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February 17, 2010

HAND DELIVERED

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

Re: Duquesne Light Company Smart Meter Procurement and Installation Plan
Docket No. M-2009-2123948

Dear Secretary McNulty:

Enclosed for filing are the original and nine (9) copies of the Exceptions, on behalf of the Office of Small Business Advocate, in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

Enclosures

cc: Cheryl Walker Davis
Office of Special Assistants

Robert D. Knecht

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF DUQUESNE LIGHT	:	
COMPANY FOR APPROVAL OF	:	
SMART METER PROCUREMENT	:	DOCKET NO. M-2009-2123948
AND INSTALLATION PLAN	:	

EXCEPTIONS ON BEHALF OF THE OFFICE OF SMALL BUSINESS ADVOCATE

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Dated: February 17, 2010

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I. INTRODUCTION

Each electric distribution company ("EDC") with at least 100,000 customers was required to file a smart meter technology procurement and installation plan ("SMIP") with the Pennsylvania Public Utility Commission ("Commission") pursuant to Act 129 of 2008. Duquesne Light Company ("Duquesne" or "Company") filed its SMIP on August 14, 2009.

The Office of Small Business Advocate ("OSBA") filed a Notice of Intervention and Public Statement on September 25, 2009. Other parties to this proceeding include the Commission's Office of Trial Staff ("OTS"); the Office of Consumer Advocate ("OCA"); the Duquesne Industrial Intervenors ("DII"); the Commonwealth of Pennsylvania, Department of Environmental Protection ("DEP"); Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (collectively, "Constellation"); Citizen Power ("Citizen"); and the Pennsylvania Association of Community Organizations for Reform Now ("ACORN").

The OSBA filed a pre-hearing memorandum and participated in the pre-hearing conference on October 7, 2009, before Administrative Law Judge ("ALJ") Robert P. Meehan. In accordance with the Commission's prior notice, a technical conference was held on October 27, 2009, in Harrisburg before ALJ Louis G. Cocheres.

The OSBA filed the Rebuttal Testimony of its witness, Robert D. Knecht, on November 6, 2009.

An evidentiary hearing took place on November 17, 2009, at which the parties submitted their testimony for the record. ALJ Meehan admitted the testimony and exhibits into the record.

The OSBA and other parties submitted Main Briefs on December 8, 2009, pursuant to the procedural schedule set forth in the October 7, 2009, Prehearing Order of ALJ Meehan.

Reply Briefs were filed by the OSBA and other parties on December 22, 2009.

The Commission issued ALJ Meehan's Initial Decision ("ID") on January 28, 2010.

II. EXCEPTIONS

Exception No. 1. The ALJ erred in rejecting Duquesne's recommendation to allocate the common costs based on the number of meters in each rate class group. (ID at 19)

A. Introduction

For cost allocation and cost recovery purposes, Duquesne's SMIP proposed that customers be assigned to one of two rate class groups: customers with single-phase service and customers with poly-phase service.[1] No party contested Duquesne's proposal to assign meters costs directly to the rate class group for which the costs are incurred.[2] Therefore, the dispute in this case regarding the allocation of costs between these two rate class groups was limited to the allocation of "common costs," *i.e.,* "costs for infrastructure to collect, back haul, store and bill the customer, all of which are required to implement the Plan and make the smart meter fully functional regardless of meter type."[3]

Regarding common costs, the OSBA supported the Company's recommendation to allocate those costs on the basis of the relative number of meters in each rate class group. However, the OSBA also provided an alternative in response to the OCA's proposal, in case the Commission rejected the Company's recommended allocation.[4]

ALJ Meehan rejected Duquesne's common costs allocation proposal as an "unreasonable allocation of common costs to the single-phase meter group, the members

[1] OSBA Main Brief at 6, *citing* Duquesne Petition, Exhibit D, at 9.

[2] OSBA Main Brief at 7.

[3] OSBA Main Brief at 7. *See also* ID at 15.

[4] OSBA Main Brief at 7-8.

of which are primarily residential customers."[5] He also dismissed the OCA's proposal as "both theoretical and speculative as to which and how customers in the various classes will 'benefit' from the SMP and, in my opinion, is not based on reasonable cost of service practices . . . ."[6] Finally, the ALJ recommended approval of the OSBA's alternative because "this cost allocation method would provide some relief to the residential and small C&I customers in the single-phase meter rate class group without the dramatic increase in costs proposed by the OCA for the small C&I and large C&I customers in the poly-phase meter rate class class group and is consistent with reasonable cost of service practices."[7]

The OSBA excepts to the ALJ's rejection of Duquesne's proposal for allocating the common costs for two reasons. First, although the OSBA proposed the alternative recommended by the ALJ, the OSBA's preferred allocation was, and is, the one proposed by Duquesne. Second, the ALJs in two other SMIP proceedings pending before the Commission have recommended approval of the same common costs allocation methodology proposed by Duquesne in this proceeding.

