**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

 Public Meeting held April 15, 2010

Commissioners Present:

 James H. Cawley, Chairman, Statement

 Tyrone J. Christy, Vice Chairman, Dissenting

 Wayne E. Gardner, Statement

 Robert F. Powelson

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| 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 |

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**OPINION AND ORDER**

**BY THE COMMISSION:**

# I. Introduction

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Initial Decision (I.D.) issued in these proceedings by Administrative Law Judge (ALJ) Susan D. Colwell on January 28, 2010, and the Exceptions filed with respect thereto. Specifically, Exceptions have been filed by Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec) and Pennsylvania Power Company (Penn Power) (collectively, FirstEnergy or the Companies); the Pennsylvania Department of Environmental Protection (DEP); the Office of Consumer Advocate (OCA); and the Office of Trial Staff (OTS). Reply Exceptions have been filed by the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance and the Penn Power Users Group (collectively, MEIUG *et al*.); the OTS; the OCA; the Companies; and the Office of Small Business Advocate (OSBA). For the reasons set forth herein, we will adopt the ALJ’s Initial Decision, as modified by this Opinion and Order.

# II. Background

## A. Act 129

Governor Edward G. Rendell signed Act 129 of 2008 (the Act or Act 129) into law on October 15, 2008. The Act took effect thirty days thereafter on November 14, 2008. Among other things, the Act specifically directed that electric distribution companies (EDCs) with at least 100,000 customers file, with the Commission for approval, a smart meter technology procurement and installation plan. 66 Pa. C.S. § 2807(f)(1). These plans were to be filed by August 14, 2009. Each plan was to describe the smart meter technologies the EDC proposes to install, upon request from a customer at the customer’s expense, in new construction, and in accordance with a depreciation schedule not to exceed 15 years. 66 Pa. C.S. §§ 2807(f)(1) and (2). The Act also established a requirement for EDCs to make available to third parties, upon customer consent, direct meter access and electronic access to meter data. 66 Pa. C.S. § 2807(f)(3). The Act further defined minimum smart meter technology capabilities. 66 Pa. C.S.
§ 2807(g). Finally, the Act established acceptable cost recovery methods. 66 Pa. C.S.
§ 2807(7).

On March 30, 2009, the Commission issued a Secretarial Letter seeking comments on a draft staff proposal and additional questions regarding EDC smart meter procurement and installation. On June 24, 2009, the Commission outlined the standards each smart meter plan must meet and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of each smart meter plan. *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (*Implementation Order*).

## B. The Companies

Met-Ed is a wholly-owned subsidiary of FirstEnergy Corp. It serves about 549,000 electric utility customers over approximately 3,300 square miles in southern and southeastern Pennsylvania. Approximately 88% of its customers are residential customers and about 11% are commercial customers. FirstEnergy St. No. 1 at 4.

Penelec is a wholly-owned subsidiary of FirstEnergy Corp. It serves about 589,000 customers over approximately 17,600 square miles in northern, northwest, and central Pennsylvania. Approximately 86% of its customers are residential customers and about 13% are commercial customers. FirstEnergy St. No. 1 at 4.

Penn Power is a wholly-owned subsidiary of Ohio Edison Company, which is, in turn, a wholly-owned subsidiary of FirstEnergy Corp. Penn Power serves about 159,000 customers over approximately 1,100 square miles in western Pennsylvania. Approximately 87% of its customers are residential customers and about 12% are commercial customers. FirstEnergy St. No. 1 at 5.

# III. Procedural History

On August 14, 2009, the Companies filed a Joint Petition (Petition) for Approval of Smart Meter Technology Procurement and Installation Plan (Plan). To recover the costs associated with the Plan, each Company filed a Smart Meter Technologies Charge Rider (SMT-C). The Petition asked the Commission to approve the Plan and authorize the implementation of the proposed tariff riders.

Notice of the filing was published in the Pennsylvania Bulletin on August 29, 2009. 39 Pa. B. 5218. Comments were received through September 25, 2009.

A pre-hearing conference was held on September 29, 2009, by ALJ Colwell. A technical conference was held on October 20, 2009, by ALJ David A. Salapa. Written testimony was filed and a hearing was held on November 19, 2009. Following the submission of briefs and reply briefs, ALJ Colwell issued her Initial Decision on January 28, 2010.

The ALJ approved the Companies’ Plan, but ordered certain modifications therein. *Inter alia*, the ALJ ordered the Companies to remove the provision calling for the payment of interest on over- and under-collections. I.D. at 41-43. The ALJ also ordered the Companies to include wording in the tariff stating that reductions in operating expenses, as well as avoided capital expenditures, will be deducted from the costs of the Plan. *Id*. at 46-47. The ALJ also ordered the Companies to revise the proposed tariffs and file the revised versions within thirty days. *Id*. at 58-59.

 As stated previously, Exceptions and Reply Exceptions have been filed.

# IV. Description of the Plan

The Companies’ Plan is a single comprehensive plan that applies to all three Companies. It describes the current status of smart meter deployment. It also contains both a detailed short-term plan, to be implemented during the thirty-month grace period (Grace Period) described in the *Implementation Order*, and a general long-term time line based on information currently available. Joint Petition at ¶ 9; FirstEnergy MB at 3. Finally, the Plan addresses cost recovery.

## A. Current Status of Smart Meter Deployment

The Companies currently deploy smart meter technology through MV-90 meters to most of its largest commercial and industrial customers. “These meters provide automated hourly consumption data to the Companies’ information systems, with such data regularly available to customers at their facilities.” Plan at 4. During the Grace Period, the Companies will continue to deploy MV-90 interval meters in response to requests by industrial or large commercial customers. Following the expiration of the Grace Period and during network system build-out, the Companies will provide smart meters based on customer requests and for all new construction. To obtain a smart meter during this period, the customer must agree to pay the incremental costs of installing the meter. At a later date, the Companies will submit an estimate of these costs for Commission review. FirstEnergy MB at 5.

## B. Plan for Smart Meter Deployment

The Companies intend to use the first twenty-four months following approval of the Plan (the Assessment Period) to assess needs, select technology, secure vendors, train personnel, and install and support test equipment. At the end of the Assessment Period, the Companies will submit a supplement to the Plan (the Deployment Plan). Joint Petition at ¶¶ 13-14; FirstEnergy MB at 3. The Deployment Plan will set forth details regarding the installation, testing and roll out of the Companies’ smart meters. Joint Petition at ¶¶ 25-26; Plan at 6. Specifically, the Deployment Plan will include:

. . . 1) a detailed long-term time line, with key milestones;
2) a smart meter solution; 3) the costs of such a solution, along with an assessment of benefits; 4) a network design solution; 5) a communications architecture design solution;
6) a training assessment and proposed curriculum; 7) a cost recovery forecast; 8) a transition plan including communications to employees and customers; and 9) a detailed tiered roll out plan.

Joint Petition at ¶ 26. The Companies estimate that the Commission will approve the Deployment Plan in October, 2012. Plan at 6.

At present, the Companies expect to begin building-out the necessary infrastructure beginning in April 2013. They also anticipate performing a technical trial prior to December 31, 2013. This technical trial is expected to involve the deployment and testing of 5,000 to 10,000 smart meters. Following this test, the Companies expect to complete the build-out of the necessary infrastructure and “de-bug” the system with at least 60,000 meters prior to full deployment. FirstEnergy MB at 4. Full deployment is estimated to commence in April 2017 and be completed in March 2022. Plan at 6.

## C. Cost Recovery

The Companies expect to incur costs of approximately $29.5 million during the Assessment Period. The total cost to deploy smart meters is expected to be about $330-$400 million, not including operation and maintenance expenses. The Companies, however, are not able to provide definitive cost data at this time. Consequently, they ask permission to file such cost data in the Deployment Plan. Joint Petition at ¶¶ 27-28.

The Companies propose to recover their smart meter technology costs through a reconcilable adjustment clause called the Smart Meter Technologies Charge (SMT-C). The ALJ summarized the principal elements of the SMT-C as follows:

1. The SMT-C will be expressed as a monthly customer charge.
2. The SMT-C will be billed to all metered customer accounts eligible for the installation of smart meters and will be non-bypassable.
3. The SMT-C will be calculated separately for the residential, commercial and industrial customer classes….
4. The cost to procure and install smart meters will be directly assigned to each customer class. All other costs, which cannot be directly assigned (i.e., “common” costs) will be allocated among customer classes based on the number of customers in each class.
5. The SMT-C Riders will become effective for service rendered on and after April 1, 2010, and the initial SMT-C will be in effect for the period from April 1, 2010 to March 31, 2011. The initial SMT-C rates and supporting calculation will be filed within 30 days of the Commission’s entry of a final Order approving the Companies’ Smart Meter Plan.
6. After the initial SMT-C, subsequent proposed SMT-C rates and accompanying information will be filed by March 1 of each year to become effective on April 1 of the same year and remain in effect for 12 months. Accordingly, the SMT-C Computation Year will be the 12 months beginning on April 1 and ending March 31 of the following year. The SMT-C Reconciliation Year will be the 12 months ending January 31 immediately preceding the Computation Year. Interim adjustments to the SMT-C will be permitted to avoid large anticipated over or under-collections.
7. Subject to the Commission’s review for prudence and reasonableness, the SMT-C will recover two categories of smart meter technology costs: (a) start up costs incurred by the Companies prior to April 1, 2010, which will be amortized over the 12 months ending March 31, 2011 with interest, based on the legal rate, on the unamortized balance; (b) all of the smart meter technology costs the Companies will incur during the Computation Year, consisting of both capital costs (pre-tax return and depreciation) on smart meter capital expenditures and operating and maintenance expenses including an allocated portion of indirect costs.1
8. The return on smart meter capital expenditures will be calculated for all three Companies using: (a) the normalized capital structures of 51% long-term debt and 49% common equity that were approved by the Commission’s January 11, 2007 final Order in Met-Ed’s and Penelec’s most recent base rate cases at Docket Nos. R-00061366 and R-00061367; (b) the Companies’ actual weighted average long-term debt cost rate shown in each Company’s most recent calendar year Financial Report filed with the Commission; and (c) the common equity return rate of 10.1% approved by the Commission for Met-Ed and Penelec in their most recent base rate cases.
9. The SMT-C will be fully reconcilable. Interest on over and under-collections will accrue at the legal rate set forth in 41 P.S. § 202 (currently 6.0%).

