**PENNSYLVANIA**

**PUBLIC UTLIITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held March 6, 2014

Commissioners Present:

 Robert F. Powelson, Chairman

 John F. Coleman, Jr., Vice Chairman

 James H. Cawley

 Pamela A. Witmer

 Gladys M. Brown

Joint Petition of Metropolitan Edison

Company, Pennsylvania Electric Company, M-2013-2341990

Pennsylvania Power Company and West Penn M-2013-2341991

Power Company For Approval of Their M-2013-2341993

Smart Meter Deployment Plan M-2013-2341994

**OPINION AND ORDER**

**BY THE COMMISSION:**

 Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power) and West Penn Power Company (West Penn)(collectively, the Companies) and of the Office of Consumer Advocate (OCA) filed on December 2, 2013, to the Recommended Decision of Administrative Law Judge (ALJ) Elizabeth H. Barnes, which was issued on November 8, 2013, in the above-captioned proceedings. Replies to Exceptions were filed by the Companies and the OCA on December 12, 2013. For the reasons fully delineated herein, we shall grant the Companies’ Exceptions, in part, deny the OCA’s Exceptions and modify the ALJ’s Recommended Decision, consistent with this Opinion and Order.

**I. Background**

On October 15, 2008, Act 129 was signed into law and was codified as part of the Public Utility Code, 66 Pa. C.S. § 2806.1, *et seq*. Act 129 became effective on November 14, 2008, and required Electric Distribution Companies (EDCs) with at least 100,000 customers to present a Smart Meter Technology Procurement and Installation Plan (SMP Plan) to the Commission for approval. 66 Pa. C.S. § 2807(f). Specifically, Section 2807(f)(2) directs EDCs to furnish smart meter technology as follows: 1) upon request from a customer that agrees to pay the cost of the smart meter at the time of the request; 2) in new building construction; and 3) in accordance with a depreciation schedule not to exceed 15 years. 66 Pa. C.S. § 2807(f)(2).

The Commission issued an Order on June 24, 2009, to establish standards and provide guidance for implementing the requirements of Act 129.[[1]](#footnote-1) Pursuant to Section 2807(f) of the Code, 66 Pa. C.S. § 2807(f), Met-Ed, Penelec and Penn Power (collectively, the FirstEnergy Companies) filed their Joint Petition for Approval of Smart Meter Technology Procurement and Installation Plan (2009 SMP) on August 14, 2009. By Order entered on June 9, 2010, the Commission approved the 2009 SMP with modifications. The Commission noted that these Companies expected to file their full Deployment Plan by April 2012.[[2]](#footnote-2)

 Also on August 14, 2009, West Penn filed a Smart Meter Implementation Plan (WPP SMP) separately from the three FirstEnergy Companies. During the Commission’s review of the WPP SMP, Met-Ed’s, Penelec’s and Penn Power’s ultimate corporate parent, FirstEnergy Corp., and West Penn’s corporate parent, Allegheny Energy, Inc., announced their intent to merge. As a result, the WPP SMP filing was reassessed. On June 30, 2011, the Commission approved a Joint Petition for Settlement of All Issues (WPP Settlement) regarding the WPP SMP. *Petition of West Penn Power Company for Expedited Approval of its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123951 (Order entered March 9, 2011).[[3]](#footnote-3) In the WPP Settlement, West Penn agreed to file its full Deployment Plan as part of its revised WPP SMP with the Commission by June of 2012.

**II. History of the Proceeding**

On May 25, 2012, the Companies requested an extension for the filing of their Smart Meter Deployment Plan to the end of 2012, in order to evaluate new smart meter technologies. The Commission granted that request by Secretarial Letter dated June 28, 2012.

On December 31, 2012, the Companies filed a Joint Petition for approval of their Smart Meter Deployment Plan (Deployment Plan), in which it requested that the Commission: (1) find that their proposed Deployment Plan (Joint Petitioners’ Exhibit 2) satisfies the requirements of Act 129 and the Commission’s *Implementation Order*; (2) approve the Companies’ proposed procurement and deployment of approximately 2.1 million smart meters, over 98% of which should be installed by the end of 2019; (3) authorize the Companies to continue to recover smart meter costs through their previously approved Smart Meter Technologies Charge (SMT‑C) Riders, including $5.1 million of costs incurred by West Penn in anticipation of the installation of smart meters; and (4) authorize the Companies to create a regulatory asset for their investment in their existing meters (Legacy Meters) to be replaced by smart meters.

 Notice of the Companies’ December 31, 2012, Deployment Plan filing was published in the *Pennsylvania Bulletin* on January 19, 2013. On February 7, 2013, Petitions to Intervene were filed by Direct Energy Services, LLC (Direct) and collectively on behalf of the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Penn Power Users Group, and the West Penn Power Industrial Intervenors (collectively, the Industrial Customer Groups). The following day, the OCA submitted Comments and an Answer to the Joint Petition. On February 14, 2013, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention.

 An evidentiary hearing was held in Harrisburg on May 8, 2013, at which time the Companies’ witnesses were presented for oral rejoinder and cross examination and the OCA witness was presented and cross-examined. Also, the Companies and Direct submitted a document entitled “Joint Stipulation of Position,” that was admitted as Direct Energy Hearing Exhibit 1, and was intended to resolve certain notification issues raised by Direct. Finally, and by agreement of the Parties, the record was held open to allow the Companies to submit copies of a table that originally appeared in the OCA’s surrebuttal testimony, but was later removed and replaced by the OCA at the May 8, 2013 hearing (Joint Petitioners’ Cross Examination Exhibit 2). This late exhibit was filed on May 13, 2013. Main Briefs were filed on May 24, 2013, by the Companies and the OCA and Reply Briefs were filed on June 3, 2013, by the same Parties. The record was closed on June 3, 2013.

 By Recommended Decision issued on November 8, 2013, ALJ Barnes recommended that the Companies’ Petition be adopted as modified and directed the Companies to file an amended Plan within 120 days of the Commission’s Order.

 As noted, Exceptions and Replies to Exceptions to the Recommended Decision were filed by the Companies and the OCA.

**III. Discussion**

**A. Legal Standards**

In this proceeding the Companies seek approval of their plan to deploy smart meters and, as such, have the burden of proving that the Petition complies with the legal requirements. The proponent of a rule or order in any Commission proceeding bears the burden of proof, 66 Pa. C.S. § 332, and, therefore, the Companies have the burden of proving their case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Companies’ evidence must be more convincing, by even the smallest amount, than the evidence presented by the other parties. *Se-Ling Hosiery, Inc. 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,* 49 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by a utility of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the utility shifts to the other parties. If the evidence presented by the other parties is of co-equal value or “weight,” the burden of proof has not been satisfied. The Companies now have to provide some additional evidence to rebut that of the other parties. [*Burleson v. Pa. PUC,* 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d,* 501 Pa. 433, 461 A.2d 1234 (1983).](http://www.lexis.com/research/buttonTFLink?_m=0d7e78528297490763e78babd487bc42&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2006%20Pa.%20PUC%20LEXIS%20102%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=16&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20Pa.%20Commw.%20282%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=9&_startdoc=1&wchp=dGLzVzz-zSkAz&_md5=44d0f4cf51bc1159652e85695542a09d)

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC,* 768 A.2d 1217 (Pa. Cmwlth. 2001).

**B. ALJ’s Initial Decision**

ALJ Barnes made thirty-eight Findings of Fact (R.D. at 4-11) and reached seventeen Conclusions of Law (R.D. at 55-58). The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In her Recommended Decision, ALJ Barnes recommended approval of the Companies’ Deployment Plan with several modifications as proposed by the OCA. The most significant modifications recommended by the ALJ include the following:

1. Identification on the Companies’ website of information regarding the deployment schedule of smart meters sixty days in advance of installation. R.D. at 19-20.

2. Recommendation that the Companies conduct another cost benchmarking analysis of their projected costs with those of other companies that have deployed smart meters to include the seven cost categories identified by the Companies in their Deployment Plan and a larger sample size of utilities than the Companies have used in their Plan. R.D. at 26.

3. Recommendation that the Companies complete this benchmarking analysis and submit a report of the results within 120 days of the Commission’s Order in this matter. R.D. at 26.

4. Recommendation that the Companies provide a report with their next SMT-C filing that identifies expenditures on all components of their Deployment Plan that have the potential to benefit their sister utilities in other states and explain how the Companies will receive credit for those expenditures. R.D. at 28.

