



McNees
Wallace & Nurick LLC

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

Barry A. Naum
Direct Dial: 717.237.5378
Direct Fax: 717.260.1730
bnaum@mwn.com

March 1, 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 PECO Energy Company for Approval of its Smart Meter Technology Procurement and Installation Plan; Docket No. M-2009-2123944

Dear Secretary McNulty:

Enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") are the original and nine (9) copies of the Reply Exception of the Philadelphia Area Industrial Energy Users Group ("PAIEUG") to the Exceptions filed by the Office of Consumer Advocate ("OCA") in the above-referenced proceeding.

As indicated on 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 Reply Exception and kindly return to us for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Barry A. Naum

Counsel to Philadelphia Area Industrial
Energy Users Group

BAN/sds
Enclosure

- c: Administrative Law Judge Marlane R. Chestnut (via E-mail and First-Class Mail)
- Cheryl Walker Davis, Director, Office of Special Assistants (via E-mail and Hand Delivery with diskette in Word format)
- Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company :
for Approval of its Smart Meter : Docket No. M-2009-2123944
Technology Procurement and :
Installation Plan :

**REPLY EXCEPTION OF THE
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP**

Air Liquide Industrial U.S. LP
Drexel University
Franklin Mills Associates Limited Partnership
GlaxoSmithKline
Jefferson Health System
Kimberly-Clark Corporation
Merck & Co., Inc.
Saint Joseph's University
Sanofi-Aventis
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Charis Mincavage (I.D. No. 82039)
Barry A. Naum (I.D. No. 204869)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
cmincavage@mwn.com
bnaum@mwn.com

Counsel to the Philadelphia Area Industrial
Energy Users Group

Dated: March 1, 2010

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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.

On August 14, 2009, PECO Energy Company ("PECO" or "Company") submitted a Petition for Approval of its Smart Meter Technology and Procurement Plan ("Petition") in accordance with the requirements of Act 129. The Company's Smart Meter Technology and Procurement Plan ("Smart Meter Plan" or "Plan") was attached to the Petition.

On November 25, 2009, the parties in this proceeding filed a Joint Petition for Partial Settlement ("Joint Petition") resolving all issues with respect to PECO's Smart Meter Plan except for those issues related to the allocation of the common costs required to manage customer data and provide customer access to time-of-use rates and dynamic pricing mechanisms, as well as the recovery of these costs from Commercial and Industrial ("C&I") customers. On December 2, 2009, and December 9, 2009, respectively, the parties submitted Main Briefs and Reply Briefs on these limited issues. PECO, the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), and the Office of Small Business Advocate ("OSBA") all argued in favor of the Company's proposal to allocate the common costs of the Smart Meter Plan to customer classes based on the number of customers in each class. The only party opposing this proposed allocation was the Office of Consumer Advocate ("OCA").

¹ As articulated in the Act, only EDCs with at least 100,000 customers are required to submit energy efficiency and conservation programs. See 66 Pa. C.S. § 2806.1, *et seq.*

On January 19, 2010, Administrative Law Judge ("ALJ") Marlane R. Chestnut issued her Initial Decision ("I.D.") recommending that Commission adopt the Joint Petition and the Company's proposed allocation of common costs. Specifically, the I.D. agreed with PECO, PAIEUG, and the OSBA that these costs are properly allocated to classes based on the number of customers in each class, which the I.D. noted represents the cause for the incurrence of these costs.² The I.D. rejected the OCA's arguments that Smart Meter Plan common costs should be assigned based on perceived energy and demand "benefits" of the Smart Meter Plan, finding that "there is no support for the assumption that each customer class will derive benefits from smart meter technology in direct proportion to the class's demand and energy usage."³ According to the I.D., the OCA's proposed allocation of common costs would result in a subsidization of Residential class costs and "unjust and unreasonable rates" not properly based on cost of service principles.⁴

On February 17, 2010, the OCA filed Exceptions to the I.D., arguing that the ALJ erred by not adopting the OCA's proposed allocation of common costs based on the energy and demand "benefits" that it believes the Smart Meter Plan will produce.⁵

Pursuant to Section 5.535 of the Commission's Regulations,⁶ PAIEUG hereby submits these Reply Exceptions in order to respond to the OCA's continued erroneous claim that the Commission should shift Smart Meter Plan common costs from the Residential customer class to the C&I classes on the basis of supposed energy and demand "benefits" that the OCA ascribes to

² I.D., p. 28.