 The Companies also propose that the unrecovered original cost of existing meters being replaced by smart meters should continue to be recovered in current base rates. Accordingly, the SMT-C would not include any costs to recover the remaining original cost of the Companies’ existing meters....

 I.D. at 31-32.

# V. Discussion

In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

We note that any issue or Exception that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. [Consolidated Rail Corporation v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) see also, generally, [University of Pennsyl­vania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

## A. Non-Cost Issues

### 1. Deployment Process and Timeframe

#### a. FirstEnergy’s Plan

As stated previously, the Companies’ Plan contains both a short-term plan and a long-term time line based on information currently available. Joint Petition at ¶ 9; FirstEnergy MB at 3. The Companies intend to use the Assessment Period to assess needs, select technology, secure vendors, train personnel, and install and support test equipment. The Companies anticipate that the vendor and selection process will start in September, 2010 and continue for almost ten months. The Companies will then conduct an evaluation of the current legacy systems to assess network design. This task is expected to commence in January, 2011, and be completed before the end of 2013. FirstEnergy MB at 4. The Companies expect to submit the Deployment Plan to the Commission for approval in April 2012, and they project that the Commission will approve the Deployment Plan about October 2012 (when the Grace Period expires). Plan at 6.

The Companies currently anticipate commencing the build-out of necessary infrastructure in April, 2013. They will then perform a technical trial involving 5,000 to 10,000 meters prior to December 31, 2013. The Companies anticipate completing the build-out of necessary infrastructure approximately March 2016. They will then “de-bug” the system with at least 60,000 meters. Full scale deployment of smart meters is expected to occur in a tiered roll out beginning about April 2017, and ending about March 2022. Joint Petition at ¶¶ 25-26; Plan at 6.

#### b. ALJ’s Recommendation

The ALJ approved the deployment timeframe set forth in the Companies’ Plan. The ALJ found that the *Implementation Order* is not a regulation and does not have the full force and effect of law. Instead, it acts as a policy to provide guidelines to EDCs regarding the Commission’s expectations about smart meter plans. The ALJ found the Companies’ proposed time frame for deployment reasonable. I.D. at 19-23.

#### c. Positions of the Parties

DEP contends there are two flaws in the Companies’ timeframe for deployment. First, DEP argues that the Plan does not comply with the *Implementation Order* in that FirstEnergy will not install its smart meter infrastructure by the end of the Grace Period in October 2012. Instead, the Companies expect to complete the build-out of their smart meter infrastructure approximately March, 2016. DEP Exc. at 6-11.

According to DEP, the *Implementation Order* provides the regulated community with guidance as to the contents of an adequate smart meter plan. Any EDC that deviates from that guidance runs the risk that its plan will be found inadequate. “Just because a requirement is contained in a statement of policy rather than a regulation does not mean that the Commission cannot establish it in an adjudicatory proceeding such as this.” DEP Exc. at 10. DEP asks the Commission to order FirstEnergy to submit a revised plan that requires the installation of the Companies’ smart meter infrastructure within the Grace Period.

Second, DEP argues that the Plan does not provide for the timely system-wide deployment of smart meters. DEP argues that the Plan would provide smart meters on a timely basis but for the Companies’ failure to install the smart meter network by the end of the Grace Period.

Because FirstEnergy’s current deployment schedule envisions a six year meter deployment period, the Commission should order FirstEnergy to maintain that deployment schedule such that smart meters are deployed throughout FirstEnergy’s service territory no later than 10 years from the date of the Commission’s Order in this matter.

DEP Exc. at 11-12.

The Companies, in contrast, argue that DEP’s position is unsupported by any record evidence. The Companies further argue that DEP’s position is based on a flawed understanding of the *Implementation Order*. First, the Companies contend that the *Implementation Order* does not have the full force and effect of law; it is in the nature of a statement of policy rather than a regulation. As a result, the *Implementation Order* “cannot function as a pre-determination of the reasonableness of any aspect of the Company’s proposed Smart Meter Plan.” FirstEnergy R.Exc. at 3-4. Second, the Companies contend that the *Implementation Order* does not require the installation of the smart meter infrastructure by the end of the 30-month grace period. *Id*. at 4-5.

Finally, the Companies dispute DEP’s contention that the Plan fails to provide for the full deployment of smart meters in a timely manner. The Companies state that the Plan provides for supplying smart meters to requesting customers and in new construction prior to full build-out. They also note that the Plan provides for the completion of full-scale deployment of smart meters approximately three years before the end of the deployment period established in the *Implementation Order.*  FirstEnergy R.Exc. at 6.

No other Party addressed this aspect of the Initial Decision.

#### d. Disposition

We will deny the Exceptions of DEP regarding the deployment process and timeframe. We addressed the legal effect of an implementation order in *Chapter 14 Implementation*, Docket No. M-00041802F0002 (Order entered November 21, 2005), wherein we stated at page 13:

[T]the Commission agrees with the argument of … PGW that the *Implementation Orders* at issue constitute policy statements setting forth how the Commission intends to interpret Chapter 14 in future adjudications and rulemakings. Nevertheless, the *Implementation Orders* provide guidance to affected parties by the agency charged with its implementation and, as such, any party that deviates from that guidance runs the substantial risk of being in violation of Chapter 14 and the initiation of appropriate enforcement measures to secure compliance with this new law.

Similarly, the smart metering *Implementation Order* did not establish a binding norm, but EDCs are not free to ignore that Order.

In the smart metering *Implementation Order*, the Commission recognized that a fully functional smart meter involves an entire network, including the meter, two-way communication, computer hardware and software, and trained support personnel. The Commission further recognized that EDCs need time to select and install the required smart meter network components and to train support personnel. *Implementation Order* at 6. Consequently, the Commission granted a network development and installation grace period of up to 30 months following plan approval. The Commission directed that a smart meter plan include a proposal for meeting specific milestones within the 30-month grace period, including the following: assessment of needs and technological solutions; selection of technologies and vendors; establishment of network designs; establishment of plans for training personnel; establishment of plans for installation, testing and roll out of support equipment and software; installation, testing and roll out of support equipment and software; establishment of plans to design, test and certify EDI transaction capability consistent with this order; and establishment of plans for installation of meters consistent with the roll out requirements described in the *Implementation Order*. *Id*. at 7-8.

Although the Companies’ Plan includes a proposal for meeting these milestones, not all of these milestones will be met by the end of the Grace Period. We agree with the ALJ that, considering that the Companies are starting smart meter deployment at the very beginning, the Companies have established good cause for deviating from the guidance provided in the *Implementation Order* with regard to the installation of its smart meter infrastructure.

Moreover, we find that the Companies’ Plan complies with Act 129 and the *Implementation Order* with regard to the time frame for full deployment of smart meters. Act 129 requires that full deployment be completed within fifteen years of Plan approval (i.e., by April 2025). The Companies’ Plan estimates that full deployment will be completed three years earlier, during 2022. The Plan therefore complies with the Act.

Nevertheless, we believe the Companies can and should aim for full deployment sooner than 2022. Every year that the Companies wait represents money that ratepayers could potentially save on their electric utility bills. The sooner that customers are given access to tools such as smart meters which allow them to better gauge how their usage patterns correspond to the price of electricity generation, the sooner the customers will have the option of tailoring their individual usage patterns to save money on their electric bills. We strongly advise FirstEnergy that it is in the best interest of all parties involved, especially its customers, to deploy smart meters and their supporting infrastructure as soon as safe and reliable operations will allow.

### 2. Smart Meter Technology

#### a. FirstEnergy’s Plan

The technology characteristics incorporated into the Plan include “equipment and processes that encourage [advanced metering infrastructure], Demand Response and Home Area Networking” (HAN). Plan at 3. The Plan states that customers will have the ability to obtain un-validated data from the smart meter, if they have compatible HAN technology. Validated data will be made available the next day, for all customers, by way of the FirstEnergy web site. *Id.* at 18.

DEP argued before the ALJ that EDCs are required to deploy smart meters that enable HAN devices. DEP concluded that the Plan must specify the deployment of smart meters that enable a HAN. DEP MB at 8.

FirstEnergy’s Reply Brief stated:

[T]he Companies confirm that they will provide smart meters that fully comply with the definition of smart meters set forth in Section 2807(g) and the Implementation Order, including the capability to furnish data through a ‘HAN or similarly capable method of open protocols.’

