



But not by following the law. We, and likely most of the customers referred to above, would not be in this legal tussle with our Electricity Distribution Company, were it not for a grave discrepancy between how we and our EDC interpret Act 129. In answering Interrogatory Set 3 No. 5, West Penn Power “is not aware of any inconsistencies.” In answering Interrogatory Set 3 No. 6 and 7, West Penn Power goes on to say that “the Company is not voluntarily installing smart meters. Rather, it has been directed, *by law*, to do so.” (Italics in West Penn Power’s reply)

West Penn Power’s reliance on the law continues a line of thought initially expressed to us in its Answer and New Matter filing of January 18, 2018 item 4 p. 2 that “The Company specifically avers that at all times relevant to this proceeding, the company’s actions have been reasonable and performed in accordance with all applicable laws, as well as the Company’s Commission-approved tariffs, the Pennsylvania Public Utility Code, Commission regulations and orders.”

In West Penn Power’s Preliminary Objections to our Complaint, they specify repeatedly that they must install smart meters in accordance with Act 129 (p. 1 item 2). On p. 4, item 13 WPP states “...the Company’s action have been in compliance with Act 129 and the June 5 Order.”

On the basis of these statements by West Penn Power, we reserve the right to inquire further since we disagree that WPP is in compliance with Act 129, and wish to discover how it arrived at such a belief.

As such our Interrogatory Set #6 is relevant to the case we are making and in full compliance with the rules of discovery as described in 52 Pa. Code § 5.321(c) Scope, wherein “a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action ... including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”

### **West Penn Power’s Objections to Interrogatories Set 6 of Eugene J. Bazan**

West Penn Power/First Energy has objected to all interrogatories in set #6 as a single batch with the following language:

*21. All of the Complainant’s Discovery Requests are improper and objectionable to the extent that they seek information or documents that are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, outside the scope of this proceeding; vague, ambiguous, unlimited in time scope or subject, overly broad, unduly burdensome, oppressive, or calling for unbounded discovery, protected from disclosure by attorney-client privilege, the attorney/representative work product doctrine, or another other privilege or protection from disclosure recognized by law; not in possession, custody, or control of the Company or documents in the public domain or otherwise available to the Complainants through alternative or less burdensome means.*

*22. Specifically, the Company objects to Questions 1 through 9 and each of its subparts because each interrogatory calls for a legal conclusion concerning the interpretation of legislative history, bill numbers, Act 129, the Commission's Implementation Order, as well a Commission presentation, thus implicating the Company's attorney-client and/or work product privileges. It is improper for a Company witness to sponsor such responses which require legal conclusion. Moreover, it is improper for the Company's attorneys to sponsor such discovery as they are not witnesses in this proceeding. Furthermore, each of these documents are public documents that speak for themselves.*

### **Complainant's Response to West Penn Power's Objections**

We have organized our Interrogatory Set #6 in a step-by-step manner requiring only that West Penn Power read the material and answer the questions. Our questions are framed such that most answers can be a simple "no", and a "yes" response requires a simple explanation to help us understand why WPP thinks as it does.

In order for us to prepare our response at the time of the hearing, we desire to find out how WPP has come to its understanding of Act 129 which differs from ours. This is central to our complaint and arguments. By objecting to our Interrogatory Set #6, WPP is preventing us from being able to present our case properly.

In Objections point 22, WPP states "each interrogatory calls for a legal conclusion" when, to be more precise, each interrogatory is a question in reading comprehension and logic, which may or may not have legal ramifications but is essential to getting to the core of helping us comprehend where our interpretation and understanding of the law in Act 129 is misguided or incorrect. WPP did not enter into the smart meter program without due deliberation, without making decisions, and without leaving a paper trail. The attorneys, as employees and agents of West Penn Power in these proceedings, have access to all this information. Their task is merely to convey this information to us, the complainants. Why this constitutes rendering a legal opinion is beyond us.

WPP states that responding to our questions implicates "the Company's attorney-client and/or work product privileges." WPP has provided no justification regarding how this objection is applicable to our questions. The attorneys are the in-house legal division for First Energy/WPP. They are employees, not members of an external law firm representing a client. This objection has no standing or merit. If employed attorneys can invoke this privilege, cannot also employed engineers? Accountants? Linemen? Secretaries?

WPP's further states, "It is improper for a Company witness to sponsor such responses which require a legal conclusion." Again, we are asking for "reading comprehension" logical answers to which we are entitled as per the rules of discovery. If there are no inconsistencies between Act 129 and the Implementation Order of June 5, 2008 as asserted by WPP, we have every right to obtain clarification to justify that assertion. We have crafted the Interrogatories to help us pinpoint wherein lies our misunderstanding. WPP has the opportunity here to offer us clarification to which we are entitled.

WPP concludes "each of these documents are public documents that speak for themselves." Clearly if that were the case, there would be no dispute. As there is a dispute, these documents must be parsed more carefully.

It was, therefore, our intent in constructing Interrogatories Set #6, to seek to identify how West Penn Power arrived at its position that it was required by law to install smart meters on all homes in their service territory. Through this set of Interrogatories we hoped to understand just where the plain English interpretation of Act 129 broke down, and whether there is any remedy along this continuum from intent to law to Implementation Order to deployment.

