

COMMONWEALTH OF PENNSYLVANIA



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March 1, 2010

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

RE: Joint Petition of Metropolitan Edison  
Company, Pennsylvania Electric Company  
and Pennsylvania Power Company for  
Approval of Smart Meter Technology  
Procurement and Installation Plan  
Docket No. M-2009-2123950

Dear Secretary McNulty:

Enclosed for filing are the Reply Exceptions of the Office of Consumer Advocate to the Initial Decision issued on January 28, 2010 by the Honorable Susan D. Colwell, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Aron J. Beatty".

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Assistant Consumer Advocate  
PA Attorney I.D. # 86625

Enclosures

cc: Honorable Susan D. Colwell

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition of Metropolitan Edison :  
Company, Pennsylvania Electric Company :  
and Pennsylvania Power Company for : Docket No. M-2009-2123950  
Approval of Smart Meter Technology :  
Procurement and Installation Plan :

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REPLY EXCEPTIONS OF THE  
OFFICE OF CONSUMER ADVOCATE

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Dated: March 1, 2010

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## I. INTRODUCTION

On August 14, 2009, Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (collectively FirstEnergy Companies or Companies) filed a Joint Petition for Approval of Smart Meter Technology Procurement and Installation Plan (Joint Petition) pursuant to Act 129, 66 Pa.C.S. § 2807, and the Public Utility Commission's (Commission) Implementation Order.<sup>1</sup> In addition to the Office of Consumer Advocate (OCA), the following parties participated in this proceeding: The Office of Trial Staff (OTS), Department of Environmental Protection (DEP), Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, and Penn Power Users Group (collectively MEIUG *et al.*), Office of Small Business Advocate (OSBA), the Pennsylvania Association of Community Organizations for Reform Now (ACORN), and Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (collectively Constellation).

Comments to the FirstEnergy Companies' Joint Petition and proposed Smart Meter Technology Procurement and Installation Plan (SMIP) were filed by the OCA, OTS, DEP and ACORN on September 25, 2009. An Initial Prehearing Conference was convened by Administrative Law Judge Susan D. Colwell (ALJ) on September 28, 2009. A technical conference was held in this matter before ALJ David A. Salapa on October 20, 2009.

Hearings were held before ALJ Colwell on November 19, 2009. During hearings, the following testimonies of the OCA's witnesses were admitted into the record: Direct Testimony of J. Richard Hornby (OCA St. 1); Direct Testimony of Nancy Brockway (OCA St. 2); Surrebuttal Testimony of J. Richard Hornby (OCA St. 1S); and Surrebuttal Testimony of Nancy

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<sup>1</sup> Re: Smart Meter Procurement and Installation, Docket No. M-2009-2092655 (Order entered June 24, 2009) (Implementation Order).

Brockway (OCA St. 2S). Main Briefs were submitted by various parties, including OCA, on December 11, 2009, and Reply Briefs were submitted on December 31, 2009.

On January 28, 2010, the Commission issued the Initial Decision of ALJ Colwell in this matter. On February 17, 2010, Exceptions to the ALJ's Initial Decision were filed by the OCA, the Companies, and OTS. The OCA submits these Reply Exceptions to the Companies' Exceptions.

## II. REPLY EXCEPTION

OCA Reply Exception to FirstEnergy Exception No. 3: The ALJ Did Not Err In Requiring The Companies To Properly Reflect Offsetting Savings In Their Rate Recovery Tariff (I.D. at 46-47; OCA M.B. at 33-36; OCA R.B. at 18-20).

In her I.D., ALJ Colwell adopted the OCA's position regarding the recognition of operating expense reductions and avoided capital costs in the Companies' cost recovery mechanism. I.D. at 46-47. The ALJ required the Companies to include language in their tariffs that will ensure that recoverable costs are offset by any cost savings. I.D. at 47. The ALJ found that Act 129 requires that the Companies' tariffs reflect potential future savings. I.D. at 47.

The Companies have filed an Exception to the ALJ's decision on this issue. The Companies argue that future distribution base rate proceedings would be the best place to recognize operational savings associated with their Smart Meter Plan. Companies' Exc. at 8. The Companies also argue that, if the Commission agrees with the ALJ on this issue, it must ensure that the Commission identify savings in a manner consistent with the statute. Companies' Exc. at 8-9.

The OCA submits that the ALJ properly recognized that offsetting savings must be reflected in the rate recovery options selected by the Companies under Act 129 and the Companies' Exception on this issue should be rejected. Under Act 129, each EDC is given an

opportunity to recover the reasonable and prudent costs of its smart meter program. See 66 Pa. C.S. §2807(f)(7). The Act details the types of costs allowed to be recovered by the Companies. Importantly, the Act recognized that “costs” must reflect operating and capital costs *savings* realized as a result of each Company’s installation and use of smart meter technology. Id. In other words, the costs incurred by the Companies reflect the netting out of savings enjoyed by the Companies.<sup>2</sup> Act 129 clearly defines the obligation of each EDC to reflect savings, as follows:

An electric distribution company may recover reasonable and prudent costs of providing smart meter technology under paragraph (2)(ii) and (iii), as determined by the commission. This paragraph includes annual depreciation and capital costs over the life of the smart meter technology and the cost of any system upgrades that the electric distribution company may require to enable the use of the smart meter technology which are incurred after the effective date of this paragraph, **less operating and capital cost savings realized by the electric distribution company from the installation and use of the smart meter technology.**

See 66 Pa.C.S. § 2807(f)(7). (Emphasis added). As the Act details, the Companies are entitled to recover reasonable and prudent costs, minus the savings that result from the SMIP.