B. OSBA's Preferred Allocation

The OSBA supported Duquesne's common costs allocation proposal because what Duquesne has characterized as "common costs" are what the Commission has labeled as "costs that provide benefit across multiple classes." According to the

[5] Initial Decision at 19.

[6] Initial Decision at 19.

[7] Initial Decision at 19-20.

Commission, these costs "should be allocated among the appropriate classes *using reasonable cost of service practices*."[8] (emphasis added)

Section 2807(f)(7) of the Public Utility Code, 66 Pa. C.S. §2807(f)(7), states that "[a]n electric distribution company may recover reasonable and prudent costs of providing smart meter technology" through base rates or "through a reconcilable automatic adjustment clause under section 1307."

With regard to the allocation of these costs among the rate class groups, the Commission has offered the following guidance:

> The Commission will require that all measures associated with an EDC's smart metering plan shall be financed by the customer class that receives the benefit of such measures. In order to ensure that proper allocation takes place, it will be necessary for the utilities to determine the total costs related to their smart metering plans, as discussed in E.1. Once these costs have been determined, we will require the EDC to allocate those costs to the classes whom derive benefit from such costs. Any costs that can be clearly shown to benefit solely one specific class should be assigned wholly to that class. Those costs that provide benefit across multiple classes should be allocated among the appropriate classes using reasonable cost of service practices.[9]

Duquesne's common costs include infrastructure costs such as meter data management system costs, network costs, and administrative costs.[10] Costs of this nature "are classified as 'customer-related,' and are allocated to each class based on a weighted or unweighted customer allocator."[11] Duquesne has classified these costs as "customer-related" and has proposed to allocate them to each rate class group through an

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[8] *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009) ("Implementation Order"), at 32.

[9] *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009) ("Implementation Order"), at 32.

[10] OSBA Main Brief at 9, *citing* Duquesne Exhibit D-R at 6.

[11] OSBA Main Brief at 9, *citing* OSBA Statement No. 1 at 5.

unweighted customer allocator, *i.e.*, on the basis of the relative number of meters in each rate class group.[12] OSBA witness Mr. Knecht concluded that Duquesne's proposal for allocating the common costs is "within the range of normal cost allocation practice for these costs."[13] DII witness Richard Baudino reached a similar conclusion, *i.e.*, that "[t]o the extent common costs cannot be directly assigned, . . . they should be allocated on the basis of the number of meters since they are customer-related costs."[14]

C. Other Pending SMIP Proceedings

In addition to the record evidence in this proceeding, the findings of other ALJs are supportive of the common costs allocation approach proposed by Duquesne. As all EDCs with at least 100,000 customers were required to file SMIPs pursuant to Act 129 of 2008, three other EDCs -- PECO, First Energy, and PPL Electric -- filed cases that are on virtually the same timeline as Duquesne.

The PPL Electric SMIP proceeding is less relevant, because the cost allocation issue was not contested. Moreover, PPL Electric has already installed smart meters and much of the supporting infrastructure, and is already recovering those costs in base rates.[15]

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[12] OSBA Main Brief at 9, *citing* Duquesne Exhibit D-R at 6.

[13] OSBA Main Brief at 10, *citing* OSBA Statement No. 1 at 5.

[14] OSBA Main Brief at 10, *citing* DII Statement No. 1 at 8.

[15] *Petition of PPL Utilities Corporation for Approval of a Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123945 (Initial Decision issued January 28, 2010), at 6 (all customers have smart meters), and at 13 (the infrastructure (AMI) already has much of the functionality required), and at 34 (costs and benefits recognized in 2004 base rates proceeding).

However, in both the PECO and First Energy SMIP proceedings, the cost allocation issue was contested. Furthermore, the Initial Decisions recommend that the allocation of common costs be based on the number of meters in each class.[16]

Specifically, in the PECO matter, ALJ Marlane Chestnut recommended approval of the EDC's proposal to allocate the common costs among classes based on the number of customers in each class because such costs vary with the number of customers regardless of usage.[17] According to ALJ Chestnut (who agreed with PECO), using this allocator complies with the Implementation Order's directive that costs not directly assigned should be allocated "using reasonable cost of service practices" and is consistent with the cost of service allocations used by the Commission for many years to allocate metering and customer accounting costs among customer classes.[18]

Similarly, in the First Energy SMIP proceeding, the EDCs also "proposed to allocate common costs among classes based on each class' number of customers consistent with the Implementation Order's directive that costs not directly assigned should be allocated 'using reasonable cost of service practices.'"[19] In recommending approval of the EDCs' proposal to allocate common costs based on the number of meters, ALJ Susan Colwell found that because these costs will be incurred without regard to energy consumption or customer demand, and because the smart meter technology will

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[16] *See Petition of PECO Energy Company for Approval of its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123944 (Initial Decision issued January 28, 2010), at 26. *See also Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of Smart Meter Technology and Procurement Installation Plan,* Docket No. M-2009-2123950 (Initial Decision issued January 28, 2010), at 55.

