PENNSYLVANIA UTILITY LAW PROJECT

118 LOCUST STREET
HARRISBURG, PA 17101-1414

JULIE GEORGE, ESQ.
JGEORGEPULP@PALEGALAID.NET

PHONE: (717) 236-9486, EXT. 214
FAX: (717) 233-4088

December 18, 2009

Via Electronic Filing (E-filing)

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

Re: Petition of PPL Electric Utilities Corporation for Approval of its Smart Meter Implementation & Procurement Plan
Docket No. M-2009-2123945

Dear Secretary McNulty:

Pursuant to 52 Pa. Code § 5.502, enclosed for filing please find the Reply Brief of the Pennsylvania Association of Community Organizations for Reform Now ("ACORN") in the above captioned proceeding.

Copies of this letter have been provided to all parties of record in the manner indicated on the enclosed Certificate of Service.

Please contact me directly if you have any questions. Thank you.

Very truly yours,

Julie George

Julie George
Counsel for ACORN

Encl.
cc: Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation for Approval of its Smart Meter Implementation & Procurement Plan	: : : :	**Docket No. M-2009-2123945**

CERTIFICATE OF SERVICE

I hereby certify that I have served true copies of ACORN's Reply Brief in the above captioned proceeding, dated December 18, 2009, on the parties of record listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Via First Class and Electronic Mail

Honorable Wayne L. Weismandel
Administrative Law Judge
PO Box 3265
Harrisburg, PA 17105
wweismande@state.pa.us

Alison C. Kaster, Esquire
Pa PUC Office of Trial Staff
Commonwealth Keystone Bldg.
400 North Street
Harrisburg PA 17105
akaster@state.pa.us

James A Mullins, Esquire
Tanya J McCloskey, Esquire
Office of Consumer Advocate
5th Floor Forum Place
555 Walnut Street
Harrisburg, PA 17101-1923
jmullins@paoca.org
tmccloskey@paoca.org

Christopher A. Lewis, Esq.
Christopher R. Sharp, Esq.
Melanie Tambolas, Esq.
Blank Rome, LLP
One Logan Square
Philadelphia, PA 19103
lewis@blankrome.com
sharp@blankrome.com
tambolas@blankrome.com

Paul E. Russell, Esquire
Associate General Counsel
PPL Electric Utilities Corporation
Two North Ninth Street
Allentown, PA 18101-1179
perussell@pplweb.com

Scott Perry, Esq.
Aspassia V. Staevska, Esq.
DEP
RCSOB, 9th Floor
400 Market Street
Harrisburg, PA 17101-2301
astaevska@state.pa.us
scperry@state.pa.us

Pamela C. Polacek, Esq.
Shelby Linton-Keddie, Esq.
McNees Wallace & Nurick, LLC
100 Pine St., PO Box 1166
Harrisburg, PA 17108-1166
ppolacek@mwn.com
skeddie@mwn.com

Sharon E. Webb, Esq.
Office of the Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
swebb@state.pa.us

David B. MacGregor, Esq.
Post & Schell, PC
Four Penn Center
1600 JFK Blvd.
Philadelphia, PA 19103-2808
dmacgregor@postschell.com

Anthony D. Kanagy, Esq.
Post & Schell, PC
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
akanagy@postschell.com

Julie George

Julie George, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
jgeorgepulp@palegalaid.net
Counsel for ACORN

Dated: December 18, 2009

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF THE ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW ("ACORN")

Harry S. Geller, Esquire
John C. Gerhard, Esquire
Julie George, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
Phone: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net
Counsel for ACORN

Dated: December 18, 2009

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I. INTRODUCTION

Act 129 ("the Act") was signed into law by Governor Rendell on October 15, 2008 and became effective on November 14, 2008. The Act provides for a number of changes to the Public Utility Code and to practice before the Pennsylvania Public Utility Commission ("Commission").

Act 129 requires electric distribution companies ("EDCs") with at least 100,000 customers to present a Smart Meter Technology Procurement and Installation Plan ("Plan" or "SMIP") to the Commission for approval. 66 Pa.C.S. § 2807(f). Each Plan must describe the smart meter technologies the EDC plans to install upon customer request or in new building construction and in accordance with a depreciation schedule not to exceed fifteen (15) years. Id. Act 129 also requires that, with customer consent, the EDCs make available direct meter access and electronic access to customer meter data to third parties, including electric generation suppliers and providers of conservation and load management services. Id. The Act also defines the requirements for acceptable smart meter technology. 66 Pa.C.S. § 2807(g).

On June 24, 2009, the Commission entered an order establishing the standards and guidelines for implementing the smart meter requirements of Act 129. See Smart Meter Procurement and Installation, Docket No. M-2009-2092655 (Order entered June 24, 2009) ("Implementation Order"). In its Order, the Commission granted a network development and installation grace period of up to thirty (30) months following plan approval and clarified that the fifteen-year depreciation period for smart meters should commence upon plan approval (with the thirty month grace period to be treated as part of that timeframe). Implementation Order at 7, 15. The Commission specifically removed support for service-limiting and prepaid service as a minimum capability requirement due to policy implications and determined to resolve these issues in another proceeding prior to requiring such capability in smart meters. Implementation Order at 18.