FirstEnergy RB at 11.

#### b. ALJ’s Recommendation

The Initial Decision did not explicitly address this issue. The ALJ, however, approved the Plans with modifications not pertinent here. That is, the Initial Decision did not require the Plans to specify the deployment of smart meters that enable a HAN.

#### c. Positions of the Parties

DEP’s Exception 1 argues that the ALJ erred by not explicitly ordering FirstEnergy “to provide meters that meet the definition of ‘smart meter technology’ under Act 129 and the Commission’s *Implementation Order.*” DEP Exc. at 4. According to DEP, the critical element of the statutory definition of “smart meter technology” is that the technology allows the customer to establish the automatic control of his electricity consumption through the smart meter. DEP notes that the *Implementation Order* states:

[T]he Commission will require EDC smart meters to have a capability to provide raw near real-time consumption data through a [home area network (HAN)] or similarly capable method of open protocols. This delivery method should also be capable of providing pricing signals to support real-time and time-of-use pricing programs, as well as energy efficiency and demand response programs.

DEP Exc. at 5 (quoting *Implementation Order* at 23. Consequently, DEP asks the Commission to order FirstEnergy to deploy smart meters that enable a HAN device or a similarly capable method with open protocols. DEP Exc. at 6.

FirstEnergy states “What DEP requests, while unnecessary, is not otherwise objectionable.” FirstEnergy R.Exc. at 2. The Companies point out that their Reply Brief stated that the Companies will provide smart meters that include the capability to furnish data through a HAN or a similarly capable method of open protocols. FirstEnergy RB at 11.

No other Party addressed this aspect of the Initial Decision.

#### d. Disposition

We will deny DEP’s Exception 1. The Companies have stated that they will fully comply with the definition of smart meters, including the capability to furnish data through a HAN or similarly capable method of open protocols. The Companies have committed to meet the terms of the *Implementation Order*. FirstEnergy RB at 11. If the Companies later propose to modify their Plan in a way that would alter this commitment, they should file such Plan modification with the Commission and the Parties to this proceeding.

### 3. Impact on “Vulnerable” Customers

#### a. FirstEnergy’s Plan

The OCA argued before the ALJ that the Companies’ Plan should be modified to include specific analyses of the impacts of the Plan on “vulnerable” residential customers (low-income customers, customers with disabilities, the elderly, and others who cannot afford bill increases but may not enjoy many of the benefits of smart meter implementation). Based on these analyses, the Companies could develop plans to mitigate the risks to such customers from the cost of the Plan. OCA MB at 17.

The Companies argued against the requested modification in the Plan. They noted that they intend to inform “vulnerable” customers about the options for energy efficiencies and conservation that smart meters will enable. In addition, they noted that the Companies’ Customer Assistance Programs would be available to mitigate the impacts of smart meter deployment on “vulnerable” customers. FirstEnergy MB at 8- 9.

#### b. ALJ’s Recommendation

The ALJ explicitly rejected the OCA’s request that the Plans be modified to address the needs of “vulnerable customers.” According to the ALJ, neither Act 129 nor the *Implementation Order* provides an exception or accommodation for low-income or other “vulnerable” customers. “Special needs due to higher bills, which are inevitable in providing for payment for this legislatively-mandated program, will be addressed through traditional means, i.e., customer assistance programs.” I.D. at 30.

#### c. Positions of the Parties

The OCA’s Exceptions argue that the Companies should be required to take additional steps to address the impacts of the Plan on “vulnerable” customers, rather than relying exclusively on traditional means, such as consumer education programs and Customer Assistance Programs. According to the OCA, traditional means are inadequate to address the needs of “vulnerable” customers for two reasons. First, the budgets of Customer Assistance Programs may be insufficient to address the needs of “vulnerable” customers resulting from the smart meter program. Second, many “vulnerable” customers will be unable to access the benefits of smart meters because those customers cannot afford the necessary initial investment to take advantage of the programs. OCA Exc. at 4.

The OCA contends that the lack of a specific exception in Act 129 for low-income or otherwise vulnerable customers does not require the rejection of its proposal for additional steps to mitigate the adverse impacts on these customers. The OCA clarifies that it is not recommending that “vulnerable” customers should be excluded from the Plan. “Instead, the OCA’s recommendations are intended to minimize any possible adverse impacts of smart metering deployment on such customers through analysis and consideration of the needs of low-income and otherwise vulnerable customers at all stages of program design and deployment.” OCA Exc. at 4.

The OCA contends that the Plans already provide for data gathering and analysis. Requiring the Companies to gather and analyze data regarding the usage of “vulnerable” customers therefore would not be burdensome for the Companies. Additional steps to mitigate the adverse impacts on “vulnerable” customers include: keeping smart meter deployment costs as low as possible and recovering Plan costs from residential customers on a volumetric rather than fixed basis. OCA Exc. at 5.

The Companies respond that they already intend to carefully study needs, costs and benefits, so they can select smart meter solutions that not only comply with law but also provide customers with the maximum benefit at the lowest cost. The Companies also argue that they understand the importance of developing information about all customers’ needs and receptiveness to new rate designs. They argue, however, that the Companies should not be bound at this time to specific formats for these analyses. The Companies also argue that consumer education, Customer Assistance Programs, and LIHEAP “will substantially mitigate the impact on low-income customers of any increases resulting from the Smart Meter Plan.” FirstEnergy R.Exc. at 8.

No other Party addressed this aspect of the Initial Decision.

#### d. Disposition

We agree with the ALJ on this issue. We are sensitive to the possibility that the cost of smart metering programs will have adverse financial impacts on low-income and other “vulnerable” customers. Nevertheless, we believe these adverse impacts should be effectively addressed by other means, including but not limited to consumer education programs, Customer Assistance Programs, and LIHEAP.

### 4. Sub-Hourly Metering

The *Implementation Order* requires parties to address the ability to provide hourly *or more frequent* energy usage data. *Implementation Order* at 16. In this proceeding, the Parties only addressed fifteen-minute sub-hourly metering. While energy markets only require information on hourly usage, these requirements may not be responsive to the regional transmission organization requirements of *ancillary* services. Therefore, the Parties are asked to address the need, ability, and cost for sub-hourly metering. The Parties should address the following issues for residential, small commercial and industrial and large commercial and industrial customers:

1. What are the capabilities and limitations of proposed smart meters to measure and record sub-hourly usage?
2. What are the capabilities and limitations of proposed smart meter communication and data storage systems to transmit and store sub-hourly usage information?
3. What are the sub-hourly PJM requirements for participation in ancillary service markets?
4. What are the Companies’ incremental smart meter, communication, data storage, and data sharing costs associated with these sub-hourly requirements for ancillary services?
5. What are the incremental equipment and installation costs of pulse data recorders used to measure sub-hourly meter data?
6. Is a pulse data recorder attached to the Companies’ meter sufficiently accurate for use by PJM in its ancillary markets, or is redundant metering required to meet PJM standards?
7. What are the additional customer costs associated with (1) transferring pulse meter information from the meter to inside the customer’s premise, (2) processing this data into usable format, (3) communicating the data to a third party or PJM?
8. To the extent a customer requests sub-hourly data, what, if any, cost recovery charge is appropriate. For example, would it be appropriate to have a customer charge that varies with the level of sub-hourly metering requested, and, if so, what would those sub-hourly metering charges be?

We direct the Companies to study these issues during the Assessment Period. A stakeholder collaborative process shall be used, which should include a broad array of participants (including but not limited to the Parties to this proceeding and EGSs) and the results shall be included in the Deployment Plan filed with the Commission. The Deployment Plan shall also provide a thorough cost/benefit analysis for review by the Parties and the Commission.

## B. Cost Issues

Absent a cost recovery rider, FirstEnergy does not have a mechanism available to recover the costs associated with developing and implementing its Smart Meter Plan. The Companies are proposing to recover all reasonable and prudent costs incurred in connection with the Plan on a full and current basis through a reconcilable adjustment clause under 66 Pa. C.S. § 1307. Joint Petition at ¶ 29.

Although no Party addressed this point, we begin by noting that all Plan costs, including both expense and capital items (net of tax) and revenues included in the Companies’ smart meter revenues, will not be included in the revenue requirement used in future distribution base rate cases and will be subject to Commission review and audit.

### 1. Cost of Capital

#### a. Capital Structure Ratios

The rate of return is calculated by determining the proportions of capital and the cost rate for each type of capital. To calculate the rate of return, therefore, it is necessary to determine the capital structure, which is the proportion of long-term debt, preferred stock and common equity.

##### 1. FirstEnergy’s Plan

As stated in the Plan:

To recover the capital costs associated with the future deployment of smart meter technologies, the Companies are proposing that the capital structure be based upon Met-Ed’s and Penelec’s normalized capital structures of 51% long-term debt and 49% common equity as determined in Met-Ed’s and Penelec’s most recent distribution base rate case proceeding by the Commission Order entered January 11, 2007 at Docket Nos. R-0061366 (Met-Ed) and
R-00061367 (Penelec). These capital ratios are also proposed to be applicable to Penn Power.

Plan at 22. The capital structure of 51% long term debt and 49% common equity would be used until an updated capital structure finding is made in a Met-Ed, Penelec or Penn Power base rate proceeding. FirstEnergy MB at 10.

