that such costs exceed the cost of removal presently being recovered as O&M in base rates. (Alternatively, the cost of removal being recovered as O&M in base rates by those companies could be credited directly to the regulatory asset account.)

For Penn Power, the cost of removal of the Legacy Meters does not present the same double recovery problem because the full amount of the depreciation expense (including any implicit cost of removal allowance) will, in effect, be treated as an ongoing credit to the regulatory asset.

OCA St. 3 at 4-5. See also R.D. at 53. As the ALJ noted, Mr. Effron's proposed modification to the Companies' proposed accounting for the cost of removal will prevent a double recovery through both base rates and the SMT-C surcharge. R.D. at 53.

The Companies argue that the Implementation Order allowed EDCs to seek recovery of stranded costs through an accelerated depreciation schedule, but does not specifically require it. FE Exceptions at 22. As the ALJ discussed, the Commission's Implementation Order regarding Act 129 specifically addressed the recovery of these stranded costs and did require EDCs to install smart meters in a manner that coincides with the full depreciation of Legacy Meters. R.D. at 54. The Implementation Order states:

The Commission believes EDCs should install smart meters in a manner that coincides with the full depreciation of existing meters, so as to minimize the stranded costs. However, in the event that there are stranded costs that need to be recovered the Commission agrees with EA, PECO and Duquesne that EDCs should be allowed to seek recovery of those costs through an accelerated depreciation schedule, to be included in the EDC's cost recovery plan.

Implementation Order at 33. (Emphasis added).

The Commission's language anticipates that the stranded costs will need to be minimized to the extent possible and coincide with the Companies' proposed depreciation schedule. The

depreciation schedule occurs with the regulatory asset, not through the SMT-C riders. As the ALJ explained:

The Commission's language anticipates that the stranded costs will be minimized to the extent possible and coincide with the Companies' proposed depreciation schedule. Separating out the cost of removal from the salvage value and depreciation does not minimize the cost to consumers. The cost of removal and the salvage value are two halves of the same whole. Customers should not have the delayed impact of the credit for the salvage value recovered through the regulatory asset and the cost of removal of the Legacy Meters charged immediately through the SMT-C riders.

R.D. at 54.

The Companies claim that the removal costs are typically treated as O&M in Pennsylvania as opposed to being amortized over time and that amortization of the costs has the impact of denying the Companies recovery of the costs. FE Exceptions at 23. The OCA submits that the ALJ's recommendation and the treatment of such costs in the Final Implementation Order are fully consistent with Act 129, traditional ratemaking requirements and allow the Companies full recovery for all of their smart meter related costs. The Companies would still recover the full costs as part of the regulatory asset.

The ALJ's recommendation is also consistent with the rider recovery option that the FirstEnergy Companies selected under Act 129. The ALJ's recommendation eliminates the double-recovery of the costs of removal already included in base rates of Met-Ed, Penelec, and West Penn that results from the FirstEnergy Companies' selection of the rider. The OCA's proposal only relates to the treatment of the cost of removal under this regulatory asset structure. The OCA proposes that if the regulatory asset is to be utilized, then the cost of removal must be treated symmetrically.

Finally, the Companies argue that the OCA moved the costs of legacy meter removal to minimize customer impact. FE Exceptions at 24. The OCA's recommendation is based upon

the fact that for Met-Ed, Penelec and West Penn, the cost of removal is already being recovered in base rates, and the Companies are proposing to also recover the costs of removal for the Legacy Meters through their SMT-C riders. The OCA proposal is to eliminate the double recovery of costs. See OCA St. 3 at 4-5; OCA R.B. at 30-31. Separating out the cost of removal from the salvage value and depreciation will smooth out the recovery of costs to consumers, but they will not minimize the cost to consumers. The cost of removal and the salvage value are two halves of the same whole. Customers should not have the delayed impact of the credit for the salvage value recovered through the regulatory asset and the cost of removal of the Legacy Meters charged immediately through the SMT-C rider.

