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December 4, 2009

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Honorable James McNulty
Secretary, Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary McNulty:

Please find for electronic filing the Main Brief of the Commonwealth of Pennsylvania, Department of Environmental Protection in the above referenced matter. Copies have been served on all parties listed on the enclosed Certificate of Service.

Sincerely,

/s/ Scott Perry

Scott Perry
Assistant Counsel

cc: Service List

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**MAIN BRIEF OF THE
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

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Dated: December 4, 2009

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STATEMENT OF THE CASE

I. Introduction

Pursuant to the September 29, 2009 Scheduling and Briefing Order of Administrative Law Judge Wayne L. Weismandel, the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) files this main brief in the above captioned matter.

Act 129 of 2008 became effective November 14, 2008 and requires electric distribution companies (“EDCs”) with more than 100,000 customers to, in relevant part, develop smart meter technology procurement and installation plans. 66 Pa. C.S. § 2807 (f)(1). Act 129 further requires EDCs to furnish smart meters upon request from a customer, in new building construction, and in accordance with a distribution schedule not to exceed 15 years. 66 Pa. C.S. § 2807 (f)(2).

Act 129 also specifies the functions smart meters must provide. In order to be considered a smart meter, the meter and supporting infrastructure must 1) be capable of bidirectional communication, 2) record electricity usage on at least an hourly basis, 3) provide customers with direct access to and use of price and consumption information, 4) directly provide customers with information on their hourly consumption, 5) enable time-of-use rates and real-time-price programs and 6) effectively support the automatic control of the customer’s electricity consumption by one of the following as selected by the customer: the customer, the EDC, or a third party engaged by the customer or the EDC. 66 Pa. C.S. § 2807 (g).

Through its Smart Meter Procurement and Installation Order (“Installation Order”) at Docket No. M-2009-2092655, the Pennsylvania Public Utility Commission’s

("Commission") established the process by which the Smart Meter Plans will be approved, the schedule under which smart meters are to be deployed, the minimum functions the meters are to provide, and the method by which the EDC may recover its costs.

Significantly, the Installation Order established a 30 month network and installation grace period during which EDCs are not required to deploy smart meters. Installation Order at 7. Equally significant, the Installation Order also required smart meters to provide nine additional functions unless the Commission determines that the function is not cost effective. Installation Order, 30-31. Finally, the Installation Order clarified that smart meters are to be deployed throughout the EDC's service territory in less than 15 years from the date the EDC's Smart Meter Plan is approved. *Id.* at 14-15.

II. Procedural History

Pursuant to Act 129 and the Commission's Installation Order, on August 14, 2009, PPL Electric Utilities Corporation ("PPL") filed its Petition for Approval of a Smart Meter Technology Procurement and Installation Plan ("Smart Meter Plan").

On August 29, 2009 the Commission published a notice of PPL's petition in the *Pennsylvania Bulletin* which required Petitions to Intervene and comments to the Smart Meter Plan to be filed by September 25, 2009. *39 Pa. Bulletin* 35. The Department filed its petition to intervene on September 18, 2009. On September 25, 2009, and in compliance with the Commission's *Bulletin* notice, the Department filed comments to PPL's Smart Meter Plan. On September 29, 2009 a prehearing conference was held in this matter and the Department's petition to intervene was granted.

III. Description of PPL's Smart Meter Plan

PPL's Smart Meter Plan is premised on PPL's belief that its current Advanced Meter Infrastructure ("AMI") "meets or exceeds all of the minimum requirements for smart technology set forth in Act 129 and the Commission's Installation Order" and "meets many of the additional capabilities" listed in the Installation Order. Smart Meter Plan at 1.

As such, PPL's Smart Meter Plan does not include a plan to deploy new smart meter infrastructure. Smart Meter Plan at 15. Instead, PPL's Smart Meter Plan describes the ways in which PPL believes its current AMI meets the functionality requirements of Act 129 and the Installation Order and then describes various pilot programs PPL proposes to conduct in order to "further enhance" the system's ability to meet the functionality requirements of Act 129 and the Installation Order. Smart Meter Plan at 12.