[17] PECO SMIP Initial Decision at 26.

[18] PECO SMIP Initial Decision at 26.

[19] FE SMIP Initial Decision at 48, *citing* Companies' Statement No. 3-R at 2-4 and Companies' Main Brief at 38.

be provided to all metered customers, any costs relating to the Companies' SMIP that cannot be directly assigned to a specific customer class should be allocated based on the number of customers in each class, as the Companies propose.[20]

There is no basis for the Commission to treat the allocation of common costs differently among EDCs. Therefore, if the Commission adopts the recommendations to allocate common costs based on the number of meters in each rate class or rate class group in the PECO SMIP and the First Energy SMIP proceedings, then the Commission should accept Duquesne's proposal to allocate common costs in a similar fashion.

Exception No. 2. The ALJ erred in applying a blanket approval to Duquesne's acceptance of proposed SMIP modifications, as such blanket approval applies to the issue of the OCA's proposal for single-phase customer rate design. (ID at 37 and 38)

Duquesne proposed to segregate its customers into two rate class groups for the purposes of SMIP cost allocation and cost recovery. The first rate class group is comprised of Residential customers and those small commercial and industrial ("Small C&I") customers who take service through a single-phase meter. The second rate class group is comprised of large commercial and industrial ("Large C&I") customers and those Small C& I customers who take service through a poly-phase meter.[21] No party has explicitly opposed this composition of the rate class groups.

Duquesne proposed to recover its SMIP costs through a reconcilable surcharge mechanism for customers taking service through single-phase meters and for customers

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[20] FE SMIP Initial Decision at 55.

[21] OSBA Main Brief at 3; OSBA Statement No. 1 at 2; Duquesne Petition, Exhibit D, at 9, lines 1-12; and Duquesne's response to OSBA I-1. (The referenced interrogatory response is attached to OSBA Statement No. 1 in Exhibit IEc-R2.)

taking service through poly-phase meters. In direct testimony, Duquesne witness Mr. William Pfrommer proposed to recover both meters and common costs via a customer charge, *i.e.,* each customer within a rate class group (single-phase or poly-phase) would pay exactly the same amount regardless of consumption.[22]

In the ID, ALJ Meehan summarized Duquesne's rate design proposal to be that "[t]he SMC [smart meter charge] rate will be a fixed rate per meter per month calculated by dividing the projected SMRR [smart meter revenue requirement] by the forecast meters and customer bills for the coming period." ALJ Meehan then concluded that "[n]o party objects to the proposed SMC."[23]

The ALJ is not correct that the rate design mechanism is uncontested. Duquesne's original proposal that the SMC be a fixed rate per meter per month was explicitly contested by the OCA.[24] As an alternative, the OCA proposed that the costs "assigned or allocated to residential customer[s]" be recovered within the Residential rate class group via a dollars-per-month charge for the meters costs and a cents-per-kWh charge for the common costs.[25] In rebuttal testimony, Duquesne agreed to adopt this proposal for Residential customers.[26]

[22] OSBA Main Brief at 15, *citing* Duquesne Petition, Exhibit D, at 9 and Exhibit D-R, at 6.

[23] Initial Decision at 20.

[24] OSBA Main Brief at 16, *citing* OCA Statement No. 2, at 11-13.

[25] OSBA Main Brief at 16, *citing* OCA Statement No. 2 at 11-13.

[26] Duquesne Exhibit D-R, Rebuttal Testimony of William V. Pfrommer, at 4-5.

Because neither the OCA's proposal nor Duquesne's acceptance of it were consistent with the rate class groups in Duquesne's SMIP, the OSBA objected to the OCA's proposal.[27]

Both the OCA's proposal and the Company's acceptance of it were based on the faulty premise that Duquesne's proposal was a "customer class specific surcharge per customer" which would affect Residential customers differently from Small C&I customers in the single-phase meter rate class group.[28] In Duquesne's SMIP, however, there are only two rate class groups, *i.e.,* single-phase customers and poly-phase customers. The SMC for single-phase customers applies to *all* single-phase customers, be they residential or non-residential customers. Therefore, to implement the OCA's rate design proposal for only Residential customers would require development of a separate residential SMC. Specifically, it would be necessary to segregate the SMIP costs for single-phase service between residential and non-residential customers.