This breakdown is at the heart of our complaint. Without this breakdown, we would not be here. Nor would the thousands of other Pennsylvanians having this same fundamental complaint.

### **Our Requests**

We wish you to expedite our Motion to Compel Discovery, turn aside the objections of West Penn Power, and direct it to return to Discovery and answer our questions in Interrogatories Set #6, which follows in the Appendix.

Respectfully Yours,



Eugene J. Bazan  
PO Box 24  
Lemont, PA 16851

April 11, 2019

**Appendix: Interrogatories Set #6 of Eugene J. Bazan to West Penn Power C-2017-2640388**

In our Interrogatories #3 to West Penn Power, we asked in Question 5, “Does West Penn Power recognize the inconsistencies between Act 129 §2807 (f) and the PUC’s Implementation Order of June 2009?” to which we received the reply:

Answer: West Penn Power Company is not aware of any inconsistencies.

With the following interrogatory questions, we seek to identify how West Penn Power (WPP) arrives at this answer, as well as how WPP asserts it is required by law to install smart meters on all homes in their territory.

Each of the questions is preceded by text discussion relevant to that question. Beyond Q1, the questions may refer to any and all of the text discussion preceding it but are primarily focused on the text immediately preceding it.

We begin with a review of the actual legislative record and development of Act 129 of pertinence to smart meters which is documented under “House Bill 2200 History.”

([http://www.legis.state.pa.us/cfdocs/billinfo/bill\\_history.cfm?year=2007&sind=0&body=H&type=B&bn=2200](http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2007&sind=0&body=H&type=B&bn=2200) )

**Please note the wording in Bill # PN 3218 on February 11, 2008:**

(ii) Electric distribution companies shall furnish smart meter technology to:

(A) Customers responsible for 40% of the distribution company's annual peak demand within four years after the effective date of this paragraph.

(B) Customers responsible for 75% of the distribution company's annual peak demand within six years after the effective date of this paragraph.

(C) One hundred percent of its customers within ten years after the effective date of this paragraph.

Below are remarks relevant to smart meters made about Bill # PN3218 as recorded in the House Journal, February 11, 2009, pages 386-403, bolded text added for emphasis:

**p. 388**

Mr. FREEMAN. Thank you, Mr. Speaker.

Mr. Speaker, **this amendment would require that all public utilities, electric utilities, install smart meters for residential and business customers across the Commonwealth.** Smart meters are a very important technology which is available to us, which would save both customers and utilities a considerable amount of money by allowing the customer to be able to opt in – and it is optional – in to a purchasing process where they could purchase their electricity at off-peak hours, thereby saving on cost.

...

**p. 390**

Mr. HUTCHINSON. Thank you, Mr. Speaker

**I rise in opposition to this amendment.** Mr. Speaker, I think that this amendment makes absolutely no common sense at this time. The consumers of Pennsylvania are about to experience an increase in the electricity costs over the next couple of years because rate caps will be phasing out in various areas over the next 2 or 3 years, and with that, consumers are going to see their electric rates increased.

By passing this amendment, **we are going to be piling on the consumers because they will be mandated**, although in an indirect way, **they will be mandated to pay for these new meters to be installed in their home whether they save on their electric costs or not.**

It only makes sense to say smart meters should go to consumers who can save money by installing them. Those who can save by having a smart meter, it would make sense for them to have smart meters in their home. **Mandating it across the board mandates that everybody pays whether they save or not, and that just does not make sense.**

**I am very concerned that we continue to ignore the consumers by making more mandates and increasing their costs, whether it is through mandating the meters, through trying to have some kind of a surcharge, all these things at a time when their electric costs are going up anyways.**

So although on a case-by-case basis, smart meters might be a good thing to do, making a 100- percent mandate does not make sense. So I am opposing this amendment.

...

Mr. GODSHALL.

In this case are we not taking the choice away from the consumer by saying you have to put this in service in your district rather than you may or you have a choice? Are we not saying that you must do it? We are taking that choice away from the consumer, I believe, and **I would have no problem with this if we do it on a choice basis**, as you used the word "choice" before. We are taking that choice away.

...

**p. 391**

Mr. FREEMAN.

Well, I would only point out, Mr. Speaker, that we are requiring the utility company to install the meter, not the customer, and it is the utility company. If we are going to see the kind of cost savings that will reduce the price of electricity for consumers throughout the State, it has got to be done on a statewide basis by the utility companies.

...

Mr. GODSHALL.

In looking at this, I totally agree with the gentleman that we need to conserve energy, we need to save energy. I totally agree that smart meters are a big step in doing this.

**What I am not in full agreement on in any way is that everyone is mandated to, whether they intend to use it or not, whether they know how to use it or not, everyone is mandated, under this legislation, to go ahead with the smart meter technology.**

And again, the gentleman mentioned there were polls taken. If there is a poll taken and said, do you believe in the use of smart meters, my answer to that would be yes. I would have absolutely no problem in answering yes, **but then if there was a question at the bottom that says you are going to be paying \$300 for the installation through your utility bill for this meter and the software that goes with it, I am not sure what the answer would be.**

**p 392**

Mr. McCALL. Thank you, Mr. Speaker.

...and they are costs that our consumers are going to have to pay unless we start giving them the tools to manage, and the Freeman amendment does precisely that. It gives people the ability to, **voluntarily, by the way – and I think that is the key to this whole debate, is voluntarily** – we are going to allow them to decide whether they want time-of-use pricing.