The OTS argued that the Commission should not use a company-specific capital structure. Instead, the OTS argued that the Commission should use a representative capital structure for all EDCs that are required to file a smart meter plan with the Commission. This representative capital structure would be based on a Commission-established barometer group included in the Bureau of Fixed Utility Services’ Quarterly Earnings Report. OTS MB at 14.

##### 2. ALJ’s Recommendation

The ALJ found that the weighted cost of capital is meant to be EDC-specific. As a result, she rejected the OTS’s proposal to use a representative capital structure. She found that the Companies’ proposal to use the capital structure approved by the Commission in the most recent base rate case of Met-Ed and Penelec is reasonable. I.D. at 33-36.

##### 3. Positions of the Parties

The OTS argues that the ALJ erred by rejecting its proposal for a representative capital structure for all EDCs based on a barometer group included in the Quarterly Earnings Report. OTS Exc. at 13. According to the OTS, the ALJ correctly characterized the arguments that the OTS offered in its Main Brief by saying:

OTS believes that a representative capital structure is important for two reasons: (1) it will be based on the same barometer group that will be used to determine the appropriate cost rate of common equity, and thus match the financial risk associated with the corresponding cost rate of common equity, and (2) since some electric companies have capital structures that are not representative of the industry norm, using a representative capital structure will not advantage or disadvantage any EDC or its ratepayers.

I.D. at 14. The OTS argues, however, that the ALJ failed to address the arguments that the OTS offered in its Reply Brief. These arguments responded to the Companies’ arguments, which the ALJ apparently found persuasive. OTS Exc. at 14.

The ALJ apparently agreed with the Companies that the *Implementation Order* indicates that capital structure is to be company specific. The *Implementation Order* states:

Act 129 allows an EDC to recover “all reasonable and prudent costs of providing smart meter technology.” In order to determine what these costs are, each EDC will document all costs relating to its smart meter deployment and installation plan. These costs will include both capital and expense items relating to all plan elements, equipment and facilities, as well as an analysis of all related administrative costs. More specifically, these costs would include, but not be limited to, capital expenditures for any equipment and facilities that may be required to implement the smart meter plan, as well as depreciation, operating and maintenance expenses, *a return component based on the EDC’s weighted cost of capital*, and taxes. Administrative costs would include, but not be limited to, incremental costs relating to plan development, cost analysis, measurement and verification, and reporting. In addition, the plan should include cost estimates for testing, upgrades, maintenance and personnel training. The EDC must also provide sufficient support to demonstrate that all such costs are reasonable and prudent with respect to its smart meter plan. Consistent with Section 315(a), the burden of proof shall be on the EDC. 66 Pa.C.S. § 315(a).

*Implementation Order* at 29 (emphasis added). The OTS contends that the ALJ gave undue importance to the use of the word “the” in the italicized portion of the above quotation. The OTS argues that the Commission was simply referring to an EDC in the singular and did not intend to limit the legal interpretation of its Order by using the expression “the” EDC. OTS Exc. at 16; OTS RB at 13.

The ALJ also apparently agreed with the Companies’ argument that a representative capital structure should not be used because that approach would ensure that some EDCs over-recover their capital costs while other EDCs under-recover theirs. I.D. at 36. The OTS responds that some EDCs have capital structures that are not representative of the industry norm. Adoption of the OTS recommendation presents the Commission with the opportunity to apply a uniform structure that is more representative. OTS Exc. at 16; OTS RB at 13-14.

Finally, the OTS submits that its recommendation should not be rejected simply because the nature of the assets to be capitalized might differ from one EDC to the next. The OTS’s proposal would have the benefit of applying a uniform rate of return recovery treatment for all EDCs that must submit a smart meter plan. If each EDC can recover the same overall rate of return on capital assets, no EDC would have an advantage or disadvantage relative to each other. OTS Exc. at 17.

The Companies respond that the Quarterly Earnings Reports are not intended to be used in the manner proposed by the OTS. The report has not been subjected to the level of scrutiny that would occur during a base rate case. The Companies’ proposal, in contrast, utilizes data resulting from such litigation. The Companies also argue that their proposed capital structure of 51% long term debt and 49% equity is reasonable, considering that the long term debt ratios for 2009, for the companies in the barometer group, range from 35% to 59%. The Companies submit that there is no basis for imposing a uniform capital structure on all EDCs that are subject to the smart meter plan requirement. Uniformity ensures that some companies over-recover their capital costs while other companies under-recover theirs. According to the Companies, each EDC is unique and has approached the smart meter requirement in its own way. As a result, there is no reason to treat the EDCs uniformly. FirstEnergy R.Exc. at 14.

No other Party addressed this aspect of the Initial Decision.

##### 4. Disposition

We will modify the decision of the ALJ. Although we prefer a company-specific approach, we are concerned about the use of stale information where the EDC’s most recent base rate case is dated. Consequently, we find that the capital structure for each Company will be determined as follows: If the Company has a capital structure from a litigated base rate case that is less than three years old, the capital structure ratios from that base rate case shall be used for the purposes of recovering the Company’s smart meter costs.[[1]](#footnote-1) If the Company’s last litigated base rate case is more than three years old, the capital structure ratio that will be used is the Company’s actual capital structure included in the then most recent Quarterly Earnings Report.[[2]](#footnote-2) If, however, the Company’s actual capital structure from the Quarterly Earnings Report is outside the zone of reasonableness for the electric utility industry, [[3]](#footnote-3) the capital structure ratio that will be used is the average of the electric utility barometer group that is included in the then most recent Quarterly Earnings Report. The applicable capital structure ratio shall be refreshed after the results of the next base rate case for that Company. To the extent that the Company’s subsequent base rate case is settled, the parties are to establish the applicable capital structure ratio to apply for the purposes of the Plan recovery mechanism in that proceeding.

#### b. Cost Rates of Senior Securities

##### 1. FirstEnergy’s Plan

The Companies proposed using their most recent calendar year’s cost of long-term debt as reported to the Commission in their annual earnings reports to the Commission. FirstEnergy MB at 10. This figure would be updated annually. *Id*. at 27. The OTS proposed that this figure be updated quarterly. OTS RB at 5.

##### 2. ALJ’s Recommendation

The ALJ approved the Plan, as proposed, with regard to this issue. The ALJ noted that the OTS’s proposal called for blending the cost rates of debt and preferred stock, but the Companies have no preferred stock outstanding. In addition, the ALJ apparently agreed with the Companies that there is no precedent for such a blended rate. I.D. at 36-37.

##### 3. Positions of the Parties

The OTS argues that the ALJ failed to give adequate weight to its argument that using quarterly debt cost rates is preferable because that approach better reflects the Companies’ actual current cost rate and will better reflect the cost of capital used to finance the smart meter technology. OTS Exc. at 18-19; OTS RB at 16.

The Companies continue to oppose the OTS’s recommendation. They argue “neither the frequency nor the magnitude of changes in the weighted average cost rate of senior securities is likely to produce any material impact on the Companies’ overall cost of capital on a quarterly basis.” FirstEnergy R.Exc. at 14. They also argue that the time and resources required by a quarterly filing and adjustment outweigh the benefits of such a procedure.

No other Party addressed this aspect of the Initial Decision.

##### 4. Disposition

We agree that the mechanism proposed by the OTS (the most recent Quarterly Earnings Reports) should be used because using the quarterly Earnings Reports will produce the most accurate and up-to-date costs of capital for the companies related to the Plan. The quarterly cost of debt and, where applicable, preferred stock, will be used in the Companies’ annual reconciliation and annual projections to determine the Companies’ weighted cost of capital.

We note the Companies’ argument that neither the frequency nor the magnitude of changes in the weighted average cost rate of senior securities is likely to produce any material impact on the Companies’ overall cost of capital on a quarterly basis. However, while we agree with the Companies regarding the potential impact, at this time when there is no outstanding preferred stock, the inclusion of this component could, at some future time, represent a notable change in capital structure. Additionally, since the actual current quarterly data regarding preferred stock and debt is available, this should be utilized as recommended by the OTS. Accordingly, we shall reverse the ALJ’s recommendation and adopt the OTS’s position on this issue.

#### c. Common Equity Cost Rate

##### 1. FirstEnergy’s Plan

FirstEnergy proposed using a company-specific cost of common equity. Specifically, FirstEnergy proposed using the cost of equity adopted by the Commission in the last base rate case for Met-Ed and Penelec (10.1%), until an updated cost of equity finding is made in a future Met-Ed, Penelec or Penn Power base rate proceeding. FirstEnergy MB at 10.

The OTS argued that the Commission should not use a company-specific cost of common equity. Instead, the OTS argued that the Commission should use the same cost of common equity for all EDCs that are required to file a smart meter plan with the Commission. This cost of common equity would be based on the barometer group included in the Quarterly Earnings Report. As support for its proposal, the OTS noted that this approach is used in distribution system improvement charge (DSIC) proceedings in the water industry. OTS MB 16-17.

##### 2. ALJ’s Recommendation

The ALJ approved FirstEnergy’s proposal to use company-specific data to calculate the cost of common equity. The ALJ found “no persuasive precedent” for using a barometer group to calculate the cost of common equity. In addition, the ALJ found the Companies’ approach reasonable. I.D. at 37-38.