Included in the pilot programs are proposals to test functions not listed in the Act or Installation Order. These functions include service limiting, prepay metering, momentary outage monitoring, and feeder meters. Smart Meter Plan pages 26-28. Attachment 1 to the Smart Meter Plan is the Smart Meter Milestone Plan which describes the time frame over which the pilot programs will be evaluated and potentially implemented. Attachment 2 provides an annual budget for the pilot programs through 2014. Attachment 3 describes the pilot programs in greater detail.

IV. Statement of Questions Involved

Q1: Does PPL Electric Utilities Corporation's current Advanced Meter Infrastructure meet the definition of "Smart Meter Technology" at 66 Pa. C.S. § 2807 (g) which requires the meter technology to "1) Directly provide customers with information on their hourly consumption. 2) Enable time-of-use rates and real-time price programs. 3) Effectively support the automatic control of the customer's electricity consumption by one or more of the following as selected by the customer:

- (I) the customer;
- (II) the customer's utility; or
- (III) or a third party engaged by the customer or the customer's utility."

Suggested Answer: No.

Q2: Does a metering system that requires hardware and software upgrades in order to provide the functions mandated by Act 129 and the Commission's Installation Order satisfy the requirements of the Act and Order?

Suggested Answer: No.

Q3: Does PPL Electric Utilities Corporation's Smart Meter Technology Procurement and Installation Plan meet the requirements of 66 Pa C.S. § 2807 (f) and the Commission's Installation Order by providing "smart meter technology" as defined by 66 Pa. C.S. § 2807 (g) and the Commission's Installation Order, after the 30 month grace period, to customers upon request, in new building construction, and throughout its service territory within 15 years of the date of Plan approval?

Suggested Answer: No.

V. Summary of Argument

PPL's currently deployed AMI does not meet the functionality requirements mandated by 66 Pa. C.S. § 2807 (g) and the Commission's Installation Order. Act 129 and the Installation Order require the use of a Home Area Network ("HAN") or similarly capable method of open protocols to provide raw near real-time consumption data and price signals to support real-time and time-of-use pricing programs, as well as energy efficiency and demand response programs. Installation Order at 23. PPL's AMI does not currently provide this function and requires hardware and software upgrades to do so. Smart Meter Plan Attachment 3.

Because PPL's AMI does not meet the mandated smart meter functionality requirements, its AMI cannot be considered "smart meter technology" for Act 129 compliance purposes. Further, because PPL's Smart Meter Plan does not commit PPL to

deploying “smart meter technology” after the 30 month grace period, to all customers upon request, in all new building construction, and throughout its service territory within 15 years of the date of Plan approval, its Smart Meter Plan must be rejected because it fails to meet the minimum requirements of 66 Pa C.S. § 2807 (f) and the Commission’s Installation Order.

VI. Argument

As the petitioner for a Commission Order in this matter, PPL has the burden of proving that the aspects of its proposed Smart Meter Plan meet the requirements of Act 129 and the Installation Order. 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, the 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).

The Department’s primary interests in this matter relate to the timeframe in which smart meters will be deployed system-wide, and the functions the proposed smart meters and infrastructure will perform and support. The Department contends that PPL has not met its burden of proving that its Smart Meter Plan satisfies the requirements of Act 129

and the Commission's Order and therefore, PPL's petition for approval of its Smart Meter Plan should be denied.

1. PPL's Current Advanced Meter Infrastructure Does Not Meet the Definition of "Smart Meter Technology" in 66 Pa. C.S. § 2807 (g) and the Installation Order.