**p 393**

The SPEAKER. The Chair recognizes the minority leader, Representative Smith.

**If we really want to encourage people to use it, I think we ought to allow them to engage it themselves as opposed to forcing them to pay for something they may not use, and that is really the difference, Mr. Speaker, in what I think is right or wrong with this amendment.**

**While I certainly appreciate the direction it is trying to go, I think the fact that it forces the cost of the meters onto every consumer of electricity in Pennsylvania, I think that is the wrong direction to go and would ask for a vote against the amendment.**

...

Mr. SAYLOR.

Mr. Speaker, I want to make it clear to everybody, **this is a mandate. This is not voluntary; it is a mandate required to use smart meters in Pennsylvania.**

And while I agree, again, with my colleague on the other side of the aisle that this is all great, the Adams Electric, the Rural Cooperatives of Pennsylvania, have been very effective in using smart meter technology to help lower consumers' bills, **the choice is up to the consumer to use that technology and whether they want that smart meter installed on their house.**

**The key is, should we in the General Assembly mandate something on consumers that is going to cost them more dollars in their electric bill?**

...

**This issue in particular should be a choice by consumers, not a mandate by the General Assembly onto an additional cost to electric bills in Pennsylvania. So remember, voting for this amendment, while I think it has great goals and where the gentleman wants to get to is very admirable and where we need to get to at some point in time, it still needs to be a consumer choice, not a General Assembly mandate onto consumers that is going to cost them more in their electric bill**

**p 394**

Mr. VITALI

Mr. Speaker, finally, smart metering helps consumers who do not opt for the time-of-use rates in a number of ways. One, even if you do not opt in, the power goes out, if you have a smart meter in your home, even though you did not opt in to the time-of-use rates, your utility company knows that; it can get your power up much more quickly. So even if you do not use the time-of-use rating, having a smart meter in your home will help you.

Also, Mr. Speaker, another reason why it is necessary to do this in a comprehensive way, as the Freeman bill does, is you can capture the economies of scale if all these meters are installed in a systematic program instead of having an installer go out one by one as people volunteer for this. Mr. Speaker, for all these reasons I urge the adoption of the Freeman amendment. Thank you.

**p 395**

Mr. BENNINGHOFF. Thank you, Mr. Speaker.

And again I thank the maker of the amendment for his time in answering those questions. **I guess my reservation, obviously, is do we want a statewide mandate? Do we want the government telling you that you have to have a meter put in your property?** I think the majority of us appreciate the fact that we want to be more energy conscious, have more efficient appliances, and I think a lot of us are moving that way.

I just struggle with the fact that **there is no other State in the Commonwealth that has done this in the past**, although I would like to see Pennsylvania obviously be a leader.

It gives me some reservations that **if this technology is so accurate and so helpful and such a cost reduction savings for the consumer, why is it not being used unilaterally across this great nation?** I would ask the members to keep that in mind.

**I think it is important that we are smart about our energy use, but I also think we have to think about what government's role is in mandating such a thing.**

**p 397**

Mr. GABIG

And so what I am wondering, is each person that lives in an apartment going to be mandated under this Freeman amendment to get a meter or not? Or if there is an apartment building or a townhouse that

has many different units in it that has one meter currently, will each individual apartment dweller in such a situation be required to get one of these meters?

...

Mr. GABIG

The problem I am having with the amendment is I think if I were called on the telephone and asked, are you for a smart legislator or a dumb legislator, are you for a smart card or a dumb card, are you for a smart meter or a dumb meter, I would probably answer, I am for the smart legislator, the smart card, the smart meter.

But if they start saying, well, for the smart legislator you are going to pay five times more money and for the dumb legislator you are going to pay five times less money, for the smart card you are going to pay five times more money and for the dumb card you are going to pay five times less money, **for the smart meter you are going to pay we do not know how much more money because we will not tell you, but it is not going to be the utilities that pay for it because we took care of them in our amendment; they are taken care of in this Freeman amendment.**

**The big utility companies and corporations, they are all right with it; they support this, but the customer, well, you are going to pay the freight for this mandate, this State mandate.**

...

I think that the gentleman from York, Stan Saylor, mentioned that Adams Electric Co-op has a similar program, **but it is not forced on people; it is a voluntary program, and they can use the market to decide whether they want to do it or not.**

**Q1 (a) Does WPP dispute that in response to Bill #3218 legislators asserted that customers should be able to choose a smart meter and not have it mandated? If you dispute this, please explain what it is you dispute and why.**

**Q1 (b): Does WPP dispute that in response to Bill #3218 there were no legislators who spoke up, according to the record, to support that smart meter installation should be mandatory? If you dispute this, please explain what it is you dispute and why.**

**Q1 (c): Does WPP dispute that Bill #3218 was not favored and was not passed by the House? If you dispute this, please explain what it is you dispute and why.**

**Please note the wording of Bill # PN 3233 on February 12, 2008:**

- (ii) Electric distribution companies shall furnish smart meter technology to:
- (A) Customers responsible for 40% of the distribution company's annual peak demand within four years after the effective date of this paragraph.
  - (B) Customers responsible for 75% of the distribution company's annual peak demand within six years after the effective date of this paragraph.
  - (C) One hundred percent of its customers within ten years after the effective date of this paragraph.