³ Id.

⁴ Id. at 28-29. The OSBA argued in its briefs that if the Commission agreed with the OCA's cost allocation argument then the common costs of the Smart Meter Plan should be recovered from the Small C&I class on an energy charge basis. PECO and PAIEUG opposed this approach. See, e.g., PAIEUG Main Brief ("M.B."), pp. 22-23; PECO M.B., pp. 13-14; and PAIEUG Reply Brief ("R.B."), pp. 10-13. Based on the finding that common costs are not properly allocated based on energy and demand usage, the I.D. determined that it was unnecessary to address this suggested contingency.

⁵ See generally OCA Exceptions, pp. 4-13.

⁶ 52 Pa. Code § 5.535.

the Smart Meter Plan. As demonstrated herein, the OCA's arguments are all based on a misunderstanding and misstatement of the legal standard with respect to the allocation of smart meter costs under Act 129 applicable cost of service regulations, as well as an erroneous reliance on factual claims that are wholly unsupported by the record. For these reasons, the Commission must reject the OCA's unfounded Exceptions and adopt the I.D. as issued.

II. REPLY EXCEPTION

A. Reply to OCA Exception #1: The OCA's Opposition to the I.D.'s Allocation of Smart Meter Plan Common Costs is Based on a Misunderstanding and Misstatement of Act 129 and Traditional Cost of Service Principles, and Relies on Erroneous and Unsupportable Factual Claims.

The OCA takes exception to the I.D.'s finding that PECO's proposal to allocate common costs of the Smart Meter Plan is the appropriate means for meeting the requirements of Act 129.⁷ According to the OCA, "traditional cost of service principles, the language of Act 129, and the Commission's Implementation Order, all support a finding that the common costs of the PECO smart meter system cannot reasonably be allocated on the basis of the number of customers" in each class.⁸ As noted repeatedly by PAIEUG, PECO, and the OSBA during the course of this proceeding, the foundation of the OCA's argument is the fundamentally erroneous belief that the common costs of the Smart Meter Plan should be assigned on the basis of the "benefits" that customers supposedly receive from the Plan.

Indeed, the OCA's opposition to the I.D. is easily summed up by the OCA's singular assertion that "[t]he number of customers is neither a measure of the benefits derived from the smart meter system nor the causation of the common system costs."⁹ Thus, the OCA's foundational claims are: (1) that Act 129, the Commission's Implementation Order, and

⁷ See generally OCA Exceptions, pp. 4-14.

⁸ Id. at 3 (citing Smart Meter Procurement and Installation, Docket No. M-2009-2092655 (Order entered June 24, 2009) ("Implementation Order").

⁹ Id.

traditional cost of service principles require PECO to allocate the common costs of the Smart Meter Plan on this basis; and (2) that energy and demand reduction is the primary "benefit" that PECO's Smart Meter Plan will provide to customers. The entirety of the OCA's opposition to the I.D. and the Company's allocation of common costs rests on whether these suppositions are true. If either of these hypotheses fail, then the OCA's argument likewise fails. Because both premises are clearly erroneous, the OCA's argument is easily dismissed.

PAIEUG, PECO and the OSBA have all demonstrated through Main and Reply Briefs in this proceeding that the OCA's argument constitutes a clear misstatement of the legal standard established by Act 129, the Implementation Order, and traditional cost of service principles. Even if the Commission agrees with the OCA, however (which it should not), the OCA's argument also relies on a factually erroneous and unsupportable claim with respect to the supposed energy and demand "benefits" that the OCA suggests will result from the Smart Meter Plan. Contrary to the OCA's allegation, the ALJ considered all of these arguments in detail in issuing her I.D., and correctly concluded that the OCA's argument with respect to the allocation of common costs was without merit.¹⁰ The OCA has presented no legal or factual basis for overruling the I.D. Therefore, the Commission must reject the OCA's unfounded claims and adopt the I.D. without modification.