##### 3. Positions of the Parties

The OTS continues to recommend “the use of a Commission staff calculated cost rate of common equity for the electric industry as presented in the Quarterly Earnings Report.” OTS Exc. at 19-20. This approach would be consistent with the OTS’s proposal to use a barometer group to determine the capital structure of all EDCs that are required to submit a smart meter plan. As a result, the OTS argues, the cost of common equity would be properly matched with the financial risk associated with the capital structure. *Id*. at 20, n. 12.

In addition, the OTS notes that Act 129 permits EDCs to recover smart meter technology costs through base rates or through a reconcilable automatic adjustment clause. 66 Pa. C.S. § 2807(f)(7). The Companies selected the quicker and simpler funding mechanism of a reconcilable automatic adjustment. The OTS argues that its approach is consistent with this choice because it is simpler and more equitable than the approach advocated by the Companies. OTS Exc. at 20.

The Companies argue that their currently-authorized 10.1% equity return rate is a better proxy for their current cost of equity than a generic figure derived from a barometer group. According to FirstEnergy, the companies in the barometer group may not have the same business risks as do the three FirstEnergy Companies. FirstEnergy R.Exc. at 14-15.

In addition, the Companies note that DSIC proceedings only use a generic equity return rate when more than two years have passed since the rate decision in the pertinent company’s last base rate case. “Unlike electric utilities, many water utilities file base rate cases on a two-year cycle, thus allowing them to go for extended periods without having to utilize the FUS ‘generic’ return rate in their DSIC calculations.” *Id*. at 15.

The Companies urge the Commission to affirm the ALJ’s decision. If, however, the Commission chooses to use a generic equity cost rate, the Companies argue that the Commission should do so through a rule-making proceeding. *Id*. at 16.

No other Party addressed this aspect of the Initial Decision.

##### 4. Disposition

Based upon our review of this issue, we conclude that the cost of common equity for each Company will be determined as follows: if that Company has a Return on Equity (ROE) from a litigated base rate case that is less than three years old, that ROE is to be used to determine the weighted average cost of capital under the Plan. If, however, the last litigated base rate case is more than three years old, the Quarterly ROEs for the electric utility barometer group included in the then most recent Quarterly Earnings Report is to be utilized[[4]](#footnote-4) until an ROE is determined in a subsequent litigated base rate case, to be effective for the subsequent three year period. To the extent that the subsequent base rate case is settled, the parties are to establish the applicable ROE to apply for the purposes of the Plan recovery mechanism in that proceeding.

While the water company DSIC ROE computation is based upon a litigated allowance unless two years has passed since that ROE was established, we believe that a span of three years for those EDCs filing smart meter plans is reasonable. Although the three year period may not represent the historic filing of our EDCs over the last two decades, we believe that, given today’s economic uncertainty, the use of a three year period to establish this component of rate recovery is also reasonable. Accordingly, we shall reverse the recommendation of the ALJ and adopt the OTS’s position.

### 2. SMT-C Filing and Reconciliation Dates and Adjustment Periods

#### a. FirstEnergy’s Plan

The Companies propose that the SMT-C rider be updated and reconciled on an annual basis (unless a material under- or over-collection is expected, in which case the Companies would submit a request for an interim revision of rates). With the exception of the initial SMT-C rates, the Companies propose the following milestone dates and deadlines for filing:

January 31 End of the 12-month SMT-C Reconciliation Year

March 1 Filing date for (1) the statement of reconciliation of SMT-C revenues and costs for the Reconciliation Year and (2) the SMT-C rates to become effective on April 1 and accompanying information.

April 1 Beginning of 12-month SMT-C Computational Year and effective date of the proposed
SMT-C rates subject to the Commission’s review of the Companies’ reconciliation statements and public hearings thereon, as required by 66 Pa. C.S. § 1307(e), and subsequent audits, as provide in 66 Pa. C.S.
§ 1307(d).

FirstEnergy MB at 30.

The OTS recommended that the Commission establish a uniform schedule for smart meter filings, rather than having a company-specific schedule. Under the OTS’s proposed schedule, the twelve-month Reconciliation Year would end on June 30. The EDCs would be required to submit their annual filings by August 1, the Commission would be required to hold hearings by October 1, and the Commission would be required to issue an Order by December 1. The resulting tariff would be effective on January 1. OTS MB at 10.

In addition to the annual rate adjustment and reconciliation, the OTS recommended that rates should be reviewed and adjusted quarterly. This would minimize the impact of projection errors and avoid “dramatic fluctuations” in rates as a result of annual adjustments. OTS MB at 12. The OTS argued that these filings should be due at least ten days before the beginning of each calendar quarter, to allow for rate adjustments on January 1, April 1, July 1 and October 1.

#### b. ALJ’s Recommendation

With regard to filing and reconciliation dates and adjustment periods, the ALJ found the Companies’ Plan reasonable and consistent with both Act 129 and the *Implementation Order.* The ALJ was not persuaded that the timetables of the EDCs need to match, nor was she persuaded that the Companies’ ratepayers should pay the cost of quarterly reports and adjustments. She therefore rejected the OTS’s proposal and approved the Companies’ proposed filing and reconciliation dates and adjustment periods. I.D.at 38-41.

#### c. Positions of the Parties

The OTS argues that the ALJ erred by not establishing a uniform schedule for filing dates and reconciliation periods. OTS Exc. at 7-9. According to the OTS, such a uniform schedule would promote administrative and judicial efficiency for the Commission and all parties involved in EDC smart meter proceedings. In this regard, the OTS notes that the Commission engages in an extensive review process for both gas distribution companies’ annual 1307(f) proceedings and EDCs’ annual Energy Efficiency and Conservation Plan proceedings:

Synchronizing the filing and review dates between those for the smart meter filings and those for such other annual Commission review proceedings to avoid each other during the year will allow the Office of Administrative Law Judge (“OALJ”), the statutory and other interested parties and particularly the Commission sufficient time to review and rule upon all aspects of such filings, and in particular the reported costs to be assessed to ratepayers.

*Id*. at 8. Finally, the OTS suggests that a uniform schedule for filing dates and reconciliation periods would improve the Commission’s ability to ensure consistency in its decisions regarding smart meter plans.

The OTS also argues that the ALJ erred by not requiring the Companies to make quarterly filings, so that their SMT-C Riders can be reviewed and potentially adjusted more regularly. OTS Exc. at 9-13. The OTS contends that the Companies’ reasons for opposing the proposed quarterly filings are unpersuasive. According to the OTS, the Companies should be tracking their expenditures and reviewing their projects on an on-going basis, so a requirement that they file this information with the Commission “should not be a major undertaking.” *Id*. at 11. The OTS further argues that there is no record evidence supporting the Companies’ claim that the Commission and the parties would incur significant additional costs as a result of the quarterly filing and review process. Similarly, the OTS submits that there is no record evidence supporting the Companies’ claim that the SMT-C riders should not vary materially from quarter to quarter.

With regard to the OTS’ proposal for a uniform schedule for filing dates and reconciliation periods, the Companies argue that the OTS offers no new arguments. The Companies submit that the OTS renews arguments that were considered and properly rejected by the ALJ. According to the Companies, the ALJ correctly concluded that the Companies’ proposed schedule is reasonable and consistent with Section 1307. The Companies reiterate their argument that the OTS’s proposed uniform schedule would introduce an unnecessary six-month delay between the end of the Reconciliation Year and the effective date of the adjusted tariffs. They further contend that this period is four months longer than the comparable period in Section 1307 adjustment clause proceedings. FirstEnergy R.Exc. at 8-9.

With regard to the OTS’s proposal for quarterly adjustments to the SMT-C rider, the Companies argue that quarterly updates are not required by Act 129 or the *Implementation Order.* They also argue that the benefits of the procedure are outweighed by the costs. The Companies acknowledge that quarterly updates and adjustments might be appropriate where the costs being recovered are volatile, or where customers need to receive price signals about the cost of electricity, but neither situation is present here. In addition, the Companies argue there is no need for the proposal because any party may request an interim adjustment of the Companies’ SMT-C rider at any time to preempt a material over- or under-collection. FirstEnergy R.Exc. at 9-10.

No other Party addressed this aspect of the Initial Decision.

#### d. Disposition

We shall modify the Initial Decision and adopt the uniform procedural schedule advocated by the OTS, with a 12-month reconciliation period ending June 30 of each Plan year, modified to only require annual filings, effective January 1 of each year, using average capital balances. Specifically, the Companies shall not be required to incorporate quarterly filings, but may file for interim adjustments as necessary to maintain a balance between Plan net costs and revenues collected under a separate cost recovery mechanism under its tariff.

### 3. Interest on Over- and Under-Collections

#### a. FirstEnergy’s Plan

The Companies’ Plan calls for interest on net over- and under-collections at the legal rate of six percent per year. 41 P.S. § 202. FirstEnergy St. No. 3 at 9. The OTS argued that interest should apply to net over-collections, but not net under-collections. In addition, the OTS argued that interest on net over-collections should be paid at the maximum lawful rate of interest for residential mortgages published monthly in the *Pennsylvania Bulletin.* OTS MB at 18.

#### b. ALJ’s Recommendation

The ALJ concluded that “the letter of the law” does not provide for interest on net over- or under-collections. I.D. at 43. The ALJ noted that the *Implementation Order* refers to Section 1307(e) of the Code, 66 Pa. C.S. § 1307(e), which does not mention interest. In contrast, Section 1307(f) of the Code, 66 Pa. C.S. § 1307(f), makes specific provision for interest in the recovery of natural gas costs.