Below are remarks relevant to smart meters that were made about Bill # PN3233 as recorded in the House Journal, February 12, 2009, pages 430-432, bolded text added for emphasis:

**p 431**

Mr. HUTCHINSON. Thank you, Mr. Speaker.

Mr. Speaker, **I rise in opposition** to passage of HB 2200, and let me tell you why. I believe that in its original, unamended form, before it came to the House floor, there were a lot of redeeming qualities in the bill. It did promote conservation, and that is a laudable goal for Pennsylvania, to try to conserve energy use.

However, by **the amendments passed yesterday, which mandated universal smart meters across Pennsylvania, that is a fatal flaw that makes this bill a bad idea for Pennsylvania. It is bad for the consumers of Pennsylvania who will have to pay for those smart meters, whether they save on their electric bills or not. It makes no sense whatsoever to force people to pay for those smart meters and then, in addition, still pay higher and higher utility bills.**

**It was said yesterday that if only 1 percent of the people used smart meters, we would have huge savings in energy use in Pennsylvania, and, Mr. Speaker, I agree with that statement. But my idea is, let us get the smart meters only to those 1 percent of the people and get this same savings in energy use. That is the smart way to move forward to promote energy conservation, to use technology like smart meters in a targeted and commonsense way instead of a mandated, across-the-board consumer tax – that is what it is, a couple hundred dollars per person – that will have to be paid to pay for these smart meters.**

So after adding that **fatal flaw** to this bill, I think it is incumbent upon everyone in this chamber to vote against HB 2200, and I ask them to join me in that vote. Thank you, Mr. Speaker.

**Q2 (a) Does WPP dispute that in response to Bill # PN 3233 there continued to be legislative opposition that Pennsylvania customers should not be forced to pay for smart meters and their higher costs and that smart meters should not be mandated? If yes, please explain what it is you dispute and why.**

**Q2 (b) Does WPP dispute that the language of PNs 3218/3233 with regard to smart meters was not passed into law? If yes, please explain what it is you dispute and why.**

House Bill 2200 (third amended version of PN 3218 also cited as PN 3233) was passed on February 12, 2008 by a vote of 152 in favor and 45 opposed. Of those who previously expressed concerns about forcible deployment of smart meters, only Reps. Hutchinson and Saylor opposed at the time of vote.

However, it is important to note the concern on the record that even though PN 3218/3233 was passed by the House, a number of legislators objected to the language in the section about smart meters that made it mandatory to all customers.

We next consider the language of Bill # PN 4429 in the Senate as of September 23, 2008:

(2) ELECTRIC DISTRIBUTION COMPANIES SHALL FURNISH SMART METER TECHNOLOGY AS FOLLOWS:

(I) UPON REQUEST TO A CUSTOMER THAT AGREES TO PAY THE COST OF THE SMART METER.

(II) IN THE CONSTRUCTION OF A NEW RESIDENCE OR NEW BUILDING TO BE USED BY A COMMERCIAL CUSTOMER.

(III) IN ACCORDANCE WITH A SCHEDULE OF REPLACEMENT OF FULL DEPRECIATION OF EXISTING METERS.

While there are no Senate Journal comments about the explicit language of PN 4429, it was further amended and was not passed by the Senate.

**Q3. Does WPP dispute that PN 4429 which required replacing all existing meters according to their full depreciation schedule was not passed? If you dispute this, please explain what it is you dispute and why.**

We next consider the language of Bill # PN 4526 in the Senate as of October 7, 2008:

(2) ELECTRIC DISTRIBUTION COMPANIES SHALL FURNISH SMART METER TECHNOLOGY AS FOLLOWS:

(I) UPON REQUEST FROM A CUSTOMER THAT AGREES TO PAY THE COST OF THE SMART METER AT THE TIME OF THE REQUEST.

(II) IN NEW BUILDING CONSTRUCTION.

(III) IN ACCORDANCE WITH A DEPRECIATION SCHEDULE NOT TO EXCEED 15 YEARS.

With the context that smart meters are a new offering to Pennsylvania customers:

**Q4 (a) Does WPP dispute that the language of PN 4526 differs from that of PN 4429 with regard to the wording of clause (III)? If you dispute this, please explain what it is you dispute and why.**

**Q4 (b) Does WPP dispute that PN 4526 no longer mentions existing meters in its context? If you dispute this, please explain what it is you dispute and why.**

**Q4 (c) Comparing PN 4526 to PN 3218 and PN 3233, does WPP dispute that clause (III) language is completely different and that “One hundred percent of its customers within ten years after the effective date of this paragraph” and “IN ACCORDANCE WITH A DEPRECIATION SCHEDULE NOT TO EXCEED 15 YEARS” do not mean the same thing, regardless of the specified number of years? If you dispute this, please explain what it is you dispute and why.**

**Q4 (d) Does WPP dispute that in PN 4526 that the subject of discussion is smart meters and that therefore the depreciation schedule referred to in clause (III) can only be in reference to smart meters? If you dispute this, please explain what it is you dispute and why.**

Discussion of PN 4526 in the Senate is recorded in the Senate Journal on October 8, 2008, pages 2626-2631 from which the following comments pertinent to smart meters and concerns about customers are taken:

(<https://www.legis.state.pa.us/WU01/LI/SJ/2008/0/Sj20081008.pdf#page=13> )

**p 2626**

Senator TOMLINSON.