- 1. The I.D. Correctly Determined That the Legal Standard Established by Act 129, the Implementation Order, and Traditional Cost of Service Ratemaking Principles Does Not Support the OCA's Argument for Allocation of Smart Meter Plan Common Costs on a "Benefits" Basis.***

Throughout this proceeding, the OCA has continually claimed that the costs at issue in this proceeding should be applied on a "value of service" basis as compared to a cost causation basis. As noted in the I.D., the cost causation basis is the methodology supported by Act 129,

¹⁰ See generally I.D., pp. 24-29.

approved by the Commonwealth Court of Pennsylvania, and has been previously applied by the Commission in other similarly situated proceedings. Because the OCA has not presented any evidence that would contradict the well-reasoned findings of the ALJ, the OCA's arguments should be rejected.

Initially, the OCA relies on the preamble of Act 129 as the basis for its primary claim that the purpose of PECO's Smart Meter Plan is to provide customers with energy and demand "benefits."¹¹ According to the OCA, this introduction to the Act somehow dictates that the purported benefits ratepayers will receive from smart meter technology, even though these benefits are only one component of Act 129's various requirements that also include mandates for Energy Efficiency and Conservation ("EE&C") Plans and revised default service rules, are precisely the same as the overarching goals of the Act itself. In fact, the OCA alleges that PECO's smart meters are being installed for the direct purpose of "impacting energy and demand consumption."¹²

As a fundamental matter, the overarching goals of Act 129 and the "benefits" of smart meter systems that are emplaced in pursuit of those goals are not the same thing. Irrespective of whether the purpose of Act 129 is to "reduce the cost and price stability of electric energy" as the OCA claims, Act 129 clearly and explicitly states the specific objective of the procurement and installation of smart meter technology. As PAIEUG has explained in detail, Section 2807(g) specifically indicates that the purpose of smart meter technology is to provide customers with the benefits of "access to and use of price and consumption information," provision of "hourly consumption" data, enablement of "time-of-use and real-time price programs," and the potential

¹¹ Id. at 6.

¹² Id. at 10.

for "automatic control" of electricity consumption.¹³ The smart meter technology provisions of Act 129 are absolutely silent with respect to any alleged energy or demand "benefits" that the installation of such technology "might" provide to end-use customers.

In an effort to bulwark its untenable position, however, the OCA asserts that the Commission's Implementation Order requires the benefits-based cost allocation proposal that the OCA prefers. Specifically, the OCA claims that the Implementation Order's requirement that EDCs allocate costs "to the classes whom derive benefit from such costs" means that even the common costs of PECO's Smart Meter Plan must be allocated on the basis of the alleged "benefits" that each class receives.¹⁴

The OCA's argument completely misinterprets the specific requirements of Act 129 and the Commission's Implementation Order with respect to how an EDC must assign common costs.¹⁵ Although the Implementation Order specifically states that "[a]ny costs that can be clearly shown to benefit solely one specific class should be assigned wholly to that class,"¹⁶ the OCA attempts to convince the Commission that all costs, even those that cannot be shown to benefit only one class, be assigned to all customers on the basis of these perceived "benefits." As it has done consistently throughout this proceeding, the OCA continues to ignore the explicit delineation, correctly acknowledged by the I.D., that the Commission has established between "direct costs," which must be assigned directly to the customers that receive the benefits of the Smart Meter Plan, and "common costs," that "provide benefit across multiple classes" and must be "allocated among the appropriate classes using reasonable cost of service principles."¹⁷

¹³ 66 Pa. C.S. § 2807(g) (emphasis added). See PAIEUG M.B., p. 17; and PAIEUG R.B., p. 9.

¹⁴ See OCA Exceptions, pp. 6-7 (citing Implementation Order, p. 32).

¹⁵ See generally PAIEUG M.B., pp. 12-21; and PAIEUG R.B., p. 4.

¹⁶ Implementation Order, p. 32.

¹⁷ Id. (emphasis added). See I.D., p. 28.

Although notionally acknowledging this provision of the Implementation Order, the OCA claims that the I.D. recommends that "benefits" of the Smart Meter Plan not be considered in determining how costs should be allocated.¹⁸ Of critical importance, however, the I.D. actually states that the Implementation Order's discussion of the relationship between benefits and costs is simply a "general cost of service statement that recognizes that customers should not bear the costs of facilities not used to serve them."¹⁹ In fact, the I.D. clarifies the specific delineation that the Commission made with respect to the allocation of "direct costs" and "common costs" when it notes, in accordance with the arguments presented by PAIEUG and other parties,²⁰ that the previous statement with respect to benefits "is modified by the immediately following specific directives concerning direct costs (directly and wholly assigned to the . . . affected class) and common costs (allocated using reasonable cost of service practices)."²¹ As demonstrated above, this holding comports completely with the specific language of the Implementation Order.