5. Recommendation that joint Deployment Plan costs are allocated based on the annual average number of meters per Company as of June 30th for purposes of calculating each Company’s annual SMT-C rider. R.D. at 30.

6. Recommendation that the Companies hire an independent consultant to conduct a comprehensive investigation of categories of potential savings achieved by other companies that have deployed smart meters and submit a report to the Commission of the findings within 90 days of the Commission’s order in this matter. R.D. at 32.

7. Recommendation that the Companies provide detailed information on the cost saving baseline measures in the next annual SMT-C filing and in all subsequent annual SMT-C filings. R.D. at 36.

8. Recommendation that the Companies hold stakeholder meetings by the first quarter of 2014 to discuss the final Communications Plan and to file this Plan with the Commission afterwards. R.D. at 39.

9. Recommendation that the Companies provide to individual consumers educational safety information including, but not be limited to, the following:, (1) that installers for FirstEnergy will have redundant identification, i.e. trucks with logo, uniform, identification badges to enable customers to distinguish between genuine FirstEnergy installers and others; (2) that pictures or descriptions of the uniforms for installers for FirstEnergy will be provided, such that a consumer can readily identify the FirstEnergy installers; (3) that such FirstEnergy installers do not need to enter the household in order to install the smart meters; (4) that customers should check the identification of installers if the customer has any doubt; and (5) that the phone number to call to verify any given installer’s identification is provided. R.D. at 41.

10. Recommendation that the Companies work with the stakeholder group to develop a stand-alone Customer Privacy Policy specifically related to the protection of smart meter information before any wide scale deployment of smart meters and to modify the Companies’ proposed customer privacy principles for clarity. R.D. at 43.

11. Recommendation that the Companies not use involuntary remote termination for non-payment as part of their Plan until first working with a stakeholder group, and filing for approval any future proposal to pursue involuntary remote termination for non-payment. R.D. at 47.

Due to the amount of modifications recommended by the ALJ, she further directed the Companies to file an amended Deployment Plan within 120 days of the Commission’s Order in this matter. R.D. at 62.

**C. Contested Issues**

 Before addressing the Exceptions, we note that any issue or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. [Consolidated Rail Corp. 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) *also* see, 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)

 **1. EGS Access to Installation Information**

 **a. Positions of the Parties**

At the evidentiary hearing, Direct and the Companies entered into a Joint Stipulation of Position. See Direct Energy Hearing Exhibit 1. In consideration of Direct taking immediate steps to terminate its participation in this proceeding, the Companies agreed in their Communication Plan to identify, on a website available to the public sixty days in advance of installation of smart meters, information regarding the deployment schedule. It was stipulated that the information provided regarding communities scheduled for installation will not include dates more specific than identification of the borough, township, or city where deployment is scheduled “within the next sixty days.” Additionally, the Companies agreed to update the website confirming when deployment has been completed. Direct Energy Hearing Exhibit 1 at 2. As a result of this Joint Stipulation, Direct and the Companies reached an agreement with regard to all outstanding issues between them in the instant proceeding.

 **b. ALJ’s Recommendation**

The ALJ recommended approval of the Joint Stipulation as she concluded that it was reasonable and not in conflict with Act 129. She noted that no Party objected to the Joint Stipulation. According to the ALJ, the stipulation protects customers from being identified on a public website in advance of the smart meter installation. Thus, she found that it protects customers from being approached at their residences by persons purporting to represent the utility and attempting to gain access into their homes to access their meters. The ALJ stated that she was persuaded that this stipulation gives the competitive electric generation supplier enough marketing information so that it may make business planning decisions regarding the targeting of its potential market. R.D. at 19-20.

 **c. Disposition**

No Party excepts to the ALJ’s recommendation in regard to her adoption of the Joint Stipulation filed by Direct and the FirstEnergy Companies. Our review of the ALJ’s recommendation indicates that it is reasonable and in accordance with the record evidence. As such, we shall adopt the ALJ’s recommendation to approve the Joint Stipulation between Direct and the FirstEnergy Companies.

**2. Whether the Companies Have Performed a Proper Benchmarking Analysis of Plan Costs to Determine if Their Deployment Costs are Reasonable**

 **a. Positions of the Parties**

The Companies estimated that the total costs of the Deployment Plan will be $1.258 billion, which costs are comprised of: (1) Meter and Local Area Network; (2) Network and Network Management; (3) Information Technology; (4) Program Management; (5) Systems Integration; (6) Change Management; and (7) Business Staffing Requirements. Joint Petitioners Ex. 1 at 9; Joint Petitioners Ex. 2 at 51-56. According to the Companies, approximately $676 million of this amount will be capital costs, and approximately $582 million will be operation and maintenance (O&M) expenses. Joint Petitioners Ex. 2 at 52-53.

 The Companies stated that, in order to determine the reasonableness of their estimated Deployment Plan costs, they performed a benchmark comparison of costs per meter with comparable smart meter installations of other utilities. Companies St. 4 at 9. According to the Companies, their all-in cost per meter is approximately $375, which they aver is reasonable compared to the estimated costs per meter for: (1) Delmarva of $343 per meter; (2) PEPCO Maryland of $327 per meter; and (3) Com Ed of $357 per meter. *Id*. at 15-16.

 However, the OCA stated that the Companies’ comparison of meter costs with three other utilities was too limited and too general. OCA St. 1 at 11. According to the OCA, there are many more than just three utilities that have received approval to deploy smart meters that the Companies could have included in their cost comparison. *Id.* The OCA further criticized the Companies’ comparison as being limited to the total cost of each company’s Advanced Metering Infrastructure (AMI) plan despite the fact that the total cost of the Companies’ Deployment Plan is composed of seven categories of expenditures: Meter & Local Network, Information Technology, Systems Integration, Network & Network Management, Program Management, Business Staffing Requirements and Communications/Change Management. *Id.* at 11-12. The OCA concluded that without a cost comparison by category, the Companies’ cost comparison study did not provide the useful information as to the reasonableness of the estimated expenditures that a properly conducted comparison could have provided. *Id.* at 12. The OCA recommended that the Companies conduct a proper cost benchmarking analysis to investigate the reasonableness of their Deployment Plan costs before the deployment of smart meters.

 The Companies countered that the OCA overstated the relevance and importance of the cost benchmarking analysis as most of the Companies’ cost estimates were determined from bids received through the Requests for Information (RFI) and Requests for Proposals (RFP) process. Companies St. 4-R at 9. According to the Companies, these bids are a far better validation of costs than any benchmark comparison with other utilities, and comparing costs with other utilities would not provide any further insight than obtained through the cost benchmarking analysis already conducted. *Id.* at 10, 12. The Companies also claimed that, even if they sought to conduct additional cost benchmarking analyses with more companies, it would be too difficult to obtain the necessary data for the comparisons. *Id.* at 12-13.

 The OCA responded that it is possible to obtain adequate cost information from other utilities for adequate cost benchmarking analyses, and that it had provided the smart meter plan filings of twelve utilities in response to a Companies’ discovery request. OCA St. 1-SR at 4. According to the OCA, these twelve utilities reported various categories of costs in their filings, including Meter & Local Area Network, Information Technology, System Integration, Network and Network Management, Program Management, Business Staffing Requirements and Communication Change Management. *Id.* at 3-4, Table 1.

 **b. ALJ’s Recommendation**

The ALJ was persuaded by the OCA’s position to find that the Companies could have conducted a better cost benchmarking analysis. Therefore, the ALJ concluded that the Companies did not meet their burden of proof that the costs they will incur for smart meter deployment, as detailed in their annual reconciliation filings, are reasonable and prudent. The ALJ stated that given the estimated cost of their SMP Plan of $1.258 billion, the Companies have a responsibility to adequately investigate the reasonableness of the costs they expect to incur to fully deploy smart meters before the Companies incur such costs. Thus, she recommended that the Companies be directed to conduct a proper cost benchmarking analysis using the seven cost categories identified by the Companies in their Deployment Plan and sub-categories, if available, and to use a much larger sample size of utilities. She further recommended that the Companies be directed to submit a report with the results of such analysis and any Deployment Plan changes stemming from such results in an amended Deployment Plan. The ALJ recommended that this cost benchmarking analysis be completed within 120 days of the Commission’s order in this matter, with a report of the results and an amended Deployment Plan, if necessary. R.D. at 26.