The Legislature included interest for subsection (f) only, and I cannot assume that the section specifically limited to the recovery of natural gas costs also applies to utilities proceeding under subsection (e). Therefore, the interest is disallowed.

I.D. at 43.

#### c. Positions of the Parties

The OTS agrees with the ALJ that no interest should be paid on net under-collections. The OTS, however, continues to argue that interest should be paid on net over-collections at the residential mortgage rate. OTS Exc. at 22-23.

With regard to net under-collections, the OTS notes that there is a return component in the SMT-C Rider for capitalized expenditures. According to the OTS, this permits the Companies to receive a return of and a return on their capitalized assets, which is the bulk of their smart meter expenditures. The OTS also notes that the smart meter surcharge mechanism permits rate base recognition quicker than would occur through the base rate case process. As a result, the OTS contends that the Companies do not need to recover interest on under-collections. *Id.* at 22-24.

With regard to net over-collections, the OTS notes that the residential mortgage rate is the rate currently used by the Commission when calculating the DSIC. The OTS contends that the residential mortgage rate is the proper rate to apply, in part, because “it constitutes the current and best representative cost of borrowed funds.” *Id*. at 25.

FirstEnergy also excepts to the ALJ’s conclusion regarding interest. FirstEnergy, however, argues that the Commission should approve the Plan’s proposal for interest on net under- and over-collections at the legal rate of interest. FirstEnergy Exc. at 2. FirstEnergy contends that interest on under- and over-collections is necessary to achieve the full and current recovery of costs allowed by Act 129. 66 Pa. S.
§ 2807(f)(7). According to FirstEnergy, interest on under- and over-collections is necessary to reflect the time value of money. FirstEnergy also argues that the ALJ’s statutory interpretation is contrary to Commission precedent, which has allowed interest on net under- and over-collections in other 1307(e) proceedings. *Id*. at 3-5.

The Companies oppose the OTS’s proposal for two reasons. First, the Companies contend there is no justification for “one-directional interest” (i.e., interest on over-collections but not under-collections). The return component in the SMT-C Rider does not recognize the time value of money associated with a shortfall in revenues compared to costs. Second, the Companies submit that the statutory rate of interest should apply rather than the residential mortgage rate. *Id*. at 5-6; FirstEnergy R.Exc. at 16-17.

No other Party addressed this aspect of the Initial Decision.

#### d. Disposition

The recovery of interest within a 1307(e) reconciliation mechanism is not specifically provided for within the statutory language. However, the Commission does require Group I gas utilities to pay their customers interest on over-collected gas costs. 52 Pa Code § 53.66. The Commission has also provided for the imputation of interest, at the legal rate of six percent per year, within other 1307(e) type recovery mechanisms such as Universal Service Cost Riders, Default Service Charge Riders and Consumer Education Program Cost Recovery Riders. By providing for the imputation of interest within the SMT-C Riders, the utility is able to recover all allowable costs, including the time value of money, on a full and current basis, as allowed by Act 129. 66 Pa. C.S.
§ 2807(f)(7). If the recovery of interest were not allowed the utility would not recover all of its allowable costs.

The Companies’ Plan calls for interest on net over- and under-collections at the legal rate of six percent per year. 41 P.S. § 202. Prior Commission decisions regarding 1307(e) recovery mechanisms have provided for the imposition of interest, at the legal rate, on both over and under-collections. We recognize that the residential mortgage interest rate is used in the reconciliation of other types of costs incurred by various utilities. However, we believe that the legal rate, as requested by the Companies, is reasonable and fulfills the requirement of the Act regarding full and current recovery. Accordingly, we shall grant the Companies’ Exception and deny the Exception of the OTS with regard to interest on over- and under-collections.

### 4. Current Recovery of Start-Up and Assessment Period Costs

#### a. FirstEnergy’s Plan

As stated in the Initial Decision,

 The Companies propose that (1) administrative start-up costs incurred through the effective date of the SMT-C Riders should be deferred, accrue compound interest based on the legal rate in 41 P.S. § 202, and be recovered over the 12-month period ending March 31, 2011; and (2) the projected expenses for the 24-month Assessment Period be recovered on a current basis.

I.D. at 44. The OTS proposed that administrative start-up costs and Assessment Period costs be capitalized and depreciated, rather than expensed when incurred. The OTS argued that the costs incurred to develop the infrastructure and make it operational should be treated as capital costs. In support of its position, the OTS also stated that infrastructure development and rebuild costs are investments which will provide benefits over an extended period of time and, as such, should be depreciated over time, just like the costs of plant investments. Lastly, the OTS states that the ratemaking principle for plant acquisitions to be amortized over their useful lives should be maintained in the treatment of smart meter plan costs. OTS MB at 20-22.

#### b. ALJ’s Recommendation

The ALJ approved the Companies’ proposal regarding administrative start-up costs. With regard to Assessment Period costs, however, the ALJ concluded that the costs in question should be capitalized over the life of the smart meter technology to which the costs relate. I.D. at 46.

#### c. Positions of the Parties

The OTS excepts to the ALJ’s conclusion that administrative start-up costs should be expensed. The OTS contends that the Companies’ administrative start-up expenses are investments that provide a benefit over an extended time period, similar to any other plant investments. An investment in physical plant should be recovered from those ratepayers who receive the benefit. “Because the number of customers in the service territory remains fluid, it would not be appropriate to recover the costs only from those customers who are in the service territory at the beginning of the recovery period.” OTS Exc. at 26. Therefore, the OTS concludes, administrative start-up costs are appropriately depreciated over the life of the asset. *Id*. at 25-26.

The Companies except to the ALJ’s conclusion that Assessment Period costs should be capitalized over the life of the smart meter technology to which the costs relate. The Companies state that the costs in question include research and development costs that are traditionally treated as expense items. FirstEnergy Exc. at 3, 6-8. The Companies further state that their proposal will moderate the impact of the Plan on customers’ rates. According to the Companies, the expenses the Companies will incur during the Assessment Period will be relatively small, whereas the costs that will be incurred during the implementation of the Plan will be greater. “It does not make sense to defer the recovery of Assessment Period costs from a period when SMT-C rates will be relatively low to a period when those rates will be considerably higher.” *Id*. at 7.

The Companies further argue that the ALJ’s decision leaves certain implementation issues unresolved. For example, the Companies state that it is unclear whether the Companies will be permitted to earn a return on, as well as a return of, Assessment Period costs. The Companies also state that the starting point for the recovery period has not been identified. The Companies conclude that the OTS’s proposal, as adopted by the ALJ, “creates levels of complexity that are not justified by the nature and amount of the Assessment Period costs to be recovered.” *Id*. at 8.

The OTS responds by arguing that the Assessment Period costs are not primarily research and development expenses. According to the OTS, the expenses in question are infrastructure development and rebuild implementation costs. That is, the OTS contends that the expenses represent plant improvements that are generally capitalized over the useful life of the items for rate-making purposes. OTS R.Exc. at 2-3.

The OTS further responds by arguing that there are no significant unresolved implementation issues. The OTS submits that its recommendation to capitalize Assessment Period costs inherently includes both the return on and return of such assets. The OTS also submits that, implicit in its recommendation regarding the capitalization of Assessment Period costs, was the concept that the starting point for the recovery period is when the meter is placed into service. *Id*. at 3-4.

No other Party addressed this aspect of the Initial Decision.

#### d. Disposition

Regarding the recovery of Start-Up Costs, we agree with the ALJ’s adoption of the Companies’ position. We agree with the Companies’ rationale that recovery of start-up costs on a current basis will moderate the rate impact on customers. Additionally, this treatment is consistent with our treatment of start-up costs incurred by the Companies in their Energy Efficiency and Conservation Plans.

Assessment Period costs should also be recovered on a current basis, as proposed by the Companies. The Companies state that the expenses that will be incurred during the twenty-four month Assessment Period will include costs associated with the review and testing of numerous meters and various meter infrastructure configurations as part of the Companies’ research and development efforts. FirstEnergy St. No. 3-R, at 12; FirstEnergy MB at 36. We agree with the Companies’ position that research and development costs are traditionally treated as an expense item for rate-making purposes. Therefore, it is appropriate to grant the Companies’ request for recovery on a current basis for these expenditures. Based upon the above discussion, the Exception of the OTS regarding start-up costs is denied, and the Exception of the Companies regarding Assessment Period costs is granted.

### 5. Recognition of Operating Expense Reductions and Avoided Capital Costs

#### a. FirstEnergy’s Plan

Act 129 permits an EDC to recover reasonable and prudent costs of providing smart meter technology.

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 [EDC] 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 [EDC] from the installation and use of the smart meter technology.*

66 Pa. C.S. § 2807(f)(7) (emphasis added).

The Companies’ Plan did not address operating and capital cost savings realized from the installation and use of smart meter technology. The OCA, however, recommended that the Companies’ SMT-C Riders be modified to explicitly state that any reduction in operating expenses or avoided capital expenditures will be deducted from the incremental costs of the Plan to determine net recoverable costs. OCA St. No. 1 at 17-18.

#### b. ALJ’s Recommendation

The ALJ found that Act 129 requires that an EDC’s tariff reflect the possibility that smart metering may result in savings for the EDC in the future. As a result, the ALJ ordered the Companies to include wording in their SMT-C Riders “to provide for operating and capital cost savings realized as a result of the smart meter installation and use of the technology.” I.D. at 47.