In order to arguably satisfy the clear mandate of the Implementation Order, the OCA manufactures a cost of service justification for its proposal by claiming that an analysis of the "benefits" of the Smart Meter Plan is somehow an appropriate component of tradition cost of service ratemaking.²² With this claim, the OCA attempts a sleight-of-hand argument in order to obfuscate the fact that it is actually proposing is a "value of service" approach to ratemaking that, in addition to being entirely outside of the intent of Act 129 or the Implementation Order, has been repeatedly rejected by the Commission and Pennsylvania courts. As PAIEUG has previously explained, "the Commission and the Commonwealth Court of Pennsylvania ('Commonwealth Court') adhere to using cost of service as the 'polestar' for ratemaking purposes,

¹⁸ See OCA Exceptions, p. 7.

¹⁹ I.D., p. 28.

²⁰ See, e.g., PAIEUG R.B., p. 9.

²¹ I.D., p. 28.

²² OCA Exceptions, p. 7.

and recognize that this methodology cannot be trumped by other considerations, including 'value of service' analyses."²³

Indeed, the OCA continues to cite only non-applicable and irrelevant Federal Energy Regulatory Commission ("FERC") precedent in support of its claim that the proposed "benefits" approach to allocating common costs of the Smart Meter Plan is appropriate.²⁴ As PAIEUG previously explained, neither FERC nor the various federal courts cited by the OCA exercise any jurisdiction over the PUC or the Commonwealth of Pennsylvania, and the specific cases cited by the OCA address matters wholly unrelated to the issues in this proceeding.²⁵ The OCA has provided absolutely no reference to any Pennsylvania PUC order, Commonwealth Court decision, or other Pennsylvania court ruling supporting its claim that it would be appropriate to assign Smart Meter Plan common costs on the basis of "value of service" rather than on the cost of service ratemaking "polestar" established in Lloyd.²⁶

Furthermore, the OCA's reliance on the Commonwealth Court's opinion in Lloyd as a response to PAIEUG's previous arguments in this proceeding is wholly misplaced.²⁷ Specifically, the OCA claims that the decision in Lloyd to allocate costs related to a Sustainable Energy Fund ("SEF") is applicable to the issues herein. Contrary to the OCA's assertion, the pertinent issue in Lloyd with respect to this Smart Meter Plan proceeding is not the establishment of the SEF, but the Commonwealth Court's basis for allocating transmission and distribution costs among

²³ PAIEUG R.B., p. 3 (citing PAIEUG M.B., pp. 8-9; Lloyd v. Pa. Pub. Util. Comm'n., 904 A.2d 1010, 1020 (Pa. Commw. Ct. 2006); Pa. Pub. Util. Comm'n. v. Philadelphia Gas Works, Docket Nos. R-2008-2073938, 2009 WL 884424 *5 (Order entered Mar. 26, 2009); Re Gas Transportation Tariffs, Docket No. L-00930084, 171 P.U.R. 4th 496, 530 (Order entered Aug. 28, 1996); Pa. Pub. Util. Comm'n. v. Peoples Natural Gas Co., Docket Nos. R-901607, *et al.*, 1992 WL 315144 at *9 (Order entered Aug. 21, 1992); and Pa. Pub. Util. Comm'n v. PPL Elec. Utilities Corp., Docket No. 00049255, 2007 WL 2198189 *7-10 (Order entered Jul. 25, 2007)) (additional internal citations omitted).

²⁴ See OCA Exceptions, pp. 7-8.

²⁵ See PAIEUG R.B., p. 3.

²⁶ See Lloyd, 904 A.2d at 1020.