For the reasons set forth above and in the OCA's Main and Reply Briefs, the OCA submits that the Commission should adopt the ALJ's Recommended Decision that the incremental cost of removal be charged to the regulatory asset account containing the remaining cost of the retired Legacy Meters and be amortized over the remaining depreciable lives of the metering assets along with the remaining costs of the retired meters. The costs of removal would then be recovered as part of the next base rate revenue requirement for electric distribution service when the regulatory asset is reflected in base rates.

**OCA Reply Exception to FirstEnergy Exception No. 6: The FirstEnergy Companies' Request In Its Exceptions To Amend Its Smart Meter Plan To Accelerate The Smart Meter Deployment Schedule For Penn Power Is Procedurally Inappropriate.** (FE Exceptions at 25-28).

In its Exceptions, the FirstEnergy Companies propose for the first time to amend the proposed deployment schedule for Penn Power. FE Exceptions at 25-28. In its Plan filed in the case, the Companies propose to use Penn Power as a "mini-system" by installing 60,000 meters from 2014-2016 (5,000 meters in 2014, 15,000 meters in 2015, and 40,000 meters in 2016). Id. The Companies state that after filing the Plan, they continued to test the selected smart meter

equipment with the proposed smart meter solution and based upon this testing, determined that the meters should be deployed to Penn Power's entire system of 170,000 meters on an accelerated basis from 2014-2015. Id. The FirstEnergy Companies propose to change the deployment schedule to deploy 50,000 meters in 2014 and by the end of 2015, to deploy the remaining 120,000 meters. Id. The Companies claim that there should be a shift of budget dollars with approximately \$62.5 million being shifted to 2014 and approximately \$49 million being shifted to 2015. Id. at 26-27. Under the filed Plan, the total cost would be \$109 million, and under the Company's proposed modifications to the Plan, the total cost appears to be an increase of \$2.5 million, or a total of \$111.5 million (\$62.5 million plus \$49 million). Id. at 27. The Companies state that the increase in costs would be so that the Companies could complete a significant portion of the IT work in the shortened time period. Id. at 26. The incremental increase in the budget would be allocated to all four of the Pennsylvania operating companies. Id. Further, the Company proposed to accelerate recovery of the costs through the SMT-C rider over a two-year period instead of the three-year period proposed in the Plan. Id. The Companies aver that this expedited deployment schedule would provide "empirical data on a broader scale" in order to identify potential problems prior to full scale deployment and to identify and verify potential cost savings categories. Id. at 27.

The OCA submits that the FirstEnergy Companies' proposed expedited Penn Power deployment schedule should not be approved at this time. Procedurally, it is improper to request a change to the deployment schedule for the first time in the Companies' Exceptions in this proceeding. The only record evidence in this proceeding regarding Penn Power's deployment schedule is included in the Companies' Plan filed in December 2012. The Companies are now proposing to amend that deployment schedule and propose to change the total cost and the

charges to customers. Amendments to the deployment schedule are also likely to have logistical impacts including consumer education impacts. The Companies have not provided any evidentiary support for these changes, and the OCA has not had the opportunity to fully evaluate the proposal. The OCA, for example, would want to examine such things as: (1) the projected costs by year of the deployment proposed by the Companies; (2) the projected costs by year of the new deployment; (3) the differences in projected costs by year; and (4) the basis for the additional \$2.5 million in costs as a result of this change.

In order for this proposal to be considered, the OCA submits that the Companies should submit an Amended Plan, which provides evidentiary support for the accelerated deployment schedule, and provide the opportunity for interested parties and the Commission to fully understand all aspects of the proposal.

### III. CONCLUSION

As set forth above and in the OCA's Exceptions, the OCA submits that the ALJ's Recommended Decision should be adopted subject to the OCA's Exceptions and Reply Exceptions.

Respectfully Submitted,



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DATE: December 12, 2013  
177474

CERTIFICATE OF SERVICE

Joint Petition of Metropolitan Edison Company :  
Pennsylvania Electric Company, Pennsylvania : Docket Nos. M-2013-2341990  
Power Company, and West Penn Power Company : M-2013-2341991  
For Approval of their Smart Meter Deployment : M-2013-2341993  
Plan : M-2013-2341994  
:

I hereby certify that I have this day served a true copy of the foregoing, the Office of Consumer Advocate's Reply Exceptions to the Recommended Decision, 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 12th day of December 2013.

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