 **c. Exceptions and Replies**

 In its Exceptions, the Companies aver that the ALJ’s recommendation is inconsistent with the evidence, unnecessarily delays smart meter installation and reflects a misunderstanding of the record. The Companies reiterated several Findings of Fact (FOF)[[4]](#footnote-4) listed by the ALJ in her Recommended Decision in support of their projected Deployment Plan costs, which they claim she ignored when she concluded that the Companies failed to satisfy their burden of proof. The Companies state that there is no requirement in either Act 129 or the *Implementation Order*, that an EDC shall submit a “benchmarking analysis” with its smart meter deployment plan. According to the Companies, to the best of their knowledge, no other Pennsylvania EDC has presented the results of such an analysis in support of its smart meter deployment plan filing. Companies Exc. at 5-7.

 Next, the Companies aver they conducted an RFI/RFP process for virtually all of the Companies’ entire smart meter costs which provided a far more meaningful and reliable “benchmark” than would information regarding the costs incurred by other utilities deploying different smart meter systems, integrated into different utility infrastructure, at different times, throughout different service territory terrain. Additionally, the Companies claim it is nearly impossible to obtain the granularity of the data necessary to perform meaningful comparisons on an “apples-to-apples” sub-cost category basis. The Companies further claim that, even if this data could become known and be “normalized” in some acceptable way, there is no uniformity in the manner by which utilities categorize and record smart meter costs. Companies Exc. at 7-8.

 The Companies also except to the ALJ’s recommendation in that its adoption could further delay the start of smart meter deployment in the Companies’ respective service territories. According to the Companies, using a full 120-day period to conduct further cost-benchmarking studies, with several more months for the Parties to evaluate the additional information and for the Commission to make a determination on the reasonableness of the studies, would likely delay a meaningful deployment until the fourth quarter of 2014. The Companies claim this would place them about nine months behind schedule and would provide no meaningful information beyond that which is already included in the evidentiary record. The Company avers that no further cost benchmarking is necessary. Companies Exc. at 8-9.

 In reply, the OCA avers that Act 129 permits the recovery of only the “reasonable and prudent costs of providing smart meter technology.” 66 Pa. C.S. § 2807(f)(7). The OCA submits that since the Companies determined to perform a cost benchmarking analysis in order to meet their burden of proof in this regard, they have the obligation to properly perform the analysis. According to the OCA, the Companies’ cost benchmarking analysis compared the meter costs of only three other utilities, which made their analysis too limited and general. The OCA maintains that without a cost comparison by category, the Companies’ cost comparison study did not provide useful information as to the reasonableness of the estimated expenditures that a properly conducted comparison could have provided. The OCA opines that a properly performed benchmarking analysis is crucial for the Companies to meet their burden of proof that their SMP Plan is reasonable and prudent. OCA R. Exc. at 1-4.

 Next, the OCA states that the Companies concern over further delay in implementation does not relieve them of their burden of proving that their Deployment Plan is reasonable and prudent. The OCA submits that the Companies could have taken action regarding the benchmarking analysis during the pendency of the proceeding or while waiting for a Recommended Decision. As they did not do that, the OCA asserts that the Companies’ concerns regarding the delay should be disregarded, and the Commission should direct the Companies to conduct a proper cost benchmarking analysis using the seven cost categories identified by the Companies in their Plan, if available, and using a much larger sample size of utilities. *Id.* at 4-5.

 **d. Disposition**

Based upon our review of the Companies Petition and the evidence of record, we are not convinced that the ALJ’s recommendation for an additional benchmarking analysis is in the public interest or reasonable at this point in time. We are persuaded by the position of the Companies that virtually all of their estimated smart meter costs were based upon bids received from a comprehensive and competitive RFI/RFP process and that the results from the RFI/RFP process are a far greater indicator of the costs involved than a benchmarking analysis. While we are cognizant of the significant costs estimated by the Companies to fulfill its smart metering responsibilities, we fail to see the benefit of requiring further, time-consuming benchmarking studies considering that the results of the benchmarking the Companies did perform was reasonable and unchallenged by any Party in this proceeding. We conclude that based upon the Companies’ RFI/RFP process, as well as the benchmarking analysis they submitted, that they have met their burden of proving the Deployment Plan is reasonable and prudent.

Furthermore, we note that there was no requirement within Act 129 or our *Implementation Order* that EDCs must conduct a benchmarking study with their smart meter deployment plan as is being recommended by the OCA and the ALJ. Lastly, we agree with the Companies’ assessment that adoption of the ALJ’s recommendation could further delay the initiation of smart meter deployment within the Companies’ territories to the detriment of their customers. Accordingly, we shall grant the Companies’ Exception on this issue and modify the ALJ’s recommendation, consistent with the foregoing discussion.

**3. Whether the Companies Have Adequately Identified Potential Savings from Smart Meter Deployment**

In its *Implementation Order*, the Commission identified some of the savings that EDCs should expect to enjoy upon the deployment of smart meters. Specifically, the Commission stated:

Smart meters have the ability to support maintenance and repair functions, theft detection, system security, consumer assistance programs, customer‑generator net metering, and other programs that increase an EDC’s efficiencies and reduce operating costs.

*Implementation Order* at 16.

**a. Positions of the Parties**

 The Companies estimated that potential operational cost savings over the Deployment Plan period would be approximately $406 million on a nominal cost basis. Companies St. 4 at 17. The Companies identified four categories of operational cost savings: (1) meter reading; (2) meter services; (3) back-office; and (4) contact center. Companies Ex. GLF-4.

The OCA calculated the Companies’ cost/benefit ratio to be 0.3, which it claimed was less than the 0.5 cost/benefit ratio of other smart meter deployment plans. OCA St. 1 at 15-16. According to the OCA, other utilities and industry studies on this issue included areas of savings from deployment of smart meters in addition to those identified by the Companies. *Id*. at 17. The OCA opined that other utilities have identified potential savings in theft reduction, revenue enhancement, avoided capital costs and distribution operations. *Id.* Further, the OCA stated that the Companies did not compare their projected Plan savings to those of other utilities. *Id*. at 18. Additionally, the OCA maintained that as part of the WPP Settlement, West Penn was required to conduct an analysis of potential savings similar to that conducted by Nevada Power at Nevada Docket No. 09-07003. *Id.* at 16-17.

 Therefore, the OCA concluded that the Companies did not develop a reasonable projection of potential savings associated with their Plan. OCA St. 1 at 18. The OCA recommended that the Companies be directed to retain an independent consultant with experience in identifying savings associated with smart meter deployment to prepare a comprehensive report assessing the potential savings the Companies will achieve from deploying smart meters. *Id.*

 **b. ALJ’s Recommendation**

The ALJ stated that it was unclear how the Companies will know if there are savings in categories other than the four they have identified in the Deployment Plan if the Companies do not properly analyze all potential categories of savings now. As such, she recommended that the Companies be directed to hire an independent consultant with experience in identifying the potential for savings as a result of smart meter deployment to: (1) conduct a comprehensive investigation of categories of potential savings achieved by other companies that have deployed smart meters, including the seven categories identified by Nevada Power described above; and (2) prepare and submit a report to the Commission of his or her findings within 90 days of the Commission’s Order in this matter. Further, she recommended that the Commission direct the Companies to file an amended Deployment Plan detailing the potential categories and estimates of savings identified by such consultant within thirty days thereafter. R.D. at 32.

 **c. Exceptions and Replies**

In its Exceptions, the Companies state that the ALJ’s recommendation misconstrues the record, increases costs and is unnecessary. The Companies aver that the ALJ’s recommendation that the Companies, and ultimately their customers, pay yet another consultant to speculate about smart meter savings opportunities should be rejected. According to the Companies, the OCA’s benefit/cost ratio calculations are flawed and of limited value because no two electric distribution companies have identical characteristics. The Companies aver that significant differences can and do exist in areas such as statutory mandates, administrative regulations, nature of service territory, customer density, age and condition of critical infrastructure and meter reading frequency. Unless those distinguishing factors are placed on an even plane and normalized, no meaningful conclusions can be drawn. Companies Exc. at 10-11.

 Next, the Companies aver that the ALJ mischaracterizes and understates the Companies’ commitment to quantifying smart meter savings. The Companies maintain that they fully intend to investigate and track all sources of potential savings, including the categories enumerated by the OCA, and to flow-through realized savings to their customers in future SMT-C Rider filings. In order to accomplish this, the Companies had retained consultant Mr. George Fitzpatrick of Black & Veatch and, at the time the case was being briefed, were in the process of hiring a nationally recognized consulting firm for the project management office to assist in such identification and quantification. According to the Companies, they have already made plans to develop the information the OCA seeks. However, the Companies aver that meaningful savings will not begin to accrue until approximately 2018, after completion of the Solution Validation Stage, by which time they will have a much better understanding of the scale and scope of the savings that are achievable. *Id.* at 11.