#### c. Positions of the Parties

The Companies argue that future base rate proceedings are the best place to recognize operating and capital cost savings realized as a result of the installation and use of smart meter technology. According to the Companies, “the difficulty and uncertainty surrounding the quantification of such savings make future distribution base rate proceedings the best place to recognize any operational savings directly associated with the implementation of the Companies’ Smart Meter Plan.” FirstEnergy Exc. at 8. The Companies also argue that savings resulting from the use of smart metering should be recognized in base rate proceedings because revenue reductions caused by reduced electricity consumption or shifting energy demand attributable to smart metering can only be reflected in base rate proceedings. *Id*.

If, however, the Commission affirms the holding of the ALJ, the Companies ask the Commission to clarify that “capital cost savings” do not include future “avoided” capital costs. The Companies argue that “avoided” costs are not currently reflected in rates. Therefore, their avoidance would not reduce existing base rates. *Id*. at 8-9.

In response, the OCA notes that Act 129 permits EDCs subject to the smart metering requirement to recover reasonable and prudent costs incurred, minus the savings that result from the smart meter plan. The OCA notes that at least one other EDC subject to the smart metering requirement has included language in its tariffs to account for savings resulting from its smart meter plan. According to the OCA, Act 129 requires such language to be included in the EDC’s tariff. OCA R.Exc. at 5.

The OCA further notes that Act 129 gives each EDC subject to the smart metering requirement an option as to how to recover its costs. The EDC can recover the costs of its smart meter plan through base rates or through a Section 1307 reconcilable automatic adjustment mechanism. In this case, the Companies chose to recover their costs through a Section 1307 automatic adjustment mechanism. Therefore, the OCA concludes, the Companies must account for savings as a result of smart metering in the automatic adjustment mechanism. OCA R.Exc. at 2-6.

No other Party addressed this aspect of the Initial Decision.

#### d. Disposition

We believe that the ALJ’s recommendation is correct in that Act 129 requires an EDC’s tariff to reflect the possibility that smart metering may result in savings for the EDC in the future. As a result, the ALJ properly ordered the Companies to include wording in their SMT-C Riders “to provide for operating and capital cost savings realized as a result of the smart meter installation and use of the technology.” 66 Pa. C.S. § 2807(f)(7).

To accomplish this requirement of the Act, PECO has included the following language in its tariff:

Any reductions in operating expenses or avoided capital expenditures due to the Smart Metering 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.

OCA St. No. 1 at 17; OCA R.Exc. at 5; PECO Joint Petition for Partial Settlement, Attachment A – Smart Meter Cost Recovery Surcharge filed on November 25, 2009 at Docket No. M-2009-2123944.

Regarding where the cost savings attributable to the smart meter program should be reflected, the Companies state that a future base rate proceeding is the appropriate venue. We disagree. The Companies selected the use of a reconcilable adjustment mechanism in lieu of a base rate proceeding to recover their Plan costs. Therefore, it is only appropriate for any cost savings to be reflected in that same reconcilable adjustment mechanism. Based upon our review of the record on this issue, we shall adopt the recommendation of the OCA on reflecting any cost savings in the Companies SMT-C Riders. Accordingly, we shall direct the Companies to add the above language to their SMT-C Riders and to also include language to clarify that the treatment of those savings will be reflected in the reconciliation process concomitantly with any other change from the originally approved recovery rate.

### 6. Cost Allocation

#### a. FirstEnergy’s Plan

The *Implementation Order* stated:

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.

*Implementation Order* at 30.

Under the Companies’ Plan, all costs incurred before and during the Assessment Period, as well as Plan costs that are not directly assignable during the Deployment Period, would be considered common costs. MEIUG *et al.,* R.Exc. at 2-3. These common costs would be allocated among the rate classes based on each class’s number of customers. Companies’ St. No. 3-R at 2-4. The OCA, however, argued that the Companies should allocate common costs among the classes based on energy usage and demand. OCA MB at 22-31.

#### b. ALJ’s Recommendation

The ALJ noted that the OCA’s proposal would dramatically change the Plan’s allocation of common costs among the customer classes. For example, the Plan would allocate 88.23% of Met-Ed’s common costs to the residential class, 11.45% to the commercial class, and 0.32% to the industrial class. The OCA’s proposal would allocate 35.5% of Met-Ed’s common costs to the residential class, 36.7% to the commercial class, and 27.8% to the industrial class. Similarly, the OCA’s proposal would significantly modify the allocation of common costs among the customer classes for Penelec and Penn Power. I.D. at 53.

The ALJ rejected the OCA’s proposal. She concluded that the OCA was “ignoring long-standing principles of cost causation.” I.D. at 55. She concluded further that the Plan’s common costs would be incurred without regard to energy consumption or customer demand. She also noted that the smart meter technology would be provided to all metered customers. She therefore recommended that common costs be allocated based on the number of customers in each class, as the Companies proposed. *Id*.

#### c. Positions of the Parties

The OCA excepts to the ALJ’s decision regarding the allocation of common costs. The OCA disputes the ALJ’s statement that smart meter costs are “akin to traditional metering.” OCA Exc. at 7 (quoting I.D. at 55). The OCA contends that these are not traditional meters and the reasons for incurring these costs diverge widely from the reason that traditional metering costs are incurred. According to the OCA: the true cost causation of the smart meter network is compliance with Act 129; the primary purpose of installing the smart meter network is to impact the energy usage and peak demand of customers, in order to reduce and stabilize energy prices; and the benefit of that impact will accrue to all customer groups based on their energy usage and the demand they place on the system. The OCA submits that common costs should be allocated to customer classes in reasonable proportion to the benefits received by each class from the planning and implementation of the smart meter system. Therefore, the OCA concludes, common costs should be allocated on a 50% energy usage/50% demand basis. The OCA believes this approach properly reflects cost causation and is consistent with traditional rate-making principles. OCA at 6-17.

The Companies respond that common costs vary based on the number of customer accounts, not based on the customer’s energy usage or peak demand. The Companies maintain that the OCA would have its desired outcome (reducing the proportion of common costs allocated to the residential class) dictate the Companies’ allocation methodology. This is an invalid approach, according to the Companies. The Companies further contend that the OCA’s proposal is a benefits-based allocation approach rather than a cost-based allocation approach. FirstEnergy R.Exc. at 18-20.

According to the Companies, the OCA erroneously argues that smart meter common costs are qualitatively different from other forms of metering costs. The Companies argue that the costs of traditional meters have been allocated on a customer basis although these meters encourage conservation, promote efficient use of utility service, and reduce overall costs. This is not qualitatively different from smart meters, which the OCA asserts are intended to reduce and stabilize the cost of energy. *Id*. at 19-20.

MEIUG *et al.,* like the Companies, believes the ALJ correctly allocated common costs based on the number of customers. According to MEIUG *et al.:*

The OCA’s proposed cost allocation approach … is unsubstantiated and would require the Companies to allocate costs based on a “value of service” approach (i.e., according to a customer’s energy or demand consumption), even though no nexus exists between the cost to the Companies for the Smart Meter Plan and a customer’s energy or demand consumption, particularly with respect to the non-direct costs of administering the smart meter communication network and other back office systems.

MEIUG *et al.* R.Exc. at 3.

MEIUG *et al.* maintains that the ALJ’s decision is consistent with Commonwealth Court precedent, including *Lloyd v. Pa. PUC*, 904 A.2d 1010 (Cmwlth. Ct. 2006). MEIUG *et al.* further argues that the ALJ’s decision is consistent with the *Implementation Order* and traditional cost causation principles. Additionally, MEIUG *et al.* agrees with the Companies that the Plan’s proposed treatment of smart meter costs is consistent with the Commission’s traditional rate-making treatment of common metering costs. *Id*. at 4-8.

MEIUG *et al.* notes that the OCA’s position is based, in part, on *Illinois Commerce Commission v. FERC*, 576 F.3d 470 (7th Cir. 2009), which was an appeal of a Federal Energy Regulatory Commission order regarding the allocation of transmission network improvement and enhancement costs. According to MEIUG *et al.*, this case is not helpful for resolving the issue before us because “it was decided by a federal court that exercises no jurisdictional authority over the Commonwealth of Pennsylvania and addresses costs that are not similar to the smart meter costs at issue here.” MEIUG *et al.* R.Exc. at 5.

Similarly, the OSBA requests that we adopt the ALJ’s position regarding the allocation of common costs. The OSBA argues that the common costs in question include such things as meter data management, network management, and administrative costs. These costs do not vary from customer to customer and bear no relation to energy or demand. OSBA R.Exc. at 3-8.

The OSBA argues that the OCA’s position is based on faulty assumptions. The OCA erroneously assumes that commercial ratepayers are more likely to reduce their electric bills through the use of smart meters than are Residential ratepayers. The OSBA contends that the record does not support this assumption. The OSBA also disagrees with the OCA’s assumption that the principle reason for the General Assembly’s decision to mandate the deployment of smart meters is to save ratepayers money. One of the policy goals of Act 129 is to reduce the air emissions associated with energy use. All ratepayers will experience these environmental benefits, even if their electric bills do not decrease because of smart meters. *Id*. at 8-9.

If, however, the Commission finds that common costs should not be allocated solely on the basis of customer count, the OSBA recommends an alternative approach: allocate the common costs in proportion to the allocation of the meters’ costs. “This alternative could be implemented by estimating the meters costs (which would not be incurred during the Assessment Period) and reconciling those estimates when the actual costs are known.” *Id*. at 11.