Act 129 of 2008 requires EDCs with more than 100,000 customers to, in relevant part, develop smart meter technology procurement and installation plans. 66 Pa. C.S. § 2807 (f)(1). Act 129 further requires EDCs to furnish smart meters upon request from a customer, in new building construction, and in accordance with a distribution schedule not to exceed 15 years. 66 Pa. C.S. § 2807 (f)(2).¹ In order to meet these statutory requirements, the EDC's Smart Meter Plan must provide for the deployment of smart meters that meet the definition of "smart meter technology".

66 Pa. C.S. § 2807 (g) defines "smart meter technology" as follows:

[T]echnology, including metering technology and network communications technology capable of bidirectional communication, that records electricity usage on at least an hourly basis, including related electric distribution system upgrades to enable the technology. The technology shall provide customers with direct access to and use of price and consumption information. The technology *shall* also:

1) Directly provide customers with information on their hourly consumption.

2) Enable time-of-use rates and real-time price programs.

3) Effectively support the automatic control of the customer's electricity consumption by one or more of the following *as selected by the customer*:

- (i) the customer;
- (ii) the customer's utility; or
- (iii) or a third party engaged by the customer or the customer's utility. (Emphasis added)

¹ The Commission's Installation Order extended the first two dead lines by granting EDCs a 30 month network and installation grace period during which EDCs are not required to deploy smart meters. Installation Order at 7.

With regard to the enumerated functions mandated by Act 129, the critical element of the definition is allowing *the customer* to be in control of establishing the automatic control of their electricity consumption through the smart meter – whether it be on their own, through a conservation service provider, or through the EDC. Accord, 66 Pa. C.S. § 2807 (g). The Installation Order directly addresses these mandated functionalities as follows:

[T]he Commission will require EDC smart meters to have a capability to provide raw near real-time consumption data through a HAN or similarly capable method of open protocols. This delivery method should also be capable of providing pricing signals to support real-time and time-of use pricing programs, as well as energy efficiency and demand response programs. Smart meters should support EDC and EGS time-of-use and real-time-pricing programs. Similarly, smart meters should support EDC, EGS and CSP energy efficiency and demand response programs.

Installation Order at 23.

As made clear by the Installation Order, the purpose of these functions is to effectively enable customers to control their energy consumption by responding to price signals sent directly to them through the meter system. PPL's Smart Meter Plan states that its current AMI provides these mandated functions. Smart Meter Plan at 1. For the reasons set forth below, the Department disagrees. Because PPL's Smart Meter Plan does not require PPL to provide these mandated functions according to the deployment schedule in the Installation Order, the Department requests that the Commission deny PPL's petition for approval of its Smart Meter Plan.

a. PPL's AMI Does Not Provide Customers with Direct Access to and Use of Price and Consumption Information

PPL's Smart Meter Plan purports to provide customers with direct access to and use of price information by making this information available through its website. Smart

Meter Plan at 7. Accessing this information requires 1) owning a computer, 2) turning it on, 3) accessing the internet, 4) navigating to PPL's website, 5) logging on to the customer's account, 6) viewing price data, and 7) viewing consumption data that is 48 hours old. See, PPL Statement No. 1-R, page 13 line 8 (regarding 48 hour time lag).

This is in stark contrast to the Home Area Network that constantly receives real-time price data from the EDC, provides near real-time consumption data, and supports energy efficiency and demand response programs. Accord, Installation Order at 23. By comparison, PPL's website is an indirect method of conveying information that does not provide the functions of the HAN required by the Commission. Because PPL's AMI does not enable a HAN and the PPL website is not a similarly capable method of delivering information, PPL's current AMI cannot be considered "smart meter technology".

b. PPL's AMI Does Not Enable Time-of-Use Rates and Real-Time-Price Programs for All Customers.

PPL contends that its current AMI enables time-of-use rates and real-time-price programs because PPL has two residential time-of-use rate pilot programs and has committed to providing real-time default service to large commercial and industrial customers. Smart Meter Plan at 8. PPL has no plan to offer real-time-pricing programs to residential customers. Failing to enable real-time-price programs for all customers renders PPL's current AMI incapable of being considered "smart meter technology".