 Lastly, the Companies opine that the type of report recommended by the ALJ cannot be completed within the suggested ninety days because relevant data regarding actual savings will not be available for several years. As such, the Companies maintain that there is no reason to pay another consultant to guess the possible size and source of those savings when the Companies already have retained a consultant and plan to identify and quantify those savings as they actually occur. The Companies further assert that adoption of the ALJ’s recommendation would unnecessarily delay the start of smart meter deployment. *Id.* at 11-13.

 In reply, the OCA notes that the Companies have agreed that a proper savings analysis should be conducted to ensure the Companies meet their obligation to offset savings realized from the installation of smart meters against their Plan costs. Additionally, the OCA points out that the Companies have already retained Accenture, a nationally recognized consulting firm, to assist them in identifying and quantifying all savings realized from the deployment of smart meters. The OCA commends the Companies for taking action to conduct a proper savings analysis during the pendency of this proceeding. The OCA opines that although the Companies do not believe it is necessary to identify in their Deployment Plan categories of savings in addition to the four already identified, it is important to identify all categories of potential savings in the Plan now. The OCA submits that since it appears that the Companies have already hired an independent consultant to investigate additional categories of savings, the ALJ’s recommendation should be adopted. OCA R. Exc. at 5-6.

 **d. Disposition**

Based upon our review of the evidence of record, we find that adoption of the ALJ’s recommendation, that the Companies prepare and submit a comprehensive savings analysis within ninety days of the entry of this Opinion and Order, is unreasonable and of limited value. We are persuaded by the statements of the Companies that they fully intend to investigate and track all sources of potential savings, including the categories listed by the OCA, and to flow-through these savings to their customers in future SMT-C Rider filings. We are further persuaded that the Companies are sincere in their claims of having hired a nationally recognized consulting firm to assist them in this effort. We fail to see the benefit of requiring the Companies to perform the ALJ’s recommended analysis at this time as this could potentially and unnecessarily further delay the initiation of smart meter deployment to the detriment of their customers. However, our reluctance to adopt this recommendation at this time does not diminish the Commission’s commitment to closely scrutinize the Companies savings determinations in future SMT-C Rider proceedings. Accordingly, the Exception of the Companies on this issue is granted and the ALJ’s Recommended Decision is modified, consistent with this discussion.

**4. Whether the Companies Have Proposed Improper Baselines for Calculating Savings**

Act 129 permits EDCs to recover the costs of smart meter deployment either through base rates or on a full and current basis through a Section 1307 rider. *See* 66 Pa. C.S. § 2807(f)(7. If an EDC chooses recovery of costs through a rider mechanism, the EDC must also offset costs achieved from the deployment of smart meters through the rider. *Id.* In order to determine the amount of savings achieved, the EDC must establish accurate baseline levels upon which to measure savings achieved from the deployment of smart meters.

**a. Positions of the Parties**

In their Deployment Plan, the Companies proposed to establish the baseline employee levels, costs and other metric levels as of the date on which deployment begins, December 31, 2013. Companies St. 4 at 17. The Companies intend to adjust for anomalies in the 2013 baseline levels. *Id.*

The OCA explained the importance of establishing proper baseline levels for measuring savings as follows:

Given the magnitude of the Deployment Plan costs the Companies are seeking to collect, it is particularly critical that the Companies establish a method for measuring the savings accurately and for crediting the actual savings against the actual costs of their Deployment Plan each year. The actual savings that the Companies report each year should be included as credits in the calculation of their respective SMT-C rates each year. Under the statute, and to ensure just and reasonable rates, it is essential that the Companies measure all savings accurately each year and report those measured savings.

OCA St. 1 at 21. The OCA argued that in order to properly reflect all offsetting savings in the rider mechanism, the Companies must properly identify the categories where savings will occur and properly identify what the Companies’ current rates are based on. According to the OCA, this will ensure that moving these costs and savings to a rider mechanism will achieve revenue neutrality. The OCA stated that the Companies’ proposal to use their cost levels as of December 31, 2013, may not produce just and reasonable rates because these costs are not the revenue requirements upon which the Companies’ currently effective rates are based. *Id.* at 22. The OCA claimed that Met-Ed’s and Penelec’s currently effective rates are based on test year revenue requirements from their most recent 2006 base rate case. *Id.* However, the OCA noted that Penn Power’s and West Penn’s currently effective distribution rates are based on the test year revenue requirements from their restructuring cases in1996 when their distribution rates were unbundled. *Id.*

 **b. ALJ’s Recommendation**

The ALJ agreed with the Companies’ proposed baseline methodology stating that their method will most accurately reflect the actual cost savings achieved on a current basis, consistent with the intent of Act 129. The ALJ found that the OCA’s contention that the baseline level should be from the Companies’ test year revenue requirements upon which their currently effective distribution rates are based, is flawed because it would not match current deployment costs to current cost savings achieved. According to the ALJ, the OCA’s methodology may become a disincentive for efficiencies (*i.e.*, less frequent meter reads, etc.), that the Companies have incorporated to maintain profitability and rate levels with revenue requirements from several years ago. R.D. at 35.

The ALJ further directed that in their next annual SMT-C filing, and in all subsequent annual SMT-C filings, the Companies provide detailed information on the cost saving baseline measures, including the actual baseline employees’ levels, costs and other metric levels as well as any adjustments. Also, the ALJ directed that the annual SMT-C filings of the Companies detail how any cost savings are calculated for each baseline measure. She further noted that if other cost saving categories other than what the Companies have proposed are identified by the independent consultant retained as directed above, the baseline measures associated with those categories shall be included in the annual SMT-C filings. *Id.* at 36.

 **c. Exceptions and Replies**

In its Exception, the OCA states that the ALJ erred in focusing on the expenses currently incurred by the Companies instead of on the expenses currently embedded in rates, arguing it is irrelevant whether smart meter costs are new or current when making a savings determination. The OCA submits that in order to properly reflect all offsetting savings in the rider mechanism, the Companies must properly identify the categories where savings will occur and properly identify what the Companies current rates are based on. According to the OCA, this will ensure that savings in expenses that form the basis of current rates are properly matched to the costs being collected through the rider mechanism. The OCA avers that if the costs and savings are not properly matched, rates may not be just and reasonable. OCA Exc. at 5-6.

 The OCA maintains that the Companies’ actual costs as of December 31, 2013, are not the revenue requirements upon which their currently effective rates are based. The OCA notes the test year revenue requirements underlying the current rates of Met-Ed and Penelec date back to 2006, while the revenue requirements underlying the current rates of Penn Power and West Penn date back even further to 1996. Therefore, the OCA opines that it is not obvious that the Companies’ actual costs as of December 31, 2013, will provide appropriate baseline amounts for the calculation of savings. According to the OCA, this issue is unique to the Companies because the other EDCs deploying smart meters have recently concluded base rate cases. The OCA further submits that permitting EDCs to select a random date to set baseline levels for measuring savings does not carry forward the intent of Act 129. Therefore, the OCA recommends that the Commission direct the Companies to establish their baselines for measuring savings from smart meter deployment as the test year revenue requirements upon which their currently effective distribution rates are based. *Id.* at 6-8.

In reply, the Companies state that the ALJ properly rejected the OCA’s proposed use of historic expense levels, in some cases dating back twenty years or more, for purposes of quantifying current smart meter savings. The Companies reiterate that they have proposed that calendar year 2013 financial and accounting data, adjusted for anomalies, be utilized to establish the baselines against which future cost levels would be measured and smart meter savings calculated. The Companies note that they advanced this proposal because the 2013 operating results would constitute the most current evidence of costs as the Companies entered the next phase of smart meter deployment in early 2014. The Companies note, however, that it is not their intention that the 2013 baselines should remain in place over time. According to the Companies, when meaningful savings begin to accrue, they intend to reevaluate whether it might make more sense to use the then “current” calendar data to properly reflect realized smart meter savings. Companies R. Exc. at 2-3.

 The Companies further maintain that in advancing its argument, the OCA ignores the plain language of Section 2807(f)(7) of the Code, which provides that recoverable smart meter costs are to be offset by “operating and capital cost savings realized by the electric distribution company from the installation and use of the smart meter technology.” The Companies maintain that “realized” is the operative word as EDCs will incur real out-of-pocket costs to implement their smart meter plans. As such, any savings to be credited against such costs should also be real or actual savings realized contemporaneously with the incurrence of the costs they offset. According to the Companies, the OCA’s approach would impute savings quantified on the basis of historical and outdated costs, thereby offsetting real out-of-pocket costs with hypothetical savings. *Id.* at 4.