#### d. Disposition

The ALJ has recommended adoption of the Companies’ proposal to allocate non-direct common costs based upon the number of customers in each class divided by the total number of customers. This methodology has also been supported by MEIUG *et al.* and the OSBA. We disagree. We do, however, support the ALJ’s rejection of the OCA’s proposal, based on the conclusion that the OCA was “ignoring long-standing principles of cost causation.” I.D. at 55.

The ALJ found that the Plan’s non-direct common costs would be incurred without regard to energy consumption or customer demand. I.D. at 55. We believe that the non-direct common costs incurred are related to the number of meters to be installed or upgraded pursuant to the Companies’ Plan. While one could argue that the number of meters is virtually equivalent to the number of customers, especially when the residential class is considered, in some instances, a single customer will have more than one meter. We also believe that allocating the non-direct common costs over the number of meters is reasonable in that it will more accurately reflect the level of common costs for each rate class and the extent to which these investments and services enable customers to participate in the smart meter program. Therefore, we shall direct that each of the Companies allocate all non-direct common costs pursuant to the number of meters in each rate class divided by the total number of meters served by each Company. Accordingly, the Parties’ Exceptions to this issue are denied.

### 7. Rate Design

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#### a. Residential

##### i. FirstEnergy’s Plan

The Companies’ Plan proposed that smart meter plan costs assigned to each class be recovered using a fixed customer charge. The OCA argued that costs should be allocated primarily on a volumetric basis. OCA MB at 37-39.

##### ii. ALJ’s Recommendation

The ALJ approved FirstEnergy’s proposal without discussion.

##### iii. Positions of the Parties

The OCA excepted to the ALJ’s decision as it pertains to residential customers. OCA Exc. at 17. The OCA contends that costs should be recovered from within the residential class on a per kWh, or usage, basis. This approach reflects the greater benefits that residential customers with greater usage stand to realize from smart meter capabilities. OCA Exc. at 17-19.

FirstEnergy notes that the OCA’s argument on this issue is essentially an extension of the OCA’s argument regarding the allocation of common costs. Both arguments should be rejected for the same reasons. In addition, FirstEnergy states that Smart Meter Plan costs represent a “basic” customer cost that is properly recovered as part of the customer charge. FirstEnergy R.Exc. at 22-23.

No other Party addressed this aspect of the Initial Decision.

##### iv. Disposition

On this issue, we support the ALJ and the Companies. The OCA’s approach presumes that higher usage customers will enjoy a greater benefit from the smart meter program. OCA MB at 39. We do not agree with this implicit assumption and there is no record evidence to support this claim. We believe that, to provide recovery of these costs through a monthly customer charge is consistent with our decision to allocate these same costs on a ‘per meter’ basis. Additionally, as cost savings are realized by the Companies and reflected in the fixed monthly charge, the ratepayers will be able to see that specific change on their bills. Such a reduction may not be as evident to customers if contained within a volumetric or usage rate. Accordingly, we shall deny the Exception of the OCA and adopt the recommendation of the ALJ on this issue.

#### b. Commercial

##### i. FirstEnergy’s Plan

The Companies’ Plan proposed that Smart Meter Plan costs assigned to each class be recovered using a fixed customer charge.

##### ii. ALJ’s Recommendation

The ALJ approved FirstEnergy’s proposal without discussion.

##### iii. Positions of the Parties

The OSBA supports the Companies’ proposal to recover costs from the Commercial class using a fixed customer charge. If, however, the Commission agrees with the OCA that common costs should be allocated based on energy consumption, the OSBA argues that consistency dictates that the costs of meters should be recovered within the Commercial class using a customer charge, but common costs should be recovered within the Commercial class via a per kWh charge. OSBA R.Exc. at 12-13.

No other Party addressed this aspect of the Initial Decision.

##### iv. Disposition

Based on our decision regarding the allocation of common costs, we find this Exception is moot.

# VI. Conclusion

For the reasons set forth above, we will grant the Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan, consistent with this Opinion and Order. The Companies are permitted to implement their Plans, as modified herein. Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company shall each file with the Commission, for its approval, a tariff supplement containing a revised Smart Meter Technologies Charge Rider that is consistent with this Opinion and Order. Copies shall be served on all Parties to this proceeding. No Company shall begin collecting rates pursuant to its tariff until it is approved by this Commission; **THEREFORE;**

**IT IS ORDERED:**

1. That the Initial Decision issued by Administrative Law Judge Susan D. Colwell on January 28, 2010, is adopted as modified, consistent with this Opinion and Order.

2. That the Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan is granted, consistent with this Opinion and Order.

3. That the Smart Meter Technology Procurement and Installation Plan filed by Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company on August 14, 2009, is approved, as modified by this Opinion and Order.

4. That Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company are permitted to implement the Smart Meter Technology Procurement and Installation Plan, as modified by this Opinion and Order.

5. That upon entry of this Opinion and Order, Metropolitan Edison Company is permitted to file a tariff or tariff supplement to implement a Smart Meter Technologies Charge Rider, consistent with this Opinion and Order. Metropolitan Edison Company shall also file supporting documentation reflecting the calculation of these charges. Copies shall be served on all Parties to this proceeding.

6. That Metropolitan Edison Company’s tariff or tariff supplement may be filed upon less than statutory notice and, pursuant to the provisions of 52 Pa. Code
§§ 53.31 and 53.101, may be filed to be effective for service rendered on and after the date of entry of the instant Opinion and Order. However, Metropolitan Edison Company shall not implement the rates pursuant to its tariff until it is approved by this Commission.

7. That upon entry of this Opinion and Order, Pennsylvania Power Company is permitted to file a tariff or tariff supplement to implement a Smart Meter Technologies Charge Rider, consistent with this Opinion and Order. Pennsylvania Power Company shall also file supporting documentation reflecting the calculation of these charges. Copies shall be served on all Parties to this proceeding.

8. That Pennsylvania Power Company’s tariff or tariff supplement may be filed upon less than statutory notice and, pursuant to the provisions of 52 Pa. Code
§§ 53.31 and 53.101, may be filed to be effective for service rendered on and after the date of entry of the instant Opinion and Order. However, Pennsylvania Power Company shall not implement the rates pursuant to its tariff until it is approved by this Commission.

9. That upon entry of this Opinion and Order, Pennsylvania Electric Company is permitted to file a tariff or tariff supplement to implement a Smart Meter Technologies Charge Rider, consistent with this Opinion and Order. Pennsylvania Electric Company shall also file supporting documentation reflecting the calculation of these charges. Copies shall be served on all Parties to this proceeding.

10. That Pennsylvania Electric Company’s tariff or tariff supplement may be filed upon less than statutory notice and, pursuant to the provisions of 52 Pa. Code §§ 53.31 and 53.101, may be filed to be effective for service rendered on and after the date of entry of the instant Opinion and Order. However, Pennsylvania Electric Company shall not implement the rates pursuant to its tariff until it is approved by this Commission.

11. That Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company shall study sub-hourly metering issues during the Assessment Period using a stakeholder collaborative process and include the results in the Deployment Plan to be filed with the Commission. The Deployment Plan shall also provide a thorough cost/benefit analysis.

12. That all Plan costs, including both expense and capital items (net of tax) and revenues included in the Companies’ smart meter revenues, shall not be included in the revenue requirement used in future distribution base rate cases of Metropolitan Edison Company, Pennsylvania Electric Company or Pennsylvania Power Company, and will be subject to Commission review and audit.

13. That Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company shall submit their annual Smart Meter Plan filings by August 1, using a twelve-month Reconciliation Year ending on June 30 and an effective date of January 1 of the following year. Commission proceedings shall be scheduled so that hearings may be held by October 1.

14. That any directive, requirement, disposition or the like contained in the body of this Opinion and Order that is not the subject of an individual Ordering Paragraph shall have full force and effect as if fully contained in this part.

15. That the Initial Decision issued by Administrative Law Judge Susan D. Colwell on January 28, 2010, is modified, consistent with this Opinion and Order.

16. That the Exceptions filed by the Office of Consumer Advocate are denied.

17. That the Exceptions filed by Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company are granted in part and denied in part.

18. That the Exceptions filed by the Office of Trial Staff are granted in part and denied in part.

19. That the Exceptions filed by the Department of Environmental Protection are denied.

20. That, upon acceptance and approval by the Commission of the tariff revisions filed by Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company, the Secretary’s Bureau shall mark this case closed.

** BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: April 15, 2010

ORDER ENTERED: **June 9, 2010**

1. This includes a hypothetical capital structure if one is used in place of an actual capital structure in the disposition of the rate case. [↑](#footnote-ref-1)
2. We note that prior Quarterly Earnings Reports did not include certain data discussed in this Opinion and Order, including the actual capital structure of the Companies. Consistent with this Opinion and Order, this information will be included in the Quarterly Earnings Report beginning with the report for the period ending December 31, 2009. [↑](#footnote-ref-2)
3. The zone of reasonableness is defined by the capital structures of the electric barometer group included in the then most recent Quarterly Earnings Report. [↑](#footnote-ref-3)
4. Since all of the Companies have a litigated ROE that is more than three years old, the Quarterly ROEs shall be used for all three Companies until the next base rate case is concluded. [↑](#footnote-ref-4)