



McNees
Wallace & Nurick LLC

100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Carl J. Zwick
Direct Dial: 717.237.5271
Direct Fax: 717.260.1788
czwick@mwn.com

February 17, 2010

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

Dear Secretary McNulty:

Enclosed for filing with the Pennsylvania Public Utility Commission are the original and nine (9) copies of the Exception of the Duquesne Industrial Intervenors ("DII") to the Initial Decision of Administrative Law Judge Robert P. Meehan, issued on January 28, 2010, in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and Exception, and kindly return them to our messenger for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By

Carl J. Zwick

Counsel to the Duquesne Industrial Intervenors

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Enclosures

- c: Administrative Law Judge Robert P. Meehan (via E-mail and First-Class Mail)
- Cheryl Walker Davis, Director, Office of Special Assistants (via E-mail and Hand Delivery)
- Certificate of Service

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**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 :

**EXCEPTION OF THE
DUQUESNE INDUSTRIAL INTERVENORS**

Pamela C. Polacek (I.D. No. 78276)
Carl J. Zwick (I.D. No. 306554)
McNEES WALLACE & NURICK LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone (717) 232-8000
Fax (717) 237-5300
ppolacek@mwn.com
czwick@mwn.com

Counsel for the Duquesne Industrial
Intervenors

Dated: February 17, 2010

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

I. INTRODUCTION1

II. EXCEPTION5

 A. Exception No. 1: The I.D. Erred in Concluding That the
 Company's Smart Meter Plan Common Costs Should be Allocated
 Among Customer Classes In the Same Proportion as the Direct
 Costs Allocated To Each Customer Class. (I.D., pp. 15-20)5

III. CONCLUSION.....10

I. INTRODUCTION

On October 15, 2008, Governor Rendell signed into law House Bill 2200, or Act 129 of 2008 ("Act 129" or "Act"). Among other things, Act 129 expands the Pennsylvania Public Utility Commission's ("PUC" or "Commission") oversight responsibilities and sets forth new requirements on Electric Distribution Companies ("EDCs")¹ for energy conservation, default service procurements, and the expansion of alternative energy sources.

With regard to advanced meter infrastructure, Act 129 defines minimum smart meter technology capabilities and requires EDCs to develop and adopt a plan, approved by the Commission, to procure and install throughout their territories smart meter technology "upon request from a customer that agrees to pay the cost of the smart meter" and all "new building construction." 66 Pa. C.S. §§ 2807(1), (2)(i)-(2)(ii). According to the Act, the purpose of this smart meter technology is to "provide customers with direct access to and use of price and consumption information" as well as to:

- (1) Directly provide customers with information on their hourly consumption[;]
- (2) Enable time-of-use rates and real-time price programs[; and]
- (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) a third party engaged by the customer or the customer's utility.

¹ As articulated in the Act, only EDCs with at least 100,000 customers are required to submit smart meter plans. See 66 Pa. C.S. § 2806.1, *et seq.*

Id. at § 2807(g)(1)-(3). Finally, the Act provides that all EDCs "may recover reasonable and prudent costs of providing smart meter technology . . . as determined by the Commission" through either base rates or "on a full and current basis through a reconcilable automatic adjustment clause under section 1307." Id. at § 2807(f)(7).

In concert with Act 129, on June 24, 2010, the Commission issued an Implementation Order establishing the substantive standards and guidance for EDCs in preparing and submitting their smart meter technology procurement and installation plans. See Smart Meter Procurement and Installation, Docket No. M-2009-2092655 (Order entered June 24, 2009) ("Implementation Order"). With respect to recovery of smart meter costs, the Implementation Order states:

The Commission will allow each EDC to develop a reconcilable adjustment clause tariff mechanism in accordance with 66 Pa.C.S. § 1307 and include this mechanism in its Smart Meter Plan. Such a mechanism shall be designed to recover, on a full and current basis from each customer class, all prudent and reasonable smart meter costs less operating and capital cost savings realized by the EDC from the installation and use of smart meter technology. The mechanism shall be set forth in the EDC's tariff, accompanied by a full and clear explanation as to its operation and applicability to each customer class. The tariff mechanism will be subject to an annual review and reconciliation in accordance with 66 Pa.C.S. § 1307(e).

Implementation Order, p. 31. Regarding allocation of these costs, the Implementation Order further states:

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 [. . .]. 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.

Id. at 32. In other words, both Act 129 and the Commission's Implementation Order require all EDCs to allocate the resulting smart meter costs to the customer classes on a cost causation basis using established cost of service principles.