Act 129 further details the rate mechanisms through which the Companies are entitled to recover their net costs, as follows:

An electric distribution company may recover smart meter technology costs:

- (i) through base rates, including a deferral for future base rate recovery or current basis with carrying charge as determined by the commission; or

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<sup>2</sup> The netting construct created under Section 2807(f)(7) is similar to the Public Utility Code’s calculation of “stranded costs” in Section 2803 (defining stranded costs as the “net electric generation related cost...”). 66 Pa.C.S. § 2803. The Commission has ruled that the netting concept is part of the calculation of “costs.” Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval to Revise the Accounting Methodology Used for NUG-Related Costs, Docket No. P-00062235 (Order entered November 8, 2007).

(ii) on a full and current basis through a reconcilable automatic adjustment clause under section 1307.

See 66 Pa.C.S. § 2907(f)(7). (Emphasis added). The Act clearly establishes a choice of mechanisms for each EDC to recover smart meter program costs. ALJ Colwell properly found that either the EDC can recover costs and reflect savings through base rates, or it can do so through a 1307 reconcilable automatic adjustment clause. I.D. at 47.

In this case, the Companies have chosen to recover their costs through a 1307 rate mechanism. The Companies do not, however, recognize savings when determining the net costs to be recovered through this rate mechanism. The Companies argue that a base rate proceeding will be the best place to recognize savings because they will be difficult to quantify. Companies' Exc. at 8. OCA witness Hornby testified, however, that the Companies' position was flawed, as follows:

[Companies' witness Parrish] indicates that the best mechanism through which to reflect any operational savings would be new base rates established in future distribution rate proceedings. The approach that Mr. Parish is proposing is not consistent with either the Act or the Commission's Implementation Order.

The Act, in Section 2807 (f) (7), specifies the Company may recover reasonable and prudent smart meter technology costs net of operating and capital cost savings it realizes from that technology. That Section also gives electric distribution companies (EDCs) the option of recovering their net costs either through deferral and recovery in future base rates or a reconcilable automatic adjustment clause. The Companies have chosen the automatic adjustment clause option, i.e., the SMT-C rider. In its Implementation Order, the Commission states that EDCs such as the Companies who have chosen the adjustment clause option shall include a tariff for that rate mechanism that reflects "...operating and cost savings realized by the EDC from the installation and use of smart meter technology".

See OCA St. 1S at 11.

As OCA witness Hornby explained, the Companies' proposal is inconsistent with Act 129. In order to comply with the Act, the Companies must include tariff language similar to that included by other utilities that have selected a reconcilable automatic adjustment clause for the recovery of SMIP costs. See OCA St. 1 at 17-18.

Other EDCs have included appropriate language that will allow savings to be reflected in rates as required by Act 129. For example, as noted by OCA witness Hornby:

[T]he Commission should require the Companies to modify its tariff to include such text. For example the comparable PECO tariff states: *"Any reductions in operating expenses or avoided capital expenditures due to the Smart Meter Program will be deducted from the incremental costs of the Smart Meter Program to derive the net incremental cost of the Program that is recoverable. Such reductions shall include any reductions in the Company's current meter and meter reading costs."*

See OCA St. 1 at 17-18. This language is consistent with the statute, alleviating the concern raised by the Companies in their Exception. Companies Exc. at 8-9.

The OCA submits that the Act requires that the Companies reflect savings when determining costs to be recovered through their chosen rate mechanism. In this case, the Companies have chosen a 1307 reconcilable rate mechanism. As a result, the Companies should be required to reflect savings in those rates, and must adopt appropriate language in their tariff that states as follows:

Any reductions in operating expenses or avoided capital expenditures due to the Smart Meter Program will be deducted from the incremental costs of the Smart Meter Program to derive the net incremental cost of the Program that is recoverable. Such reductions shall include any reductions in the Company's current meter and meter reading costs.

As the ALJ found, the Companies are required by law to reflect savings in their cost calculation and must incorporate those savings in their selected rate recovery mechanism. The

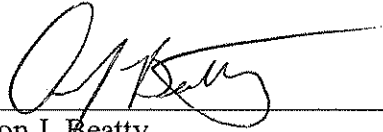


Companies should be directed to include language in their tariffs to ensure that ratepayers receive the credited savings they are entitled to under the law.

### III. CONCLUSION

For the reasons set forth above, and those set forth in the Main and Reply Briefs of the OCA, the OCA submits that the Commission should adopt the ALJ's position regarding the recognition of operating expense reductions and avoided capital costs in the Companies' cost recovery mechanism. As such, the Commission should reject the Companies' Exception on this issue.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

Joint Petition of Metropolitan Edison :  
Company, Pennsylvania Electric Company :  
and Pennsylvania Power Company for : Docket No. M-2009-2123950  
Approval of Smart Meter Technology :  
Procurement and Installation Plan :

I hereby certify that I have this day served a true copy of the foregoing document, the Reply Exceptions of the Office of Consumer Advocate to the Initial Decision issued on January 28, 2010 by the Honorable Susan D. Colwell, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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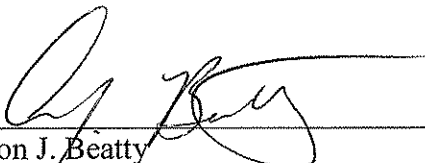
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