In order for a meter to be considered a "smart meter" it must enable both time-of-use rates *and* real-time-prices. 66 Pa. C.S. § 2807 (g). This is why the Commission required all smart meters to employ a HAN. These devices are capable of providing pricing signals to the customer that fully enable both time-of-use rates and real-time-

pricing programs. Installation Order at 23. In addition, Act 129 clearly requires EDCs to offer the option of participating in time-of-use rates and real-time-price programs to *all* customers who have a smart meter (that was provided according to a 15 year depreciation schedule). 66 Pa. C.S. § 2897 (f)(5). Finally, even if PPL were to offer real-time-price programs to residential customers using its current AMI, getting access to consumption information 48 hours after the fact through PPL’s website is simply an inadequate way of making thoroughly informed decisions about one’s electricity consumption.

As a matter of law, metering infrastructure that does not provide all customers with all mandated functions is not “smart meter technology” pursuant to 66 Pa. C.S. § 2807 (g). Nothing in Act 129 permits an EDC to offer some functions to one customer class and avoid offering the same functions to another. In addition, the Installation Order clearly requires EDCs to provide all of the listed capabilities. Installation Order at 16 (“the Commission directs that a covered EDC’s smart meter technology *must* support the following capabilities” then lists 14 functions (emphasis added)). Enabling both time-of-use rates and real-time-pricing programs to all customers is a legal requirement that PPL’s AMI does not meet.

c. PPL’s AMI Does Not Effectively Support the Automatic Control of the Customer’s Electricity Consumption by Either the Customer, the EDC, or a Third Party Engaged by the Customer or the EDC.

The ability to effectively support the automatic control of the customer’s electricity consumption by either the customer, the customer’s utility, or a third party engaged by the customer *as selected by the customer* is perhaps the most important function a smart meter can provide. Accord, 66 Pa. C.S. § 2807 (g). This function puts

the customer in complete control over their electricity consumption in response to fluctuating prices.

PPL claims that its current AMI provides this function through direct load control and load curtailment programs provided by conservation service providers (“CSP”) as part of PPL’s Energy Efficiency and Conservation Plan. Smart Meter Plan at 8. Importantly, these CSP load control programs “employ technology and communications capabilities that are *not* part of the Company’s advanced meter infrastructure.” PPL Statement 1-R, page 5 lines 4-5 (emphasis added). As a matter of law, load control programs offered by a CSP independently of the utility’s metering infrastructure fundamentally fail to meet this functionality requirement.

Act 129 requires that an EDC’s metering infrastructure provide the functions required of smart meter technology. 66 Pa. C.S. § 2807 (f). Because PPL’s current AMI does not provide this function, it does not meet the definition of “smart meter technology”. Even if both the CSP and the EDC provide direct load control functions through the EDC’s metering system, this still does not satisfy Act 129 because neither option allows the customer to automatically control their electric consumption as required by 66 Pa. C.S. § 2807 (g).

Only a HAN can support the customer’s ability to choose the price points at which their smart appliances respond to price signals provided by the utility. The Commission understood this when it required that HANs (or similarly capable devices) be provided with each smart meter, required smart meters to include “open standards and protocols that comply with nationally recognized non-proprietary standards, such as IEEE 802.15.4” and required smart meters to provide “the ability to upgrade these

minimum capabilities as technology advances and becomes economically feasible”. Installation Order at 16 and 23. Indeed, even PPL acknowledges this. As stated in its Smart Meter Plan when discussing the deployment of open standard HANs through a pilot program:

The expected high level benefits are that the pilot will (1) contribute to the reduction of energy consumption through “smart” automated home controls, (2) provide the basic hardware foundation for special rate initiatives such as critical peak pricing, and (3) enable the customer to understand and control their consumption. Smart Meter Plan at 24.