 **d. Disposition**

Based upon our review of the record evidence we are in agreement with the ALJ that the Companies’ proposed methodology and baseline date of December 31, 2013, are reasonable, in the public interest and should be approved. We find that the OCA’s recommendation would create a mismatch between currently existing expenses and cost savings achieved and would not reflect the actual cost savings achieved on a current basis. We further find that the OCA’s approach would impute savings quantified on the basis of historical and outdated costs levels as it would be based upon *pro forma* costs embedded in a revenue requirement established several years ago. Therefore, the Exception of the OCA on this issue is denied.

 **5. Cyber Security**

**a. Positions of the Parties**

The OCA reviewed the Companies’ cyber-security program in this proceeding and asked a series of discovery questions that were based on the National Association of Regulatory Utility Commissioners’ recommended questions to ask utilities engaged in smart grid deployment. According to the OCA, the Companies have an extensive cyber-security program under senior management that is reported to the Board of Directors and is audited annually. The OCA found that the Companies recognize the importance of cyber-security and are working towards maximizing security. However, the OCA recommended that this issue continue to be regularly monitored, that the Companies should be aware of emerging issues, and that these issues should be addressed, as needed, at the state level. The OCA further recommended that the Companies develop sufficient policies and practices for application by the Companies as they implement smart metering. OCA St. 2 at 4-8. OCA St. 1-SR at 2.

 Additionally, the OCA recommended that the Companies have a Chief Security Offer with a corresponding set of responsibilities covering both the operational and information technology (IT) systems who reports to the Board. According to the OCA, it would be the better practice to place responsibility for all security issues, including both IT and operations management, and responsibility for both physical and electronic security, in one organization within the firm. OCA St. 2 at 7-8.

 **b. ALJ’s Recommendation**

The ALJ recommended that the Companies be directed to continue to discuss and address cyber-security issues with the stakeholder group on a going-forward basis and to report to the Commission on a regular semi-annual basis regarding the status of cyber-security at the Companies. R.D. at 48.

 **c. Exceptions and Replies**

In its Exceptions, the Companies state that, while they do not except to making cyber-security a standing agenda item at stakeholder meetings, the ALJ’s recommendation to submit semi-annual cyber-security reports is redundant with other Commission activities and could jeopardize such security. The Companies submit that the ALJ found in FOF No. 36 that the Companies currently comply with all cyber security, customer privacy and remote disconnection guidelines. The Companies further aver that no Party in this proceeding claimed that any additional reporting requirement was necessary. According to the Companies, by making such filings, its cyber security protocols and safeguards could be compromised and would be redundant with other activities occurring at the Commission. The Companies further aver that the evidence demonstrates that they take seriously their cyber-security responsibilities, something that is required by law to be certified with the Commission on a regular basis. Companies Exc. at 13-14.

 Next, the Companies refer to Section 101.1 of our Regulations, 52 Pa. Code § 101.1, which requires utilities within the Commonwealth “to develop and maintain appropriate written physical security, cyber security, emergency response and business continuity plans to protect this Commonwealth’s infrastructure and ensure safe, continuous and reliable utility service.” Furthermore, the Companies note that each utility is required to “submit a Self-Certification Form to the Commission documenting compliance with this chapter.” According to the Companies, even the legislature chose not to require public reporting of cyber security issues, instead opting for the submission of a self-certification form, realizing the potential breaches in security that could occur should details of a utility’s cyber security processes, protocols and practices be made public. As a result, the Companies opine that there is no practical reason to require the Companies to submit reports not required by the other EDCs within the Commonwealth. Companies Exc. at 14-15.

 No Party filed replies to this Exception of the Companies.

 **d. Disposition**

Based upon our review of the record evidence and applicable statutes, we find that the Companies are correct in their assertion that the recommended cyber security reporting requirement of the ALJ is ill-advised and should not be approved. Based upon our Regulations pertaining to Public Utility Preparedness Through Self Certification, 52 Pa. C.S. §§ 101.1, *et seq.*, jurisdictional utilities are required to develop and maintain appropriate physical security, cyber security, emergency response and business continuity plans to protect their infrastructure and ensure safe, continuous and reliable utility service. These Regulations only require that our jurisdictional utilities submit a Self Certification Form to the Commission documenting compliance. Finally, we note that no Party to the instant proceeding recommended that the Companies submit cyber security reports. Accordingly, we find that the ALJ’s recommendation regarding cybersecurity reporting should not be approved, noting that the Companies will still be required to discuss and address cyber-security issues with the stakeholder group on a going-forward basis. Accordingly, the Exception of the Companies on this issue is granted and the ALJ’s recommendation is modified, consistent with this discussion.

 **6. West Penn Customer Information System Costs**

As part of its SMP filing at Docket No. M-2009-2123951, West Penn included approximately $45.1 million, which it expended in 2009 and 2010, for costs related to smart meter activities, including amounts for modernizing West Penn’s Customer Information System (CIS). OCA St. 1 at 23. The Parties to that proceeding ultimately filed the WPP Settlement, which stated:

The Joint Petitioners recognize that the Company made expenditures between 2009 and 2010 in support of the development of a smart meter deployment plan. These costs are related to activities defined as Phase 1 and Phase 2 activities in the accompanying Appendix A. To date, the Company has expended $45.1 million, of which the parties agree that $40 million can be recovered in the smart meter surcharge…The additional $5.1 million represents certain costs related to the CIS system that the Joint Petitioners dispute should be recovered through the smart meter surcharge. The Company may file for recovery of these disputed amounts in its next distribution base rate case and/or as part of the smart meter surcharge in connection with its Revised SMIP filing. All parties reserve all rights to continue to dispute the reasonableness of recovery of the $5.1 million in disputed charges and to oppose any recovery of those costs.

WPP Settlement at ¶ 19.

**a. Positions of the Parties**

West Penn seeks recovery of the remaining $5.1 million in this proceeding, which if approved, would be recovered over the balance of the 5.5-year amortization period previously approved by the Commission for recovery of the initial $40 million, or through February 28, 2017. Companies St. No. 5 at 14.

 In West Penn’s prior WPP SMP proceeding, the OCA opposed the inclusion of the CIS costs because it believes that the investment was one that a utility would typically make in its normal course of business. In this proceeding, the OCA’s witness recounted the prior position as follows:

My position in that proceeding was based upon, and supported by, various admissions made by West Penn. First, West Penn stated that the CIS, which is its billing system, was installed in the 1970s and that prior to the Company’s 2009 modernization investment, the Company had not made any major investments to upgrade that system since 1999. West Penn also acknowledged that the CIS was used by all of its parent corporation’s distribution operating companies, including West Penn’s sister companies operating in Maryland and West Virginia. West Penn further acknowledged that 52 percent of the CIS costs would be allocated to its sister companies in Maryland and West Virginia, and those sister companies would seek to collect those allocated costs through distribution base rate proceeding in their respective states.

In rebuttal, West Penn witnesses Heasley and Arthur each stated that the Company needs to modernize its CIS in order to support the deployment of smart meter technology and the rate offerings enabled by that technology. However, neither Mr. Heasley nor Mr. Arthur explicitly denied that modernizing the CIS was an investment that West Penn would make in its normal course of business. Instead, both Company witnesses simply stated that they understood Act 129 to allow recovery of those capital costs as part of the implementation of smart meter technology.

OCA St. 1 at 23-24.

 According to the OCA, the Company seeks to recover these CIS costs through the SMT-C Rider even though the Company had not updated its CIS system for over thirty years. The OCA maintained that while the Company has argued that the system was a customized system that was specifically tailored to meet the needs of West Penn, most Pennsylvania utilities had made modernization investments to upgrade their customer information systems between 1970 and 2008 as part of the normal course of business. The OCA position is that those costs are typically incurred in the normal course of business and are recovered through a base rate proceeding. OCA St. 1 at 23.

 **b. ALJ’s Recommendation**

The ALJ recommended that the Companies’ proposal to recover $5.1 million for expenditures related to West Penn’s abandoned CIS be denied. The ALJ found that there was substantial evidence to show that the West Penn CIS upgrade was a normal business expense and was not solely for the purposes of Act 129. She noted the significance of West Penn allocating 52 percent of the costs of that system to its sister utilities, Potomac Edison Company in Maryland and Monongahela Power in West Virginia, neither of which had a requirement to deploy smart meters or AMI. The ALJ further found that since the merger of West Penn with FirstEnergy in 2011,[[5]](#footnote-5) West Penn has retired its CIS and transitioned to using the CIS of the FirstEnergy Companies. Therefore, she concluded that West Penn is no longer using the system for which it expended the $5.1 million. According to the ALJ, West Penn expended the $5.1 million for a CIS system, which was ultimately abandoned and is not used or useful to ratepayers for smart metering purposes.[[6]](#footnote-6) R.D. at 50-51.