In its Reply Brief, the OSBA pointed out that the OCA's rate design must be rejected because no party has presented evidence as to how the costs would be allocated to separate rate classes within the rate class groups (*i.e.,* Residential and Small C&I in the single-phase meter group).[29] Duquesne appears generally to agree that such cost allocation is unresolved, as it indicated in its Main Brief that "[t]he exact split of cost is

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[27] OSBA Reply Brief at 14.

[28] OSBA Main Brief at 16, *citing* OSBA Statement No. 1 at 6, fn.3.

[29] OSBA Reply Brief at 14-15.

not known at this point. This redesign would be made in the first compliance filing to implement the SMC."[30]

The ALJ did not address these issues directly. Moreover, the ALJ created confusion by providing a blanket approval to all modifications to which Duquesne had conceded.[31]

Specifically, Conclusion of Law No. 5 provides that "[a]ny adjustment, modification, revision to the proposed SMP which were made by any party and accepted by Duquesne should be included in a revised SMP to be filed with the Commission."[32] Conclusion of Law No. 6 further provides that "[t]he Commission should approve Duquesne's acceptance of adjustments, modifications, revisions, etc., to the proposed SMP made by several parties to this proceeding."[33]

The ALJ's implicit approval of Duquesne's acceptance of the OCA rate design proposal creates an inconsistency within the Initial Decision. The ALJ rejected the proposal of the OCA that common costs be allocated between the two rate class groups on the basis of energy use and peak demand.[34] In rejecting the OCA's proposal, the ALJ cited to Duquesne's testimony, which generally indicated that the functions of the common infrastructure (collecting, back hauling, storing and maintaining data) are

[30] Duquesne Main Brief at 33. It is notable that Duquesne's Main Brief pointed to no record evidence supporting the need to defer this cost allocation analysis to a compliance filing or explaining the guidelines for implementing the OCA's proposal in the compliance filing.

[31] Initial Decision at 37.

[32] *Initial Decision at 37, Conclusion of Law No. 5.*

[33] Initial Decision at 37, Conclusion of Law No. 6.

[34] Initial Decision at 19.

required equally for each meter regardless of benefits realized or size of the customer.[35] Furthermore, in Ordering Paragraph No. 2(f), the ALJ directed Duquesne to "allocate the common costs of the smart meter deployment among the customer classes in proportion to the meter costs directly allocated to each customer class as proposed by the Office of Small Business Advocate."[36]

However, the ALJ also directed Duquesne to implement all SMIP modifications to which the Company had agreed. The Company accepted the OCA's proposal that common costs for Residential customers be recovered via a per kWh charge.[37] Therefore, in effect, the ALJ has recommended approval of a cost allocation mechanism that expressly excludes consideration of energy use as an allocation factor, but has recommended approval of a rate design mechanism based on energy use. Unfortunately, the ID provides no guidance as to why the rate design should not be consistent with the cost allocation principles, nor does it explain how SMIP costs for single-phase service should be segregated between residential and non-residential service.

As set forth in the OSBA's briefs, no party has presented any evidence as to the composition of separate rate class groups (Residential and Small C&I) within the single-phase meter group or how costs should be allocated among them. Moreover, the OSBA objects to the Company's proposal that this matter be deferred until a compliance filing for implementing the SMC.[38] The parties have had ample opportunity in this proceeding to propose alternative methodologies for allocating SMIP costs and to propose coherent

[35] Initial Decision at 19, *citing* Duquesne Exhibit D-R at 6.

[36] Initial Decision at 38, Ordering Paragraph No. 2(f).

[37] OSBA Reply Brief at 14, *citing* Duquesne Main Brief at 33.

[38] *See* Duquesne Main Brief at 33.

and complete tariff mechanisms for the recovery of these costs. In the absence of necessary evidence for allocating costs within the single-phase customer group, the OCA's proposed Residential rate design mechanism, and Duquesne's acceptance of it, should be rejected.

III. CONCLUSION

For the reasons set forth above and in its Main and Reply Briefs, the OSBA respectfully requests that the Commission approve Duquesne's proposed common cost allocation method in which costs are allocated between the two rate class groups based on the number of meters in each group. In addition, the OSBA respectfully requests that the Commission approve Duquesne's originally filed cost recovery methodology, in which the SMIP costs assigned to each rate class group are recovered through a fixed monthly customer charge.

Respectfully submitted,

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February 17, 2010

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company	:	
For Approval of its Smart Meter	:	Docket No. M-2009-2123948
Procurement and Installation Plan	:	

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Exceptions, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise noted) upon the persons addressed below:

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