Mr. President, I rise to ask for support for House Bill No. 2200 as amended by the Senate. I think this is very, very important legislation for our consumers today who consume power and energy in Pennsylvania. House Bill No. 2200 is, I think, a large step forward.

The Governor of the State of Pennsylvania, Ed Rendell, has been a leader in a new energy policy, and this legislation contains many of those items in there. It includes demand-side reduction, conservation, that I think is going to help the consumer, in the long run, to reduce the demand on power. We are requiring a reduction of 3 percent by the year 2013 and 4 1/2 percent for peak power, and I think that is extremely important as we go forward with an energy policy, Mr. President.

**It also contains language in there that we will have smart meters. It is not mandated,** but it allows for the deployment of smart meters through a depreciation process, through new home construction process, and through the depreciation of 15 years, and **for anyone who wants to purchase a smart meter which they feel will help them manage their electric load better.**

Senator BOSCOLA.

So-called **smart meters** by themselves are not magically -- **anyone's monthly electric bill is not going to go down just because you are getting a smart meter. That will not happen.** But this new technology will reward customers who are smart enough to realize that they can use electricity when it is cheapest during off-peak hours and pay a lower rate.

**We also made sure that smart meters would not be mandated for every single ratepayer. Not only is that a smarter approach to smart meter deployment, but it will also save electric customers hundreds of millions of dollars paying for something that will not provide a real benefit in their own households.**

Senator RHOADES.

We have gone from a regulated monopoly to an unregulated monopoly, and I have problems with that. **I do not want to move on any piece of legislation until I see the mitigation piece and how it is going to affect the consumers.** Then I will say we should do the whole thing. **I want to see how it affects the consumers, what it is going to mean to them, and how we are going to put it in place.** I know, I hear, well, we will give them a 75-percent break, then a 50-percent break, then a 25-percent break, but as a company borrows that money, you know who is going to end up paying the interest on it. Or I will tell you what, you put your deposit in, and I will give you 6 percent now. Why do I have to go through that gyration when I should have had an understanding, at least it was projected to me, that all things will remain basically the same, except now, you will be able to go out and be at least more competitive. I have not seen that.

**... I want to know what the consumer is really going to have to pay before I can pass on anything.**

**So for that reason, I will be voting "no."**

Senator FERLO.

...I am very disappointed in the final outcome represented in this bill, House Bill No. 2200, and it quite honestly represents a sucker punch in the face of electric ratepayers, both individual homeowners and ratepayers at a residential level, as well as those in the small business community, and even larger businesses that are going to have to continue to bear exorbitant rate hikes and rate increases when it comes to electricity.

... The only electric choice we have, basically, is to continue to pay exorbitant electric rates. There is no true competition. **There is basically an almost fraudulent methodology by which electricity is purchased on the PJM marketplace.** We have companies going to Wall Street, blatantly and with very clear annual statements and reports, even documenting the amount of profiteering that they are going to make off the backs of ratepayers.

Senator FUMO

**In addition, we did not mandate smart meters, but we made them optional. We did say in new construction, where they really are practical, they will be put in.**

**Outcome of the Senate votes: 47 in favor, 3 opposed (Eicheberger, Folmer & Rhoades)**

**Q5 (a) Does WPP dispute that three Senators (Tomlinson, Boscola and Fumo) stated that smart meters were not mandated in this bill? If you dispute this, please explain what it is you dispute and why.**

**Q5 (b) Does WPP dispute that no other senators spoke up to contradict or correct the statements of Senators Tomlinson, Boscola and Fumo with regard to the non-mandatory intent of PN 4526? If you dispute this, please explain what it is you dispute and why.**

**Q5 (c) Does WPP dispute that there were on-going concerns about future high costs of electricity to the consumer that PN 4526 was not addressing? If you dispute this, please explain what it is you dispute and why.**

**Q5 (d) Does WPP dispute that, as mentioned by Senator Ferlo, the power companies are purchasing power from the PJM marketplace which is what really sets the rates, independent of the type of meter on homes? If you dispute this, please explain what it is you dispute and why.**

Bill 4526, passed by the Senate, then went back to the House. The Legislative Journal, pp. 2323-2327 documents further concerns about PN 4526 prior to voting as follows:  
<https://www.legis.state.pa.us/WU01/LI/HJ/2008/0/20081008.pdf#page=65>

p. 2324

Mr. METCALFE. Thank you, Mr. Speaker.

...

Mr. Speaker, I think that passing HB 2200 today as we approach the dark of night once again, when many of our colleagues needed to leave for their own reasons, as was mentioned earlier today, I think that the membership list is getting shorter, and **I do not think that we should be taking this vote up today. It is a vote that needs to be vetted more; it is a vote that needs to be read more.** I think a 79-page bill that you are going to push through with a suspension of the rules is what a quarter of this Assembly ran against the last time they ran to get elected, Mr. Speaker. I think when they came in here and took that oath, and many of them served on your Reform Commission, I do not think they envisioned the end of session voting for **a 79-page bill that was dropped on our desks at the last minute, that has severe impacts on the marketplace and, in my opinion and I know in many of my colleagues' opinions, will drive the costs up for consumers, not down.**

... I think it is time to stand with the people of Pennsylvania. It is time to reject this government-mandated type control of our energy market. It is time for energy independence, Mr. Speaker, and more government controls through this type of legislation will not deliver it. **It is not the type of reform that the people of Pennsylvania expect. They like a different type of bonus; they like to be looked out for by the people that are supposed to be representing them.**

pp 2324-2325

The SPEAKER. Representative Turzai.