 **c. Exceptions and Replies**

In its Exceptions, the Companies state that the ALJ’s recommendation to deny recovery of the $5.1 million CIS costs ignores both the law and the evidence. The Companies aver that West Penn’s claim for CIS-related expenses incurred during 2009-2010 is a reserved legal issue from the WPP Settlement. According to the Companies, this issue is primarily a legal issue centering on whether expenditures made to enable smart meters, but which also have the effect of updating the CIS generally, are recoverable under Act 129’s provisions for cost recovery. In the Companies’ opinion, the legal basis for recoverability of the $5.1 million is addressed by the plain language of Act 129. The Companies note that Section 2807(f)(7) states that an EDC may recover the reasonable and prudent costs of “providing smart meter technology” including “the cost of any system upgrades that the electric distribution company may require to enable the use of the smart meter technology which are incurred after the effective date of this paragraph….” 66 Pa. C.S. § 2807(f)(7). As a result, the Companies aver that the general CIS system $5.1 million upgrade, which was an ancillary benefit of West Penn’s overall $45.1 million expenditure, is explicitly recoverable as a system upgrade under Act 129. Companies Exc. at 15-17.

 Next, the Companies aver that full recovery of the $5.1 million is factually warranted because this expenditure proved to be useful in the FirstEnergy smart metering design solution and supported West Penn’s ability to deploy the approximately 25,000 smart meters that enabled West Penn’s Energy Saver Rewards Program. The Companies further argue that the $5.1 million CIS expense was not “normal” in the least because it would not have been incurred absent the Act 129 smart meter mandate. According to the Companies, the only reason West Penn expended these funds was because of the requirements of Act 129. The Companies claim that West Penn’s CIS at the time was incompatible with the smart metering mandate, but was functional to meet West Penn’s needs for the future absent the requirements of Act 129 and that there were no CIS upgrades planned for the foreseeable future. *Id.* at 17.

 Next, the Companies assert that the ALJ’s reliance on the allocation of CIS improvement costs to West Penn’s sister utilities as support for denial of the claim is also misplaced. The Companies maintain that this allocation is irrelevant to the issue of whether West Penn expended those funds in support of the Pennsylvania Act 129 smart meter mandate, and not in the ordinary course of business. The Companies note that it has never been their position that these CIS upgrades did not also benefit West Penn’s sister utilities, justifying the allocation of a portion of these costs to them. According to the Companies, the inclusion of those allocated costs in the base rates of West Penn’s sister utilities means nothing other than there was no smart meter surcharge available to those companies in those other jurisdictions. *Id.* at 18.

 In reply, the OCA reiterates that it has opposed the inclusion of these costs for two reasons: (1) the system upgrade was one of the types that should have been undertaken in the normal course of business and was not specifically related to smart metering; and (2) West Penn’s CIS has been abandoned and is not used and useful. The OCA maintains that West Penn’s CIS changes were not a smart meter technology “system upgrade” recoverable through the SMT-C Rider, but rather an investment that a utility would make in its normal course of business. Further, the OCA notes that fifty-two percent of the costs were allocated to West Penn’s affiliates in Maryland and West Virginia, neither of which have any statutory obligation to deploy smart meters. Also, the OCA explains that West Penn had not changed its CIS system for over thirty years. According to the OCA, most utilities in Pennsylvania made similar modernization investments to their CIS systems between 1970 and 2008 as a part of the normal course of business and recovered the costs of those projects through base rate proceedings. The OCA opines that there is no reason that West Penn should be treated differently because it incurred this expense after Act 129 was passed. OCA R. Exc. at 6-10.

 **d. Disposition**

Based upon our review of the evidence of record, we are persuaded by the Companies argument that the West Penn CIS costs are a recoverable cost of compliance with this Commonwealth’s smart meter implementation statutory requirement and are recoverable costs through West Penn’s SMT-C Rider surcharge. We find that the Companies have met their burden of proof in this proceeding to justify recovery of these CIS system upgrade costs at this time. Specifically, we note that Section 2807(f)(7) of the Code states:

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

66 Pa. C.S. § 2807(f)(7).

 Furthermore, we note that Section 2807(f)(8) of the Code defines the term “smart meter technology” as:

…technology, including metering technology and network communications technology capable of bidirectional communication, that records electricity usage on at least an hourly basis, including related electric distribution system upgrades to enable the technology.

66 Pa. C.S. § 2807(g).

 We conclude that the West Penn CIS Costs were a reasonable and prudent cost of a “system upgrade” required by the Company to initiate the use of smart meter technology in its service territory. We are not convinced by the OCA’s position that this system upgrade should have been included as a normal cost of doing business. Instead, we adopt the Companies position that that the $5.1 million of CIS-related costs were an unavoidable expenditure related to the costs West Penn incurred as part of the development of its 2009 plan as West Penn’s CIS at the time was not capable of supporting smart meters and that these expenditures would not have occurred absent the smart metering mandates of Act 129. We also agree with the Companies that the fact that a portion of these costs were allocated to certain affiliates in other states is irrelevant to the determination of whether the $5.1 million is a recoverable smart meter implementation cost in Pennsylvania.

 Lastly, we do not find the OCA’s arguments with regard to the “used and useful” principle applicable to this proceeding as West Penn’s claim simply is not a rate base claim, which implicates whether an asset is used and useful. Section 2807(f)(7) expressly provides for recovery of this expense as a system upgrade needed to enable the deployment of smart meters.

 Accordingly, we shall grant the Exceptions of the Companies on this issue and modify the ALJ’s recommendation.

 **7. Legacy Meters**

**a. Positions of the Parties**

The Companies have requested regulatory asset treatment for their unrecovered investment in their meters currently in place, also referred to as the Legacy Meters, that will be replaced by smart meters. According to the Companies, the regulatory assets would then be amortized over the remaining depreciable lives of the meters with recovery of that depreciation expense continuing through base rates. The Companies proposed to separately account for the cost of removal of the meters and the salvage value of the meters. The Companies proposed that any salvage value realized from the disposition of the Legacy Meters be credited to the regulatory asset. The Companies further proposed to treat the cost of removal for Legacy Meters as an O&M expense and to recover that cost as a component of the SMT-C rider. Companies St. No. 5 at 17.

 The OCA recommended that the Companies’ proposed treatment of the cost of removal should be modified such that the cost of removal of the meters and the salvage value of the meters are handled together as a part of the regulatory asset. According to the OCA, the Companies have historically dealt with the cost of removal and/or salvage value of Legacy Meters through its base rates and the existing base rates have costs of removal and salvage value embedded in them. The OCA testified how West Penn, Penelec, Met-Ed and Penn Power have historically handled this issue:

In response to OCA Interrogatory IV-6, the Companies explained that Met-Ed, Penelec, and West Penn presently treat the cost of removal as O&M expense, with Penn Power accruing for the cost of removal as part of its depreciation rate. (The Companies subsequently clarified that Met-Ed, Penelec, and West Penn actually charge the cost of removal to Account 403, which is depreciation expense, not technically an O&M account; however, the cost of removal for those companies is treated as if it were an O&M expense, that is to say as a cash expense.)

If Met-Ed, Penelec, and West Penn have historically treated the cost of removal of meters as O&M and that cost is being recovered in base rates, then inclusion of the cost of removal of the Legacy Meters as a current O&M expense in the Smart Grid rider would constitute a double recovery. That is, the Companies would be recovering the cost of removal in base rates and also recovering that cost of removal in the Smart Grid rider. Therefore, Met-Ed, Penelec and West Penn should be allowed to recover the cost of removal of Legacy Meters only to the extent that such costs exceed the cost of removal presently being recovered as O&M in base rates. (Alternatively, the cost of removal being recovered as O&M in base rates by those companies could be credited directly to the regulatory asset account.)

For Penn Power, the cost of removal of the Legacy Meters does not present the same double recovery problem because the full amount of the depreciation expense (including any implicit cost of removal allowance) will, in effect, be treated as an ongoing credit to the regulatory asset.

OCA St. 3 at 4-5.