CSP load control programs that operate independently of the EDC metering infrastructure are not an effective substitute for a HAN and do not satisfy the requirements of Act 129 and the Installation Order.

2. PPL’s AMI is not “Capable” of Providing the Functions Required by Act 129 and the Installation Order.

Despite the fact that PPL’s AMI does not actually provide all the functions required by Act 129 and the Installation Order, PPL may argue that its AMI meets the definition of “smart meter technology” because it is “capable” of providing those functions. See, Hearing Transcript page 93 lines 19-23. This argument fails for two reasons. First, Act 129 and the Installation Order require smart meters to actually provide the above discussed functions. Second, PPL’s AMI is not capable of providing the functions because it requires hardware and software upgrades to do so.

66 Pa. C.S. § 2807 (g) does define “smart meter technology” as technology that is “capable” of bidirectional communication. However, with respect to the functions discussed above, section 2807(g) states that the technology *shall* provide those functions. 66 Pa. C.S. § 2807 (g). This is a mandatory requirement that is not couched with the word “capable”. Even if the word “capable” could somehow be read into that part of the

smart meter technology definition, the Installation Order makes clear that smart meters must actually provide the listed functions. As stated on page 16 of the Order, “a covered EDC’s smart meter technology *must* support the following capabilities.” Installation Order at 16 (emphasis added).

Even if metering technology that is merely capable of providing the mandated functions satisfies Act 129 and the Installation Order, PPL’s current AMI would not meet that standard. As the pilot programs demonstrate, in order to provide customers with direct access to and use of price and consumption information, directly provide customers with information on their hourly consumption, enable time-of-use rates and real-time price programs and effectively support the automatic control of the customer’s electricity consumption by the customer, the EDC, or a third party engaged by the customer or the EDC as selected by the customer, PPL must first upgrade the hardware and software of its system. See, Smart Meter Plan Attachment 3, page 3-1, 3-2, 3-6, 3-10. Indeed, in order to provide meters that enable a HAN, PPL must actually provide the customer with an entirely new meter. *Id.* The Department submits that a system that lacks the necessary hardware and software to provide the functions mandated by Act 129 is simply not capable of providing those functions.

3. PPL’s Smart Meter Plan does not Provide “Smart Meter Technology” After the 30 month Grace Period, to All Customers Upon Request, in All New Building Construction, and Throughout its Service Territory Within 15 years of the Date of Plan Approval.

PPL’s Smart Meter Plan proposes several pilot programs to “enhance” the AMI’s current capabilities. Smart Meter Plan at 12. Relevant to the discussion here, PPL proposes to evaluate the ability of its current AMI to support a HAN that meets nationally recognized open standards. Smart Meter Plan Attachment 3 at 3-1, 3-3 and 3-10.

However, PPL does not commit to deploying meters that provide the “enhanced” capabilities after the 30 month grace period, to all customers upon request, in all new building construction, and throughout its service territory within 15 years of the date of Plan approval. Smart Meter Plan at 14-15.

Indeed even if the pilot program supports deployment of HAN enabled meters, PPL would only provide such a meter to customers who request it. Hearing Transcript at 128 Lines 21-22 (“It would not automatically be deployed in new construction”) and Pages 97-98 (“We are not committing ourselves to that. We’re committing to making them available to customers requesting them.” page 98 lines 12-14). Even then, a requesting customer may not be provided with such a meter. See Smart Meter Plan at 14 (PPL will provide HAN enabled meters to customers through the pilot program “subject to the constraints of timing and availability of equipment that provides the required functions.”).