Mr. TURZAI. Thank you very much, Mr. Speaker.

With respect to HB 2200, I will support concurrence although **I think that we could have had a much better bill from the Senate.** There are some positive aspects to this and I think those override the negative aspects.

...

I do think that there are some opportunities for conservation education. **I am not in favor of the mandate-type approach but the educational type of approach where consumers can make those decisions for themselves.**

p. 2325

The SPEAKER. Representative Thomas.

Mr. THOMAS. Thank you, Mr. Speaker.

...

I hope that whatever happens with HB 2200 – and I am not promoting HB 2200 – but whatever happens ... I ask leadership from both sides to let us not take our eyes off of the ball. **There are too many people in Pennsylvania that are literally sitting in darkness as we speak because they are unable to pay for electricity, gas, or any utilities, and we did not help them in December of 2004 when we gave the utility companies unfettered authority to turn on and turn off consumers' utilities almost at will.**

So I hope that ... we do not step away from putting people over politics, from **looking out for the interests of the people that we represent.** I am excited that jobs will be created. I am excited with how energy will be conserved, but I am troubled by the current situation facing people all over Pennsylvania with respect to electricity and heat, and **I am concerned about how the marketplace and deregulation are going to aggravate an already bad situation.**

p. 2326

Mr. REICHLEY. Thank you, Mr. Speaker

...

Quite frankly, Mr. Speaker, I think **we are ducking our responsibility**, but all we have heard from our constituents over the last few weeks and months is the need to address this question of whether rate caps will be extended, which I think is an unconstitutional provision and therefore illegal, or whether we are going to do something about mitigating the impact of increased prices at the end of 2009.

I think even the chairman, the majority chairman of the Environmental Committee would admit **this legislation does not do one iota to address the issue of a mitigated rate structure**. We received this bill 2 hours ago. It is 79 pages long. It is a huge power grab that we would authorize to the Public Utility Commission, and **we are avoiding our responsibility to ensure for our constituents that we are mitigating, or lessening, the blow of rate increases starting in 2010**.

In addition, some of our members know there is a separate regulatory body, the Federal Energy Regulatory Commission, which has exclusive purview under wholesale electricity rates. This legislation would seek to provide the Public Utility Commission of Pennsylvania with the comparable authority to interfere in the contracts by which wholesale electricity prices are set. Mr. Speaker, based upon correspondence I have had with the Public Utility Commission, that could potentially be unconstitutional.

I do not understand why we are in such a rush now at this eleventh hour to **try to sell our constituency on the idea that we did something big when in fact we have done nothing except turn over our responsibility to the Public Utility Commission**.

...

**I understand it is tempting to tell people, oh, we did something on electricity rates. With all due respect, you have done nothing.**

**So I would urge a "no" vote on this legislation.** Thank you.

The SPEAKER. Representative Mensch.

Mr. MENSCH. Thank you, Mr. Speaker.

I would like to echo some of the sentiments that were just offered by the previous speaker. **This is not the best bill that it could be**, but I believe that it provides some benefits, and I think those benefits do outweigh the negatives.

The previous speaker mentioned that his **primary goal, and I would agree with him, of this bill is to see that we lower the costs to our consumers** and we do that in a free market and a competitive way.

**House Bill 2200, PN 4526 was passed with 186 in favor, 4 opposed (Hutchinson, Maher, Metcalfe and Reichley) with 1 non-voting and 12 excused.**

**Q6 (a) Does WPP dispute that PN 4526 was passed in the House with ongoing reservations and concerns about the costs to customers? If you dispute this, please explain what it is you dispute and why.**

**Q6 (b) Does WPP dispute that Rep. Turzai emphasized he supported a non-mandated approach that allowed customers to make their own energy conservation decisions for themselves? If you dispute this, please explain what it is you dispute and why.**

**Q6 (c) Does WPP dispute that since Rep. Turzai voted in favor of PN 4526 that he did so in part because he believed it was a “non-mandated approach”? (In other words, did Rep. Turzai’s comment about supporting a non-mandated approach in any way suggest there was a mandatory requirement that remained a problematic facet of the bill?) If you dispute this, please explain what it is you dispute and why.**

**Q6 (d) Does WPP dispute that, according to the legislative record, opposition akin to that expressed about mandatory language of the previous bill versions (PNs 3218, 3233) was absent in the consideration of PN 4526? If you dispute this, please explain what it is you dispute and why.**

**Q6 (e) Does WPP dispute that, according to the legislative record, no legislators found issue with the non-mandatory language of PN 4526 in comparison with the mandatory language of the previous bill versions (PNs 3218, 3233)? If you dispute this, please explain what it is you dispute and why.**

**Q6 (f) Does WPP dispute that HB2200 PN4526 was passed in part because both the senators and the legislators were satisfied with the non-mandatory language with regard to “furnishing” smart meters? If you dispute this, please explain what it is you dispute and why.**

**HB 2200 was signed into law as Act 129 by Governor Edward G. Rendell with the section pertaining to the “furnishing” of smart meters written as followed:**

§ 2807. Duties of electric distribution companies.