In the Implementation Order, the Commission called for the publication of the Plans in the *Pennsylvania Bulletin* and allowed for the filing of Comments on the Plan by September 25, 2009. Id. at 4. The Commission also directed that at least one technical conference be scheduled for each EDC which shall be transcribed with the transcript, becoming part of the record. Id.

On August 14, 2009, PPL filed its "Petition of PPL Electric Utilities Corporation for Approval of a Smart Meter Technology Procurement and Installation Plan." The Company's filing was assigned to the Office of Administrative Law Judge and further assigned to Administrative Law Judge Wayne L. Weismandel for investigation. On September 25, 2009, the Association of Community Organizations for Reform Now ("ACORN") filed its Petition to Intervene, Pre-hearing Memorandum, and Comments in response to PPL's SMP. On September 29, 2009, a Pre-hearing conference was held in Harrisburg, at which time a procedural schedule was established. Pursuant to this schedule, on October 6, 2009, a technical conference was convened. On October 9, 2009, ACORN filed the Direct Testimony of Ian Phillips. ACORN filed no Surrebuttal Testimony. Evidentiary hearings were held on November 3, 2009. ACORN filed no Main Brief. ACORN now files this Reply Brief pursuant to the procedural schedule adopted in this proceeding.

II. SUMMARY OF THE ARGUMENT

This reply addresses several of the issues raised by PPL in its Main Brief, including the actual vulnerability of low income customers to cost increases as a result of smart meter implementation, the ability of low income customers to deal with the costs of the smart meter implementation plan ("SMIP"), the usage characteristics of low income households, the purpose of Universal Service programs, and the ability of PPL's current Customer Assistance Program ("CAP") design to adequately assist payment troubled low income customers in PPL's service territory. In addition, this reply addresses misstatements and mischaracterizations of witness Ian Phillips' testimony by PPL in its Main Brief. PPL arguments which incorrectly characterize and which incorrectly attribute to him arguments which were never offered and are not reasonably attributable to him are rebutted. It is the intent of this reply to correct these mischaracterizations and refocus the proceeding to the issues in this case which are germane to low income consumers.

III. ARGUMENT

A. LOW INCOME CUSTOMERS CANNOT ABSORB THE INCREASING COSTS OF UTILITY SERVICE; SMART METER COSTS CANNOT BE COSIDERED IN ISOLATION.

Ian Phillips' Direct Testimony is that low income customers are being pressured by an array of new utility costs, including new smart meter costs, new costs associated with Act 129 Energy Efficient and Conservation Plans, and increased generation costs as rate caps expire. He specifically testifies that, because low income households have little or no surplus financial resources, "the *cumulative* effect of these increases will be higher levels of low income service terminations." ACORN St. No. 1 at 7, ln. 5-6 (emphasis added).

PPL fails to recognize or acknowledge that smart meter implementation costs are but one of several additional costs to be borne by low income households. PPL, by its focus solely on smart meter costs, mischaracterizes and misstates Mr. Phillips' testimony. He does not state, as

PPL incorrectly asserts, that, as a result of smart meters alone, low income customers will not be able to afford smart meter costs and that imposing these costs on low income customers will increase termination levels. PPL Main Brief at 26. PPL makes no mention of the other costs cited by Mr. Phillips, nor does PPL address his concern with the *cumulative* nature of new costs to low income consumers. PPL does not mention or address the nearly $250 million in new costs associated with PPL's Act 129 Energy Efficiency and Conservation Plan, nor the estimated 30% increase in generation costs for PPL customers when rate caps come off. See PPL Electric Utilities Energy Efficiency and Conservation Plan, Docket No. M-2009-2093216 (Plan filed July 1, 2009), Table 7 at 34; PUC Electric Price Estimates Report, July 2009.

PPL's focus solely on smart meter costs in a vacuum, its failure to acknowledge additional costs being imposed, and its failure to address *the effect on low-income households by the totality of additional costs* obscures the real issue: low income customers have little or no discretionary money in their fixed budgets to pay for an array of new costs, including the new smart meter costs. The logical and nearly inevitable result is that low income families will not be able to pay for these new costs and will lose their utility service.

B. LOW INCOME HOUSEHOLDS ARE VULNERABLE AND ARE IN NEED OF COMMISSION PROTECTION.

Low income customers are vulnerable to service termination as a result of the increasing costs from cumulative sources, including smart meter costs. Mr Phillips offers several ways to address this vulnerability. For example, he recommends mitigating the cost impacts by enrolling low income customers into CAP and to expand the reach of those CAPs. ACORN St. No. 1 at 9-13. He also urges the Commission to increase customer protections for low income customers. Id. at 15-16.