Therefore, the OCA recommended that rather than being treated as O&M and being recovered as a current component of the Smart Grid rider, the cost of removal incurred by Penn Power and the incremental cost of removal incurred by Met-Ed, Penelec, and West Penn should be charged to the regulatory asset account containing the remaining cost of the retired Legacy Meters and be amortized over the remaining depreciable lives of the metering assets along with the remaining costs of those meters. The OCA opined that this will result in the cost of removal being treated symmetrically with salvage value. In addition, the OCA stated that charging the cost of removal to the regulatory asset and amortizing those costs accordingly will tend to smooth year-to-year variations in those costs. According to the OCA, this modification is necessary to prevent the double-recovery of these costs through base rates and through the SMT-C. OCA St. 3 at 5.

 **b. ALJ’s Recommendation**

The ALJ noted that the Commission previously addressed how these costs should be handled in its *Implementation Order,* whichstated:

The Commission believes the EDCs should install smart meters in a manner that coincides with the full depreciation of existing meters, so as to minimize the stranded costs. However, in the event that that there are stranded costs that need to be recovered the Commission agrees … that EDCs should be allowed to seek recovery of those costs through an accelerated depreciation schedule, to be included in the EDC’s cost recovery plan.

*Implementation Order* at 33.

 According to the ALJ, the Commission’s language anticipates that the stranded costs will be minimized to the extent possible and coincide with the Companies’ proposed depreciation schedule. The ALJ found that separating out the cost of removal from the salvage value and depreciation does not minimize the cost to consumers, noting that customers should not have the delayed impact of the credit for the salvage value recovered through the regulatory asset and the cost of removal of the Legacy Meters charged immediately through the SMT-C riders. Therefore, the ALJ recommended that the incremental cost of removal should be charged to the regulatory asset account containing the remaining cost of the retired Legacy Meters and be amortized over the remaining depreciable lives of the metering assets along with the remaining costs of those retired meters. She noted further that the cost of removal would then be recovered as part of the next base rate revenue requirement for electric distribution service when the regulatory asset is reflected in base rates. R.D. at 54.

 **c. Exceptions and Replies**

In their Exceptions, the Companies state that the ALJ’s recommendation is completely inconsistent with the Companies’ election to recover costs through the rider, rather than base rates, a factor that is sufficient to reject the ALJ’s recommended ratemaking treatment of incremental Legacy Meter removal costs. According to the Companies, the ALJ essentially adopted the OCA’s erroneous description of the Companies’ proposal to recover incremental Legacy Meter removal costs, which are above and beyond removal costs currently in base rates, thus resulting in an erroneous conclusion. The Companies explain that Act 129’s mandate to replace Legacy Meters with smart meters creates several ratemaking issues that must be addressed by the Commission, since current base rates only cover traditional depreciation of Legacy Meters, salvage value and the O&M expense of removing these meters during the normal course of business. Companies Exc. at 20-21.

The Companies explain that their proposal uses a recovery schedule set equal to the remaining depreciable lives of such meters per the respective Company’s Annual Depreciation Reports and continued recovery through base rates. They further explain that salvage value received from the disposition of Legacy Meters will be used as an offset to the regulatory asset, similarly amortized over the remaining depreciable lives of the metering asset. According to the Companies, the rate base equivalent of the regulatory asset for Legacy Meters will continue to be included in the respective Company’s rate base allowing the Companies to continue to earn a fair return on the asset. The Companies opine that the removal of the Legacy Meters is part of the installation of the smart meters, and, therefore, the Companies are requesting approval to include the incremental cost of removal for Legacy Meters as a recoverable O&M expense in each Company’s SMT-C Rider. Companies Exc. at 20-22.

Next, the Companies aver that the ALJ’s reliance on the Commission’s previously expressed concern over excessive stranded costs is misplaced. The Companies claim that no party in this case suggested that the Companies’ plan causes excessive stranded costs. Rather, the Companies opine that the OCA and the ALJ misinterpret the *Implementation Order* on the subject. According to the Companies, while the *Implementation Order* allowed EDCs to seek recovery of stranded costs through an accelerated depreciation schedule, it did not require this approach. The Companies aver that to amortize these incremental costs over several decades, rather than simply treat these removal costs as O&M, as is typically done in Pennsylvania, has the effect of denying the Companies’ recovery of costs and is contrary to the typical treatment of meter removal costs. The Companies aver that adding incremental removal costs to the regulatory asset without any corresponding base rate revenues will erode revenues and earnings over time. *Id.* at 22-23.

In reply, the OCA states that it is opposed to recovering these costs through the SMT-C Rider and recommends instead that they be charged to the regulatory asset account containing the remaining cost of the retired Legacy Meters and be amortized over the remaining depreciable lives of the metering assets along with the remaining costs of those meters. According to the OCA, this will result in cost of removal being treated symmetrically with salvage value and will tend to smooth year-to-year variations in those costs. The OCA opines that under the Companies’ proposal, they would be separating out the salvage and removal expense from the regulatory asset by recovering them through the SMT-C rider, but still recovering these same removal costs through base rates as well. The OCA opines that its proposed modification to the Companies’ proposed accounting for the cost of removal will prevent a double recovery through base rates and the SMT-C surcharge. OCA R. Exc. at 14-17.

The OCA next refers to the Companies’ argument that the Commission’s *Implementation Order* allowed EDCs to seek recovery of stranded costs through an accelerated depreciation schedule, but does not specifically require it. However, the OCA agrees with the ALJ’s discussion of the *Implementation Order* regarding Act 129, which specifically addressed the recovery of these stranded costs and did require EDCs to install smart meters in a manner that coincides with the full depreciation of LegacyMeters. The OCA explains that the Commission’s language anticipates that the stranded costs will need to be minimized to the extent possible and coincide with the Companies’ proposed depreciation schedule. The OCA opines that the depreciation schedule occurs with the regulatory asset, not through the SMT-C riders. According to the OCA, the ALJ’s recommendation and the treatment of such costs in the *Implementation Order* are fully consistent with Act 129, traditional ratemaking requirements and allow the Companies full recovery for all of their smart meter related costs. *Id.* at 17-18.

 **d. Disposition**

Upon our review of the record evidence we are in agreement with the ALJ’s recommendation that the incremental cost of removal of the Legacy Meters should be charged to the regulatory asset account containing the remaining cost of the retired Legacy Meters and amortized over the remaining depreciable lives of the metering assets along with the remaining costs of those retired meters. We are persuaded by the position of the OCA that this process will result in cost of removal being treated symmetrically with salvage value and will serve to smooth year-to-year variations in those costs. We further agree with the ALJ’s analysis that the Companies’ proposal of separating out the cost of removal from the salvage value and depreciation does not minimize the cost to consumers. We conclude that customers should not have the delayed impact of the credit for the salvage value recovered through the regulatory asset and the cost of removal of the legacy meters charged immediately through the SMT-C rider.

 Accordingly, the Exceptions of the Companies on this issue are denied and the recommendation of the ALJ is affirmed.

 **8. Smart Meter Deployment Schedule**

**a. Positions of the Parties**

The Companies have proposed a phased smart meter deployment strategy consisting of three distinct phases. First, a Post-Grace Period Stage commenced on January 1, 2013, and will conclude with the completion of smart meter deployment. In compliance with Act 129 and the Commission’s *Implementation Order*, the Companies have implemented procedures to provide smart meters for new construction and for all customers who request, and are willing to pay to have access to a smart meter in advance of their scheduled installation date. Companies St. 2 at 7-9.

Next, during the Solution Validation Stage, which is expected to run from shortly after Commission approval of the Deployment Plan until early 2017, the Companies will build out needed infrastructure and construct a “mini version” of their proposed smart meter system, serving approximately 60,000 customers in the Penn Power service territory. This will allow the Companies to validate their approach and the functionality of all selected equipment in a controlled environment. *Id*. at 11-12.

Finally, the Full-Scale Deployment Stage is expected to commence in early 2017 and conclude by the end of 2022. Assuming a start date in early 2017 and the installation of approximately 3,000 meters per day, five days a week, the Companies expect to install about 98.5% of all smart meters by December 31, 2019. *Id*. at 13-14.

 **b. ALJ’s Recommendation**

The ALJ recommended adoption of the Companies smart meter deployment schedule. R.D. at 12-13, 58.