As required by Act 129, on August 14, 2009, Duquesne Light Company ("Duquesne" or "Company") submitted a Petition for Approval of its Smart Meter Technology Procurement and Installation Plan ("Petition"). The Company's Smart Meter Technology Procurement and Installation Plan ("Smart Meter Plan" or "Plan") was attached to the Petition.

On September 25, 2009, the Duquesne Industrial Intervenors ("DII") filed a Petition to Intervene in this proceeding in order to protect its members' interests. DII's Petition to Intervene was granted by Administrative Law Judge ("ALJ") Robert P. Meehan at the October 7, 2009, Prehearing Conference.

Consistent with the established schedule, DII provided one prepared testimony statement. On October 29, 2009, DII circulated a letter to the ALJ and the parties indicating that DII would not be submitting direct testimony. On November 6, 2009, DII circulated DII Statement No. 1-R, the Rebuttal Testimony and Exhibits of Mr. Richard A. Baudino (hereinafter, "DII St. 1-R"). On November 12, 2009, DII submitted a letter indicating that DII would not be submitting Surrebuttal Testimony. DII St. 1-R was entered into the record at the evidentiary hearing held on November 17, 2009.

On December 8, 2009, and December 22, 2009, respectively, DII filed a Main Brief and Reply Brief on behalf of its Large Commercial and Industrial ("C&I") members, addressing certain issues raised during the course of the Smart Meter Plan proceeding with respect to the Company's proposed allocation of Smart Meter Plan costs and cost recovery mechanism. DII

received Main and Reply Briefs from the Company; the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); the Office of Trial Staff ("OTS"); the Pennsylvania Department of Environmental Protection ("DEP"); Citizen Power, Inc. ("Citizen"); Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. ("Constellation"); and Association of Community Organizers for Reform Now ("ACORN").² The parties that submitted Briefs addressing issues related to cost allocation and cost recovery included the Company; DII; the OSBA; and the OCA. DII and the OSBA both supported the Company's cost allocation methodology, as filed. Specifically, DII and the OSBA agreed that common costs of the Smart Meter Plan should be allocated pursuant to the number of meters on the Company's system. As an alternative proposal, however, the OSBA suggested that Duquesne allocate common costs among the customer classes in the same proportion as the Company allocated its direct meter costs. The OCA opposed the Company's proposed common cost allocation approach and, instead, suggested that the Company allocate such costs on an energy and/or demand basis.

On January 21, 2010, ALJ Meehan issued his Initial Decision ("I.D.") in this proceeding. Among other things, the I.D. recommended that the Commission reject both the Company's and the OCA's common cost allocation approaches and adopt the OSBA's alternative cost allocation proposal.

For the reasons set forth below, and pursuant to Section 5.533 of the Commission's Regulations, 52 Pa. Code § 5.533, DII hereby files this limited exception urging the Commission to reject the ALJ's determination that the common costs of the Company's Smart Meter Plan

² ACORN submitted only a Reply Brief in this proceeding.

should be allocated among customer classes in the same proportion as the Company's direct meter costs.

II. EXCEPTION

- A. ***Exception No. 1: The I.D. Erred in Concluding That the Company's Smart Meter Plan Common Costs Should be Allocated Among Customer Classes In the Same Proportion as the Direct Costs Allocated To Each Customer Class. (I.D., pp. 15-20).***

In accordance with Act 129 and the Implementation Order's clear mandate, Duquesne's Smart Meter Plan proposes to recover the costs of the procurement and installation of smart meters in its territory through a non-bypassable Section 1307 mechanism ("Smart Meter Charge"). See Duquesne Exhibit D, Direct Testimony of William V. Pfrommer ("Duquesne Ex. D"), pp. 4, 12. For purposes of allocating and collecting the costs associated with the Smart Meter Plan, the Company proposes to divide customers into two classes: (1) customers with single-phase meters; and (2) those with poly-phase meters. The Smart Meter Charge would assign the direct cost of customer meters to each respective customer class. See id. The Company proposes to apply the Smart Meter Charge to the applicable fixed monthly charge of the tariff rate schedules. Id. at 12. For all costs that are not directly assignable to an individual customer class (e.g., the costs of administering the Company's smart meter data management system and the smart meter network itself), Duquesne proposes to allocate these common costs to each customer class based upon the total number of customers in each class. See Duquesne Exhibit D-R, Rebuttal Testimony of William V. Pfrommer ("Duquesne Ex. D-R"), pp. 5-8. The Company reasons that this allocation approach is reasonable "because the number of meters drives these costs which are incurred to support the smart meter infrastructure" and because the costs per meter are consistent "to make the smart meter fully functional regardless of the meter type." Id. at 6, 9.