The law and Installation Order are clear. A meter that does not provide all the mandated functions is not a smart meter. 66 Pa. C.S. § 2807(g). Smart meters must be deployed after the 30 month grace period to all customers who request them (and agree to pay the incremental cost) and on all new construction. 66 Pa. C.S § 2807(f)(2)(i),(ii), Installation Order 9-13. Finally, smart meters must be deployed throughout the EDC’s service territory within 15 years of the date of plan approval 66 Pa. C.S § 2807(f)(2)(iii), Installation Order 14-15. PPL’s Smart Meter Plan fails to meet all of these basic requirements and must be rejected.

VII. Conclusion

For foregoing reasons, the Department respectfully requests that the Commission deny PPL's Petition for Approval of its Smart Meter Technology Procurement and Installation Plan and require PPL to resubmit a Smart Meter Plan that complies with the proposed ordering paragraphs provided below.

VIII. Proposed Findings of Fact

- 1) PPL's current Advanced Meter Infrastructure does not include the use of Home Area Networks. Smart Meter Plan Attachment 3.
- 2) PPL's current Advanced Meter Infrastructure requires customers to use its website to view electricity price and consumption information. Smart Meter Plan at 7
- 3) PPL does not offer real-time-price programs to residential customers. Smart Meter Plan at 8.
- 4) Load control programs offered by conservation service providers through PPL's Energy Efficiency and Conservation Plan do not use PPL's metering infrastructure. PPL Statement 1-R, page 5.

IX. Proposed Conclusions of Law

- 1) PPL's Smart Meter Plan does not satisfy the requirements of 66 Pa. C.S. § 2807(f), (g) and the Commission's Smart Meter Procurement and Installation Order .
- 2) PPL's current Advanced Meter Infrastructure does not meet the definition of "smart meter technology" at 66 Pa. C.S. § 2807(g).
- 3) A Home Area Network enabled meter provides the functions that meet the definition of "smart meter technology" at 66 Pa. C.S. § 2807(g).
- 4) A Home Area Network or similarly capable method of open protocols is required in every smart meter.
- 5) Providing energy consumption and price information on a website is not a similarly capable method of providing pricing and consumption information as a Home Area Network as required by the Commission's Smart Meter Procurement and Installation Order.
- 6) Direct load control programs offered by conservation service providers or PPL do not support the automatic control of the customer's electricity consumption by the customer as required by 66 Pa. C.S. § 2807(g).
- 7) Direct load control programs offered by conservation service providers or PPL are not similarly capable methods of supporting energy efficiency and demand

response programs as a Home Area Network as required by the Commission's Smart Meter Procurement and Installation Order.

- 8) PPL's Smart Meter Plan does not require PPL to provide smart meters to all customers who request a smart meter after the 30 month grace period as required by the Commission's Smart Meter Procurement and Installation Order.
- 9) PPL's Smart Meter Plan does not require PPL to provide smart meters on all new construction after the 30 month grace period as required by the Commission's Smart Meter Procurement and Installation Order.
- 10) PPL's Smart Meter Plan does not require PPL to deploy smart meters throughout its service territory within 15 years from the date its smart meter plan is approved as required by the Commission's Smart Meter Procurement and Installation Order.

X. Proposed Ordering Paragraphs

- 1) PPL's Petition for Approval of its Smart Meter Technology Procurement and Installation Plan is denied.
- 2) PPL is ordered to resubmit a Smart Meter Technology Procurement and Installation Plan that meets the following minimum requirements within 30 days of this order.
 - a. Every smart meter installed by PPL shall enable a Home Area Network that meets nationally recognized open standards and protocols.
 - b. Smart meters shall be provided to all customers who request a smart meter and agree to the incremental cost of the meter after the 30 month grace period but in advance of system wide deployment.
 - c. Smart meters shall be installed on all new construction after the 30 month grace period.
 - d. Smart meters shall be deployed throughout PPL's service territory within 10 years of plan approval.

Respectfully submitted,

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities :
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Meter Technology Procurement and :
Installation Plan :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, the Main Brief of the Commonwealth of Pennsylvania, Department of Environmental Protection, 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 upon the persons listed below:

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