²⁷ See OCA Exceptions, pp. 8-9.

customer classes and recovering these costs through rates.²⁸ On this issue, the Commonwealth Court clearly held that, although there are "many factors to be considered and weighed by the Commission in determining rate designs," these factors (particularly gradualism under the facts of that case) "cannot be allowed to trump all other valid ratemaking concerns[,]" particularly the cost of service polestar, "and do[es] not justify allowing one class of customers to subsidize the cost of service for another class of customers."²⁹ As PAIEUG previously explained, the Commission's precedent dictates that this cost of service preference must be applied over other forms of ratemaking, including the "value of service" considerations that the OCA argues should take primary importance in the allocation of smart meter technology common costs.³⁰

The establishment of the SEF is in no way analogous to the requirement for EDCs to develop and implement plans for procuring and installing smart meter technology. The OCA would have the Commission believe that, just as the General Assembly established the requirement for recovery of costs for the SEF from all ratepayers,³¹ so too did the General Assembly require the recovery of smart meter costs on a "benefits" basis. In actuality, Act 129 does not require that EDCs recover the costs of these programs from all customers on the basis of supposed energy and demand "benefits." Indeed, unlike the Competition Act's express establishment of the SEF, without any mandate that the rate be set based on identifiable "benefits,"³² the Commission's Implementation Order explicitly requires that direct costs must be allocated to customer classes who receive the benefits of the costs, while common costs must be allocated by "reasonable cost of service practices."³³ The Commonwealth Court's reasoning in

²⁸ See generally Lloyd, 904 A.2d at 1014-21.

²⁹ Id. at 1020.

³⁰ See PAIEUG M.B., pp. 8-9 (citing Re Gas Transportation Tariffs, Docket No. L-00930084, 171 P.U.R. 4th 496, 530 (Order entered Aug. 28, 1996)); see also generally id. at 10-16.

³¹ See Lloyd, 904 A.2d at 1026-27.

³² See id. at 1027.

³³ Implementation Order, p. 32.

Lloyd with respect to the SEF is therefore irrelevant and inapplicable to PECO's Smart Meter Plan.

Finally, the OCA's suggestion for common cost allocation based on the alleged "benefits" of these non-direct costs entirely ignores the Commission's consistent application of costs with respect to metering systems. PECO correctly noted in this proceeding that all non-direct metering costs have traditionally been assigned to customers based on the number of customers in each class, and not on any other basis – particularly not on an energy or demand basis as suggested by the OCA.³⁴ The OCA simply ignores the fact that the Company's proposed allocation of common costs "is the same method that utilities, with the Commission's approval, have employed for many years to allocate metering and customer account costs among customer classes."³⁵

As the I.D. correctly acknowledged, this allocation of smart metering common costs is firm in keeping with the Commission's delineated cost of service principles.³⁶ In fact, as PECO explained in its Main Brief, customer costs that vary with the number of customers in each class have long been determined on a cost of service basis to include "metering equipment, metering reading [and] billing and accounting" services which are clearly "independent of consumption."³⁷ The OCA would have the Commission abandon this long-standing position, as well as the Commonwealth Court-supported precedent for cost of service rates, by requiring PECO to now assign Smart Meter Plan common costs on a basis that clearly has no legal support or justification. Because the OCA has not presented any evidence that would support the abandonment of such precedent, the OCA's proposal should be rejected.

³⁴ See PECO M.B., pp. 6-8.

³⁵ Id. at 6.

³⁶ See I.D., p. 27; see also PECO M.B., p. 6.

³⁷ PECO M.B., p. 7 (quoting Charles F. Phillips, Jr., THE REGULATION OF PUBLIC UTILITIES (1985), p. 406; and citing James H. Cawley & Norman James Kennard, RATE CASE HANDBOOK – A GUIDE TO UTILITY RATEMAKING BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION (1983), pp. 260-61).

The ALJ correctly determined that the OCA's proposed cost allocation methodology would not be based on proper cost of service principles.³⁸ This decision was derived from a proper examination of the legal arguments presented in the parties' briefs regarding the appropriate cost causation methodology that must be applied to the costs at issue herein. The OCA has not demonstrated that this determination was in error. Accordingly, the Commission must reject the OCA's continued attempts to shift costs that are appropriately assigned to the Residential class to the C&I classes based on a legally unsupportable "benefits" or "value of service" basis. Rather, the Commission should adopt the ALJ's well-reasoned I.D. without modification.