 **c. Exceptions and Replies**

First, the Companies note that its initial smart meter deployment schedule was not challenged by any party. However, the Companies explain that during the five months between the submission of Briefs and the issuance of the Recommended Decision, they continued to test the selected smart meter equipment individually, and in combination with the other components comprising the smart meter solution. According to the Companies, based on this additional testing, it is now the Companies’ belief that the entire Penn Power system, which is comprised of approximately 170,000 meters, can be built out between 2014 (50,000 meters) and the end of 2015 (120,000 meters), rather than only deploying 60,000 meters through 2016 as originally proposed. The Companies aver that this can be done without increasing the estimated overall nominal cost of deployment. Instead, the Companies assert that there would be a shift of budget dollars among the various years, with approximately $62.5 million being shifted to 2014 and another $49 million being shifted to 2015. The latter years would experience corresponding decreases in annual budgets, per the Companies. The Companies opine that this acceleration will provide the Companies with empirical data on a broader scale and should allow the Companies to better identify and verify potential cost savings from the installation of smart meters more quickly. Companies Exc. at 25-27.

 In reply, the OCA submits that this proposed expedited Penn Power deployment schedule should not be approved at this time. The OCA states that procedurally, it is improper to request a change to the deployment schedule for the first time in Exceptions as the only record evidence in this proceeding regarding Penn Power’s deployment schedule is included in the Companies’ Plan filed in December 2012. The OCA asserts that amendments to the deployment schedule will change the charges to customers and will also likely have logistical impacts including consumer education impacts. The OCA avers that the Companies have not provided any evidentiary support for these changes and that it has not had the opportunity to fully evaluate the proposal. For example, the OCA explains that it would want to examine such things as the projected costs by year of the new deployment, the differences in projected costs by year and the basis for the additional $2.5 million in costs as a result of this change. The OCA submits that the Companies should submit an amended Plan, which provides evidentiary support for the accelerated deployment, provides the opportunity for interested parties and the Commission to fully understand all aspects of the proposal. OCA R. Exc. at 19‑21.

 **d. Disposition**

Based upon the evidence of record, we are in agreement with the position espoused by the OCA that a change in the smart meter deployment, to the significant degree as proposed by the Companies, is unreasonable at this point in time. It is simply improper for the Companies to make such a proposal during the Exception stage of this proceeding, long after the close of the record, without record evidence support and thereby denying the other Parties in this proceeding the opportunity to fully analyze the proposed accelerated deployment schedule and to challenge its ramifications. We further agree with the OCA, that if the Companies feel strongly about implementing this accelerated Penn Power deployment schedule, then they should promptly submit an amended Plan, with proper supporting documentation, with the Commission to properly provide the opportunity for all affected Parties, as well as this Commission, to fully evaluate and comprehend this proposal. If the Companies decide to pursue an accelerated deployment, they must file an amended Plan within thirty days of the entry of this Opinion and Order, stating their case more fully and in more detail. 52 Pa. Code § 5.93(a). Thereafter, the Commission will schedule an expedited procedural schedule so that the amended Plan could be decided within ninety days of the entry of the instant Opinion and Order.

Accordingly, the Exceptions of the Companies on this issue are denied.

**IV. Conclusion**

Based on our review of the record and the applicable law, we shall grant the Companies’ Exceptions, in part, deny the OCA’s Exceptions and adopt the ALJ’s Recommended Decision as modified, consistent with this Opinion and Order; **THEREFORE,**

 **IT IS ORDERED:**

1. That the Exceptions of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are granted, in part, and denied, in part, consistent with this Opinion and Order.

 2. That the Exceptions of the Office of Consumer Advocate are denied, consistent with this Opinion and Order.

 3. That the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes is adopted, as modified, consistent with this Opinion and Order.

4. That the Smart Meter Deployment Plan as proposed by the Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Smart Meter Deployment Plan filed on December 31, 2012, in the above-captioned matter is adopted as modified by this Opinion and Order.

 5. That in no more than sixty (60) days in advance of installation of their smart meters, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are directed to identify on a website, available to the public, information regarding the deployment schedule in accordance with the terms of stipulation in Direct Energy Hearing Exhibit 1 at 2.

 6. That the Smart Meters to be deployed pursuant to this Smart Meter Implementation Plan include the capabilities listed on pages 16 and 17 of the Commission’s Order in *Re: Smart Meter Procurement and Installation*,Docket No. M‑2009-2092655 (Order entered June 24, 2009).

 7. That Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are directed to provide a report with their next SMT-C filing that identifies expenditures on all components of their Plan that have the potential to benefit their sister utilities in other states when they begin deploying smart meters and that describes the method through which the Companies will receive credit from FirstEnergy Service Company for those expenditures.

 8. That to the extent any system upgrades are currently being utilized by their sister utilities, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are directed to properly allocate those costs to the sister utilities.

 9. That joint Plan costs are directed to be allocated based on the annual average number of meters per Company as of June 30th prospectively for purposes of calculating each Company’s annual SMT-C rider.

 10. That Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are permitted to use the date of December 31, 2013, subject to certain adjustments, to establish baseline metrics to measure cost savings achieved throughout deployment.

 11. That in the next annual SMT-C filing, and in all subsequent annual SMT-C filings, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company shall provide detailed information on the cost saving baseline measures, including the actual baseline employees’ levels, costs and other metric levels as well as any adjustments. Also, the annual SMT-C filings shall detail how any cost savings are calculated for each baseline measure.

 12. That Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are directed to hold stakeholder meetings by the second quarter of 2014 in order to discuss the final Communications Plan and to file the final Communications Plan with the Commission and to serve a copy upon the Reliability and Emergency Preparedness Section of the Bureau of Technical Utility Services after the stakeholders have sufficiently reviewed and discussed the Communications Plan in the stakeholder meetings.

 13. That Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are directed to include information in the Communications Plan related to early education for customers about time-varying prices and the functionalities of smart meters.

 14. That Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are directed to provide to individual consumers educational safety information including, but not be limited to, the following:, (1) that installers for FirstEnergy will have redundant identification, *i.e.*, trucks with logo, uniform, identification badges to enable customers to distinguish between genuine FirstEnergy installers and others; (2) that pictures or descriptions of the uniforms for installers for FirstEnergy will be provided, such that a consumer can readily identify the FirstEnergy installers; (3) that such FirstEnergy installers do not need to enter the household in order to install the smart meters; (4) that customers should check the identification of installers if the customer has any doubt; and (5) that the phone number to call to verify any given installer’s identification is provided.

 15. That Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are directed to work with the stakeholder group to develop a stand-alone Customer Privacy Policy specifically related to the protection of smart meter information before any wide scale deployment of smart meters and to modify the Companies’ proposed customer privacy principles for clarity.

 16. That Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are directed to not use involuntary remote termination for non-payment as part of their Plan until first working with a stakeholder group, and filing for approval any future proposal to pursue involuntary remote termination for non-payment.

 17. That Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are directed to work with the stakeholder group to develop protocols for voluntary remote disconnection for move in/move out situations.

 18. That Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are directed to continue to discuss and address cyber-security issues with the stakeholder group on a going-forward basis.

 19. That Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are permitted to collect $5.1 million for expenditures related to West Penn Power Company’s Customer Information System.

 20. That Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are directed to charge the incremental cost of removal of Legacy Meters to the regulatory asset account containing the remaining cost of the retired Legacy Meters and to amortize the cost over the remaining depreciable lives of the metering assets along with the remaining costs of those retired meters.

 21. That Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are directed to file an amended Plan within 30 days of the Commission’s Opinion and Order in this matter that shall reflect any changes directed by the Commission within this Opinion and Order. The amended Plan shall also be served upon the Reliability and Emergency Preparedness Section of the Bureau of Technical Utility Services.

 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: March 6, 2014

ORDER ENTERED: March 6, 2014

1. *In Re: Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009) *(Implementation Order).* [↑](#footnote-ref-1)
2. *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 (Order entered June 9, 2010). [↑](#footnote-ref-2)
3. The Commission adopted the Initial Decision of the ALJ and approved the WPP Settlement by Order entered June 30, 2011, at Docket No. M-2009-2123951. [↑](#footnote-ref-3)
4. See FOF Nos. 7, 8, 9, 12, 13, 17, 24 and 25 within the R.D. at 5-8. [↑](#footnote-ref-4)
5. *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a Change of Control of West Penn Power Company and Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2176520, A-2010-2176732, Order (March 8, 2011). [↑](#footnote-ref-5)
6. The ALJ cited to *Barasch v. Pa. PUC*, 516 Pa. 142, 532 A.2d 325 (1987), aff’d *Duquesne Light Co. v.* *Barasch,* 488 U.S. 299 (1989), in support of the recommendation to deny the CIS cost recovery. [↑](#footnote-ref-6)