(f) Smart meter technology and time of use rates.—

(1) Within nine months after the effective date of this paragraph, electric distribution companies shall file a smart meter technology procurement and installation plan with the commission for approval. The plan shall describe the smart meter technologies the electric distribution company proposes to install in accordance with paragraph (2).

(2) Electric distribution companies shall furnish smart meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

APPROVED--The 15th day of October, A. D. 2008. EDWARD G. RENDELL

**Q7 (a) Does WPP dispute that the language of Act 129 § 2807 is the same as what was written in PN 4526? If you dispute this, please explain what it is you dispute and why.**

**Q7 (b) Does WPP dispute that Act 129 § 2807 is believed to be non-mandatory as per the documented legislative and senate records in Q1-Q6 above? If you dispute this, please explain what it is you dispute and why.**

**Q7 (c) Does WPP dispute that Act 129 § 2807 f(2)(i) requires that customers who wish to have a smart meter have to request it and agree to pay for the cost of it at the time of the request, which is an “opt-in” right? If you dispute this, please explain what it is you dispute and why.**

**Q7 (d) Does WPP dispute that Act 129 § 2807 f(2)(ii) does not say “in all new building construction” and therefore, based on language and the non-mandatory intent with which the law was passed, makes smart meters an option but not a requirement for new construction? If you dispute this, please explain what it is you dispute and why.**

**Q7 (e) Does WPP dispute that Act 129 § 2807 f(2)(iii) does not mention existing analog meters and, in accord with the language of that section, can only be self-referential to smart meters? If you dispute this, please explain what it is you dispute and why.**

**Q7 (f) Does WPP dispute that smart meters are to be furnished “In accordance with a depreciation schedule not to exceed 15 years” is a financial accounting measure of relevance to smart meters since there is no mention of the existing analog meters whose depreciation schedules have already been assigned, and “depreciation” is an accounting term? If you dispute this, please explain what it is you dispute and why.**

**Q7 (g) Does WPP dispute that stating smart meters are to be furnished “In accordance with a depreciation schedule not to exceed 15 years” is not the same as saying “...furnished to ...One hundred percent of its customers within ten years after the effective date of this paragraph” as was the language of PN 3218? If you dispute this, please explain what it is you dispute and why.**

**Q7 (h) Does WPP dispute that stating smart meters are to be furnished “In accordance with a depreciation schedule not to exceed 15 years” is not the same as saying “IN ACCORDANCE WITH A SCHEDULE OF REPLACEMENT OF FULL DEPRECIATION OF EXISTING METERS” as was the language of PN 4429? If you dispute this, please explain what it is you dispute and why.**

**Q7 (i) Does WPP dispute that since earlier versions of the bill which mandated universal deployment of smart meters in their versions of clause (iii) were criticized for being mandatory and were not passed, whereas the belief and intent as expressed by the Senators and Legislators immediately prior to the passage of Act 129 was that the new language was clearly non-mandatory, that Act 129 § 2807 f(2)(iii) cannot be interpreted as meaning “mandatory universal deployment” of smart meters? If you dispute this, please explain what it is you dispute and why.**

First evidence in the PUC public records of alteration from wording and intent of Act 129 § 2807 (f) (2) was found in a March 5, 2009 power point presentation:

# Act 129 of 2008

## Overview and Implementation

MADRI Steering Committee Meeting  
March 5, 2009

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## Act 129

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- Legislative History
- Implementation Schedule
- Energy Consumption Reduction Objective
- Peak Demand Reduction Objective
- Standards for Implementation
- Penalties
- Smart Metering Mandate
- Time Based Rate Mandate

2

The relevant slide in this 15 slide presentation is slide 12 as follows:

# Smart Metering Mandate

- ❑ All EDCs with 100,000 or more customers must file a smart metering procurement and implementation plan with the Commission by August 14, 2009.
- ❑ “Smart meter” is bidirectional and records usage at least hourly.
- ❑ At a minimum, smart meters must be provided upon customer request (if customer pays), in all new building construction in the service territory, and to all other customers within 15 years.
- ❑ EDCs may fully recover reasonable costs.
- ❑ Direct access to meters and data will be provided to third parties with customer consent.

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In Slide 12, the PUC states the following:

*At a minimum, smart meters must be provided upon customer request (if customer pays), in all new building construction in the service territory, and to all other customers within 15 years.*

If we use the same format as Act 129, what the PUC Implementation presentation states is:

At a minimum, smart meters must be provided  
(i) upon customer request (if customer pays),  
(ii) in all new building construction in the service territory,  
(iii) and to all other customers within 15 years.

Changes are thus noted as follows:

“shall furnish” has been replaced by “must be provided”

- (i) opt-in mandate is preserved
- (ii) the word “all” has been added that was not present in the original
- (iii) complete rewording to reflect earlier house bill versions that were NOT PASSED, and no mention of the smart meter’s depreciation schedule which is not to exceed 15 years.