2. *The I.D. Correctly Determined That There Is No Factual Support for the OCA's Position That Each Customer Class Will Derive "Benefits" From Smart Meter Technology in Direct Proportion to Demand and Energy Usage.*

The OCA asserts that "the purpose of this massive investment [in smart meter technology] is not simply to count kilowatt hours every month and provide accurate bills to each individual customer."³⁹ Rather, the OCA claims that the purpose of this smart meter advancement, and PECO's Smart Meter Plan in particular, is "to reduce overall demand and energy costs for the benefit of all customers."⁴⁰ From this hypothesis, the OCA concludes that allocating common costs on the basis of demand and energy usage "recognizes that larger customers . . . will derive far greater benefits from both the smart meter systems and the enhanced technological capabilities."⁴¹

In addition to obfuscating the Commission's true cost of service mandate as well as the intent and meaning of Act 129 and the Implementation Order with respect to the benefits that the

³⁸ See I.D., p. 28.

³⁹ OCA Exceptions, p. 9.

⁴⁰ Id.

⁴¹ Id.

General Assembly and the Commission actually anticipate will result from the Smart Meter Plan, the OCA's argument is not based on any reasonable foundation of fact.⁴² As the I.D. correctly acknowledged, the OCA neither provides reasonable support or justification to substantiate the energy and demand "benefits" that it alleges will result from the Plan nor explains how C&I customers will experience these "benefits" in greater degree than Residential customers.⁴³ In short, the OCA's proposal constitutes nothing more than a smokescreen for shifting a large proportion of common costs from the Residential class to the C&I classes in general and the Large C&I class in particular.

Assuming arguendo that the OCA is correct in claiming that common costs of the Smart Meter Plan should be allocated to customer classes based on the "benefits" received by each class, some means must be set forth to quantify these alleged "benefits" so that allocation of costs can occur.⁴⁴ Unfortunately, the OCA's premise, that "a glaring disparity between costs and benefits" exists, simply confuses the issue and, more importantly, fails to provide any basis upon which costs could be allocated.⁴⁵

Perhaps because such quantification cannot occur, the OCA suggests that the "benefits" of the Smart Meter Plan are related to energy and demand savings and that these "benefits" are therefore simply equivalent to the amount of energy and demand that each class of customers consumes.⁴⁶ Specifically, the OCA rehashes its argument that, since the Large C&I class "is responsible for approximately 33% of retail revenues and 44[%] of total energy usage," these customers should pay an approximate equal percentage of the common costs of the Smart Meter Plan, presumably because these customers will also receive a similar percentage of the alleged

⁴² See PAIEUG R.B., p. 6; and PAIEUG M.B., pp. 11, 20.

⁴³ See I.D., p. 28

⁴⁴ See PAIEUG R.B, p. 7.

⁴⁵ OCA Exceptions, p.13.

⁴⁶ See id. at 10-13.

energy and demand "benefits" of the Plan.⁴⁷ The OCA, however, has not identified or quantified precisely what these energy and demand "benefits" might be and provides absolutely no credible evidentiary support for this broad conclusion or even a reasonable causal link between these phantom "benefits" and the energy and demand requirements of PECO's various customers.

Indeed, the only arguably quantifiable data that the OCA has ever been able to provide is a reference to Duquesne Light Company's ("Duquesne") American Reinvestment and Recovery Act ("ARRA") grant application wherein Duquesne apparently attempted to identify the benefits that might accrue to customers in that EDC's service territory as a result of smart meters.⁴⁸ Obviously, any reference to a tangential filing that may or may not have been submitted in Duquesne's Smart Meter Proceeding stretches the relevant application of this claim to PECO's Smart Meter Plan beyond any reasonable comprehension. The OCA has provided absolutely no analysis as to how these supposed savings "benefits" will inure to PECO's various classes, or more importantly, how these alleged "benefits" are in any way derived from PECO's administration of the PECO smart meter system. In other words, the OCA's attempt to use information regarding Duquesne for purposes of allocating PECO's Smart Meter Costs is moot at best. The I.D. was correct in disregarding this "evidence."

Moreover, the OCA fails to prove that these energy and demand "benefits" even exist, regardless of whether they could be quantified. The OCA makes much of the fact that the smart meters on PECO's system "are not being installed simply to count kWh for billing purposes."⁴⁹ Unfortunately, no party ever argued this position in the course of this proceeding, nor did the ALJ make this holding in her I.D. It thus appears that the OCA has constructed this strawman argument for the sole purpose of tearing it down. Certainly, the OCA is correct that the purpose

⁴⁷ Id. at 13.