At no point does PPL refute the argument that there are vulnerable low income customers in its service territory. Nor does PPL refute the argument that this vulnerability will increase as additional costs from a variety of sources, including smart meters, are added to low income households' financial burdens. While cost and operational considerations must be given weight, so too must we consider the real vulnerability of low income customers, the real likelihood that many more of these customers will lose electric service as a result of bill increases, and that, when low income families lose utility service, tragedies like the loss of life that occurred in PPL's service territory last winter after a service termination, will occur. See Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation, Docket No. M-2008-2057562 (Opinion and Order entered March 31, 2009).

C. LOAD PROFILES DO NOT NECESARILLY SHED LIGHT ON THE KIND OF USAGE IN A HOUSEHOLD.

Mr. Phillips' Direct Testimony is that low income households' electric usage is driven by necessities, not luxuries. ACORN St. No. 1 at 8-9. The result is that it is often difficult for low income families to reduce or shift electric usage without a resulting negative impact to the health and welfare of the family. This has nothing to do with load profiles at all; rather, it is about the kind of use that drives the load profile.

PPL acknowledges this position and then makes the statement that there are low income households with high usage that could benefit from shifting usage. PPL Main Brief at 27. PPL cites a study it conducted wherein it learned that load profiles were similar between low income and other residential customers. Id. PPL draws the conclusion that low income households with high usage could benefit from smart meter programs. Id.

PPL's conclusion misses the point of Mr. Phillips' testimony. Certainly, some low income households do have high usage, but generally they do not. However the key issue is not about load profile; it is about *the cause of the usage* that drives the load profile. A low income family that lives in an old house with inefficient electric baseboard heat is likely to have high usage. However, this is completely different from an affluent family that has high usage driven by a large screen plasma television and several home computers. The testimony indicates that low income families are more prone to endanger their health and welfare by reducing electric consumption by cutting back on necessities and essential uses.

D. THE COMMISSION INTENDS UNIVERSAL SERVICE PROGRAMS TO PROTECT LOW INCOME CUSTOMERS.

The Commission clearly intends for Universal Service programs to address the needs of low income households. Commenting on Act 129 programs, the Commission states in reference to low income customers, "such customers can take advantage of the many programs currently available to help low-income and payment-troubled customers pay their energy bills." Energy Efficiency and Conservation Program: Implementation Order, Docket No. M-2009-2069887 (Order entered January 15, 2009) at 37. This reference seems clearly to include Universal Service programs.

In order for Universal Service programs to meet the changing needs of vulnerable low income customers, the programs continually must be maintained and adjusted. Mr. Phillips' testimony proposes that the utility landscape will change quickly over the next few years, and the result of these cumulative changes is that electric prices will rise, making it particularly difficult, if not impossible, for low income families, particularly those on fixed incomes, to pay for this service. PPL's discussions about its *past* Universal Service programming fail to address this *future* oriented point.

E. CAP PROGRAMS MUST BE REVISITED BY THE COMMISSION IF THEY ADEQUATELY ARE TO MEET THE NEW PRESSURES ON LOW INCOME CONSUMERS CAUSED BY INCREASING UTILITY COSTS.

Mr. Phillips' testimony, rather than criticizing CAP programs as PPL represents, highlights their importance. Increasing utility costs are going to cause increasing numbers of income families to have problems paying their utility bills. As a result, the best way for low income households to maintain service is to turn to CAPs for assistance. This will place new and unique pressures on CAPs, and the Commission will need to respond to these new pressures if CAPS are to remain effective. Given the new costs customers will face, it is unreasonable to expect that changes to the CAP programs will not be required. As Mr. Phillips points out, PPL's OnTrack design includes a rate discount component. As rates increase, they will be partially but not totally discounted through such a design. Low income CAP customers participating in OnTrack may therefore be vulnerable to rate increases. That vulnerability must be addressed and cannot simply be ignored.

PPL makes a number of arguments about the benefits of OnTrack. All of these arguments miss the overall point. CAP programs, such as OnTrack, are essential and do provide benefits; however, low income families who have fixed incomes will be unable to continue paying for utility service because of the significant increases in the cost of utility services (cumulative costs from a number of proceedings) which will not be fully set off through CAP or other mechanisms. These families, in increasing numbers, will need the kind of help CAPs can provide and will need the Commission to ensure that CAP payment requirements reflect a realistic energy burden capable of being borne by a low income utility consumer.

IV. CONCLUSION

The cumulative effect of the increasing costs of utility service will be that it is impossible for low income households, particularly those with fixed incomes, to keep pace with utility costs. As a result, low income customers will turn to CAPs for help or fall behind on their payments and face termination. The increased importance of CAPs and all Universal Service programs will require attention from utilities and the Commission. The implementation of smart meter technology is one of the reasons this focus will be necessary.

Respectfully submitted,

Julie George

Harry S. Geller, Esquire
John C. Gerhard, Esquire
Julie George, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
Phone: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net
Counsel for ACORN

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