Duquesne's approach for allocating both the direct and common costs of the Smart Meter Plan is squarely within the Commission's long-standing precedent for establishing rates based on a utility's cost of providing the service. Specifically, the Commonwealth Court and the Commission have clearly held that a utility's cost of providing service must be the guiding principle – or "polestar" – in utility ratemaking. See Lloyd v. Pa. Pub. Util. Comm'n, 904 A.2d 1010, 1020 (Pa. Commw. Ct. 2006); see also, e.g., Pa. Pub. Util. Comm'n v. Philadelphia Gas Works, Docket Nos. R-2008-2073938, 2009 WL 884424 *5 (Order entered Mar. 26, 2009) (upholding natural gas utility rates as consistent with Lloyd by reason of the rates being properly derived from a cost of service analysis and subject to cost of service review in future base rate case). The Commission has since applied the Court's directive in Lloyd by recognizing that, while other factors may be considered, cost of service should be the primary consideration for ratemaking purposes. See, e.g., Pa. Pub. Util. Comm'n v. PPL Elec. Utilities Corp., Docket No. 00049255, 2007 WL 2198189 *7-10 (Order entered Jul. 25, 2007) (PUC order citing Lloyd in support of settlement of distribution rate increase based on cost of service principles).

In the context of smart meter procurement and installation programs, the Commission's Implementation Order unequivocally requires that "[a]ny costs that can be clearly shown to benefit solely one specific class should be assigned wholly to that class[,]" while "[t]hose costs that provide benefit across multiple classes should be allocated among the appropriate classes using reasonable cost of service practices." Implementation Order, p. 32. In other words, the Commission is requiring the application of cost of service principles to allocate costs in these proceedings. By analyzing both the direct and common costs of the Smart Meter Plan and *determining that each of these categories of costs should be allocated based either on direct customer causation or, in the case of the common costs, on the number of customers in each*

class, Duquesne has clearly followed the cost of service ratemaking requirement established by the Commonwealth Court and required by the Commission in this proceeding.

Specifically, as Duquesne witness, Mr. Pfrommer, testified:

The Company has proposed to allocate common costs on the principle of cost causation using reasonable cost of service practices. [T]he primary functions of the common infrastructure . . . are to collect, back haul, store, manage, maintain and protect the data required to bill the customer. All of these functions will be required for every hour of the day, and will require the same resources regardless of the customer or customer class from which the data is collected.

Duquesne Ex. D-R, p. 6. DII fully agrees with this analysis, as demonstrated by Mr. Baudino's testimony:

To the extent common costs cannot be directly assigned, I also agree with Duquesne and Mr. Pfrommer that they should be allocated on the basis of the number of meters since they are customer-related, or meter-related, costs. The costs do not depend on the level of demand or energy consumed by Duquesne's customers and should not be allocated on such a basis. Further, allocation of these common costs should not be based on hypothetical and non-quantified future "benefits" that may or may not occur for certain classes.

DII Main Brief (M.B.), pp. 7-8; DII St. 1-R, p. 8; see also, Nat'l Ass'n of Regulatory Util. Comm'n'rs, Elec. Util. Cost Allocation Manual, p. 22 (Jan. 1992) (describing generally accepted cost of service principles). Duquesne adhered to the Commission's mandate to allocate Smart Meter Plan costs on a cost of service basis.

In rejecting the Company's cost allocation proposal, the I.D. not only ignores PUC and Commonwealth Court ratemaking precedent, but also fails to recognize reasonable cost of service principles, as required by Act 129 and the Commission's Implementation Order. Moreover, by accepting the OSBA's alternative proposal to allocate common costs among customer classes in the same proportion as the Company's direct meter costs, the I.D. attempts to

"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 group." I.D., pp. 19-20. Despite the I.D.'s effort to find a "middle ground" between the proposals of the Company and the OCA, neither the I.D. nor the OSBA puts forth any evidence regarding the cost impact of the OSBA's alternative proposal. Indeed, the OSBA does not provide any support to: (1) demonstrate that its alternative proposal is consistent with reasonable cost of service principles; or (2) illustrate that its alternative cost allocation approach would produce just and reasonable rates.

On the other hand, the OSBA's witness, Mr. Knecht, expressly recognized:

The common costs associated with the SMIP are metering, billing, and customer service costs. In utility cost of service studies ("COSS"), such costs are usually classified as "customer-related," and are allocated to each class based on weighted or unweighted customer allocators. Duquesne proposes to use an unweighted meter allocator, which I believe to be within the range of normal cost allocation practice for these costs.