⁴⁸ Id. at 12-13.

⁴⁹ OCA Exceptions, p. 10.

of PECO's new investment in smart meters is not simply to "count kilowatt hours and provide accurate bills to each individual customer."⁵⁰ As previously noted, however, contrary to the OCA's allegation, the actual purpose of Act 129's requirement for smart meter procurement and installation is to provide customers with "access to and use of price and consumption information," as well as the ability to participate in dynamic pricing programs.⁵¹ As PAIEUG has explained in detail:

[T]he installation of an individual smart meter and the administration of the smart meter network to facilitate the meter cannot produce a single kW or kWh reduction absent some further step on the part of the customer.⁵² Access to consumption information and dynamic pricing mechanisms are the only concrete customer benefits that will proceed directly from PECO's Smart Meter Plan.⁵³ . . . Any energy, demand, or price reduction that customers will see is purely ancillary to customers' participation in the programs that would directly provide such reductions.⁵⁴

Importantly, PAIEUG has additionally proven in the course of this proceeding that:

[T]he benefit of access to consumption information and dynamic pricing that might be provided to the Large C&I class by reason of the Smart Meter Plan is very limited. While the OCA suggests that the Smart Meter Plan will provide benefits through the "new and novel" ability of customers to participate in demand response programs, as noted in PAIEUG's Main Brief, the sophistication of Large C&I customers actually dictates that these entities "are already intensively managing their energy needs and pursuing energy efficiency and demand response opportunities," and "have already made the substantial investment in smart meter technology." . . . As such, many of these customers already participate to some degree in the PJM Interconnection, L.L.C. ("PJM") hourly and day-ahead markets and thus already have the advanced metering capability necessary to facilitate this participation.⁵⁵

⁵⁰ Id.

⁵¹ See infra, p. 5 (quoting 66 Pa. C.S. § 2807(g)(emphasis added); see also PAIEUG M.B., p. 17; and PAIEUG R.B., p. 9.

⁵² See PAIEUG R.B., p. 9.

⁵³ See Id.

⁵⁴ Id.

⁵⁵ PAIEUG R.B., p. 9 n.7 (citing PAIEUG M.B., pp. 18-19).

The only actual direct benefits of PECO's Smart Meter Plan (e.g., access to information and pricing mechanisms) are already accurately captured in the design and construction of the meters themselves – the costs of which are already directly assigned by PECO to each customer that elects to install a smart meter.⁵⁶ The I.D. correctly concluded that "it is the need for the meter itself (as well as the associated costs to make use of that meter) that 'causes' those specific benefits to be incurred."⁵⁷ As PAIEUG has repeatedly stated throughout this proceeding, there is absolutely no direct causal connection between: (1) energy or demand savings; and (2) the procurement and installation of smart meters, or the administration of the smart meter system.⁵⁸ The OCA has failed to provide any evidence to refute the solid position shared by PECO, PAIEUG, and the OSBA – and acknowledged by the I.D. – that the common costs of the Smart Meter Plan "are not connected to customer usage, but instead are incurred because of the existence of those customers on the Company's system, regardless of their consumption and/or demands."⁵⁹ Accordingly, the I.D.'s conclusion that "metering costs – whether those associated with the current meters or the smart meters that will eventually be deployed – vary with the number of customers" is absolutely factually correct.⁶⁰

Therefore, even if the Commission accepts the OCA's "benefits" test for allocating the common costs of PECO's Smart Meter Plan (which it should not), the OCA's description of the "benefits" of the Plan is factually unsupportable. For this reason, the Commission must reject the OCA's argument and adopt the I.D. as issued.

⁵⁶ See id. at 9; and PAIUG M.B., p. 12.

⁵⁷ I.D., p. 28.

⁵⁸ See PAIEUG M.B., p. 13; and PAIEUG R.B., pp. 9-10.

⁵⁹ PAIEUG R.B., p. 10 (citing PAIEUG M.B., p. 14 (quoting PAIEUG Statement No. 1-R, Rebuttal Testimony of Mr. Richard A. Baudino (hereinafter, "PAIEUG St. 1-R"), p. 5)); see also PECO M.B., p. 11; OSBA M.B., p. 13; and I.D., p. 27.

⁶⁰ I.D., p. 27.