OSBA Statement No. 1, Rebuttal Testimony of Robert D. Knecht ("OSBA St. 1"), p. 5. In suggesting that, if the PUC does not adopt the Company's cost allocation proposal, the Commission should adopt the OSBA's alternative approach in lieu of the OCA's proposal, Mr. Knecht continued:

An alternative approach would be to allocate the common costs of the SMIP in proportion to the direct costs of the SMIP. Relative to Duquesne's proposal, this approach would shift some costs away from the single-phase service rate class group and to the multi-phase service rate class group. This is the approach proposed by PPL Electric Utilities, Inc. ("PPL") in its concurrent SMIP proceeding.

Id. The OSBA broadly asserts that, under its alternative proposal, some costs would be shifted from the single-phase meter group to the multi-phase meter group without presenting evidence of

the impact of that proposal. Thus, the PUC lacks the necessary evidence to conclude that the resulting rates will be just, reasonable, and not unduly discriminatory. See 66 Pa. C.S. §§ 1301 and 1304.

Moreover, it is ill-conceived to suggest that, because PPL proposed this same alternative cost allocation approach in its Smart Meter Plan proceeding, the approach might also be suitable in Duquesne's case. With PPL, the vast majority of customers throughout its service territory are already equipped with "smart" meters. PPL's plan focuses primarily on conducting various pilot programs to enhance the capabilities of its current metering for residential and small commercial customers. Duquesne is in a different stage of development because its residential and small commercial customer do not have the same level of technology. PPL's and Duquesne's current meters for larger customers, however, do meet the basic requirements for smart meters. See DII M.B., p. 10; Duquesne Ex. D-R, p. 7; see also DII St. 1-R, pp. 6-7. Thus, differing cost allocation approaches are defensible for each company.

There is no record evidence that the OSBA's alternative cost allocation proposal is consistent with reasonable cost of service principles or that such a proposal would generate just and reasonable rates for Duquesne's customers. As such, the Commission should reject the I.D.'s analysis of this issue, grant DII's Exception, and adopt the Company's cost allocation proposal, as filed.

III. CONCLUSION

WHEREFORE, the Duquesne Industrial Intervenors respectfully request that the Commission:

1. Reject the Initial Decision's conclusion to allocate the common costs of Duquesne Light Company's Smart Meter Plan among customer classes in the same proportion as the direct meter costs of the Plan; and
2. Adopt Duquesne Light Company's cost allocation proposal, as filed.

Respectfully submitted,

MCNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek (Pa. I.D. 78276)

Carl J. Zwick (Pa. I.D. 306554)

100 Pine Street

P. O. Box 1166

Harrisburg, PA 17108-1166

717-232-8000

717-260-5300 (fax)

ppolacek@mwn.com

czwick@mwn.com

Counsel for the Duquesne Industrial Intervenors

Dated: February 17, 2010

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant):

VIA E-MAIL AND FIRST-CLASS MAIL

David T. Evrard, Esq.
Tanya J. McCloskey, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
devrard@paoca.org
tmccloskey@paoca.org

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

Charles Daniel Shields, Esq.
Adeolu Bakare, Esq.
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265
chshields@state.pa.us
abakare@state.pa.us

Gary Jack, Esq.
Erin H. Creahan, Esq.
Duquesne Light Company
411 Seventh Ave. 16-1
Pittsburgh, PA 15219
gjack@duqlight.com
ecreahan@duqlight.com

Kurt E. Klapkowski, Esq.
Commonwealth of Pennsylvania
Department of Environmental Protection
RCSOB, 9th Floor
400 Market Street
Harrisburg, PA 17101-2301
kklapkowski@state.pa.us

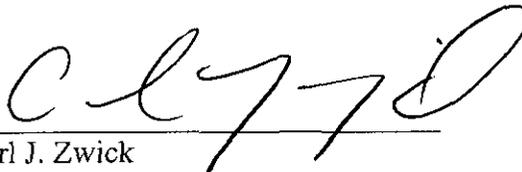
Harry S. Geller, Esq.
John C. Gerhard, Esq.
Julie George, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
hgellerpulp@palegalaid.net
jgerhardpulp@palegalaid.net
jgeorgepulp@palegalaid.net

Christopher A. Lewis, Esq.
Christopher R. Sharp, Esq.
Blank Rome, LLP
One Logan Square
Philadelphia, PA 19103-6998
lewis@blankrome.com
sharp@blankrome.com

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Page 2

Theodore S. Robinson, Esq.
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
robinson@citizenpower.com



Carl J. Zwick

Counsel to the Duquesne Industrial Intervenors

Dated this 17th day of February, 2010, in Harrisburg, Pennsylvania.