3. *The I.D. Correctly Determined that the OCA's "Benefits" Approach for Allocating Common Costs Would Result in Unjust and Unreasonable Rates, as well as an Inappropriate Subsidization of Residential Class Costs.*

In finding that "there is no support for the assumption that each customer class will derive benefits from smart meter technology in direct proportion to the class's demand and energy usage," the I.D. concluded that the effect of the OCA's proposal to allocate common costs on this basis "would be to shift a large proportion of the residential class costs to the other rate classes, resulting in a subsidization of the residential class."⁶¹ The I.D. further concluded that this methodology "would produce unjust and unreasonable rates, since the rates would not be based on a cost of service study."⁶²

The OCA objects to this reasoning, arguing that the I.D.'s conclusion is "circular."⁶³ Under the OCA's thinking, because "the proper method of allocating common costs is based on energy and demand," no subsidization would occur.⁶⁴ Rather, the OCA suggests that the cost allocation methodology proposed by PECO and adopted by the I.D. would result in subsidization of non-Residential classes due to an alleged "gross disparity between costs and benefits."⁶⁵

By way of brief response to this argument, it is clearly the OCA's position that is "circular," and not the I.D.'s holding. Once again, this issue hinges upon whether the OCA's claimed energy and demand "benefits" test is the appropriate methodology to assign smart meter technology common costs under Act 129, the Implementation Order, and traditional cost of service principles. As demonstrated fully above, and in the Main and Reply Briefs submitted by PAIEUG, PECO, and the OSBA, the OCA's energy and demand "benefits" premise for allocating these costs is clearly erroneous and without any reasonable support in fact or law.

⁶¹ Id. at 28.

⁶² Id. at 28-29 (citing Lloyd, 904 A.2d at 1020).

⁶³ OCA Exceptions, p. 13.

⁶⁴ Id.

⁶⁵ Id. at 14.

Thus, because the OCA's foundational argument fails, so too does the ancillary argument that such subsidization will not occur under the OCA's cost allocation methodology.

The I.D. appropriately acknowledged the correct legal and factual basis for approving PECO's cost allocation approach and rejected the OCA's unsupportable argument. As the I.D. noted, irrespective of the supposed "disparity" between the Residential and non-Residential class responsibility for common costs, "[b]ased on the relative number of customers, the residential class will be associated with almost 90% of the meter locations and this is why it is just, reasonable and appropriate that they be responsible for a proportionate share of the common costs to utilize those meters."⁶⁶ This sound determination should not be reversed.

⁶⁶ I.D., p. 28.

III. CONCLUSION

WHEREFORE, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Pennsylvania Public Utility Commission: (1) reject the OCA's unfounded and erroneous argument for allocation of the common costs of PECO Energy Company's Smart Meter Plan on the basis of energy and demand consumption; and (2) adopt, without modification, the Initial Decision issued by ALJ Chestnut in this proceeding.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By



Charis Mincavage (I.D. No. 82039)

Barry A. Naum (I.D. No. 204869)

100 Pine Street

P.O. Box 1166

Harrisburg, PA 17108-1166

Phone: (717) 232-8000

Fax: (717) 237-5300

Counsel to the Philadelphia Area Industrial Energy
Users Group

Dated: March 1, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served 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

Romulo Diaz, Esq.
Anthony E. Gay, Esq.
Exelon Business Services Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
romulo.diaz@exeloncorp.com
anthony.gay@exeloncorp.com

Richard A. Kanaskie, Esq.
Carrie B. Wright, Esq.
Pennsylvania Public Utility Commission
Office of Trial Staff
P.O. Box 3265
Harrisburg, PA 17105-3265
rkanaskie@state.pa.us
carwright@state.pa.us

Tanya J. McCloskey, Esq.
Jennedy S. Johnson, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101
tmccloskey@paoca.org
jjohnson@paoca.org

Kenneth T. Kristl, Esq.
Widener Environmental and Natural
Resources Law Clinic
4601 Concord Pike
Wilmington, DE 19803
ktkristl@widener.edu

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

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

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

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Daniel G. Asmus, Esq.
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
dasmus@state.pa.us

A handwritten signature in black ink, appearing to read 'B. Naum', written over a horizontal line.

Barry A. Naum

Counsel to the Philadelphia Area Industrial Energy
Users Group

Dated this 1st day of March, 2010, in Harrisburg, Pennsylvania.