**Q8 refers to the “Act 129 of 2008 Overview and Implementation” presentation and the observations about it cited above.**

**Q8 (a) Does WPP dispute that Commissioner Kim Pizzingrilli and PUC Counsel Shane Rooney significantly altered Act 129 § 2807 (f) (2) in language and intent in their March 5, 2009 “Act 129 of 2008 Overview and Implementation” presentation? If you dispute this, please explain what it is you dispute and why.**

**Q8 (b) Does WPP dispute that “shall furnish” in Act 129 § 2807 (f) (2) does not carry the same meaning as “must be provided” used in the PUC’s March 5, 2008 presentation? If you dispute this, please explain what it is you dispute and why.**

**Q8 (c) Does WPP dispute that “in all new building construction in the service territory” cited in the PUC’s March 5, 2008 presentation carries a mandatory weight that is absent in Act 129 § 2807 (f) (2) (ii) “in new building construction”? If you dispute this, please explain what it is you dispute and why.**

**Q8 (d) Does WPP dispute that “and to all other customers within 15 years” of the PUC’s March 5, 2008 presentation is identical in intent to PN 3218/3233’s third clause that smart meters are to be “...furnished to ...One hundred percent of its customers within ten years after the effective date of this paragraph” and that PNs 3218/3233 were criticized for being mandatory and were not passed into law? If you dispute this, please explain what it is you dispute and why.**

**Q8 (e) Does WPP dispute that “and to all other customers within 15 years” in the PUC’s March 5, 2008 presentation is not the same in scope, meaning or intent of “In accordance with a depreciation schedule not to exceed 15 years” of Act 129 § 2807 (f) (2)(iii)? If you dispute this, please explain what it is you dispute and why.**

**Q8 (f) Does WPP dispute that the primary clause of Act 129 § 2807 (f) (2)(i) stating that smart meters shall be furnished “Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request” is preserved in the PUC’s March 5, 2008 presentation? If you dispute this, please explain what it is you dispute and why.**

**Q8 (g) Does WPP dispute that the clauses stating smart meters be provided “in all new building construction in the service territory” and “to all other customers within 15 years” render null and void the non-mandatory opt in clause (i): “upon customer request (if customer pays)”? If you dispute this, please explain what it is you dispute and why.**

**Q8 (h) Does WPP dispute that there is no point citing a provision in a law for a non-mandatory opt in (“upon customer request (if customer pays)”) if the remaining clauses invalidate it? If you dispute this, please explain what it is you dispute and why.**

The PUC's Implementation Order of June 2009 mirrors the intent iterated explicitly in their March 5, 2008 presentation as shown preceding Q8. Excerpts below are from this Order. Link to the June 2009 Implementation Order: <http://www.puc.pa.gov/pcdocs/1046123.doc>

Section B "Smart Meter Deployment" (p. 6) cites the law verbatim:

"Act 129 requires EDCs to furnish smart meter technology (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 rest of the document focuses on when and how to implement deployment of smart meters to customers who request it and in new building construction, with a caveat on the latter as follows (Section 3: New Construction, p. 12):

"As with all equipment, meters have a useful life. EDCs determine how much to invest in meter equipment based on its useful life and have an opportunity to depreciate that investment over the useful life of the meter. In addition, EDCs have an opportunity to recover the cost of the meter from ratepayers. Therefore, if a meter is replaced prior to the end of its useful life, the EDC will not be able to take advantage of the full depreciation of that meter or the ratepayers will pay an increased rate to cover the cost of both meters. The Commission believes that the intent of the Act's provision for installing smart meters in new construction was to avoid this waste and added expense."

The above statement is the PUC's way to change the *option* of getting smart meters in new construction to *mandating it in all new construction* while making it look like they are complying with the law and the intent with which it was passed. The difficulty with this statement is that it presumes that all analog meters will eventually have to be replaced with smart meters, which is not what Act 129 stipulated. It does not preserve the non-mandatory nature with which Act 129 was written, intended and passed.

We come to the third clause of Act 129 § 2807(f)(2), which the Implementation order states as follows (Section 4: System-Wide Deployment, p. 14):

"The Commission believes that it was the intent of the General Assembly to require all covered EDCs to deploy smart meters system-wide when it included a requirement for smart meter deployment "in accordance with a depreciation schedule not to exceed 15 years." It is this system-wide deployment that will provide the foundation for the EDCs' smart meter installation plans."

**Q9 refers to the PUC's June 2009 Implementation Order and the observations about it cited above.**

**Q9 (a) Does WPP dispute that the Act 129 § 2807 (f) (2) (ii) provision "in new construction" legally and logically does not mean the same thing as "in all new construction"? If you dispute this, please explain what it is you dispute and why.**

**Q9 (b) Does WPP dispute that the Act 129 § 2807 (f) (2) (ii) provision "in new construction" is lacking the word "all" in it? If you dispute this, please explain what it is you dispute and why.**

**Q9 (c) Does WPP dispute that Act 129 § 2807 (f) (2) (ii) was changed from being a non-mandatory option for new construction as per how it is written to required in all new construction by the PUC's Implementation Order? If you dispute this, please explain what it is you dispute and why.**

**Q9 (d) Does WPP dispute that Act 129 § 2807 (f) (2) (iii) was changed from an accounting provision to a mandatory edict for system-wide deployment by the PUC's Implementation Order? If you dispute this, please explain what it is you dispute and why.**

**Q9 (e) Does WPP dispute that the PUC's belief "that it was the intent of the General Assembly to require all covered EDCs to deploy smart meters system-wide when it included a requirement for smart meter deployment 'in accordance with a depreciation schedule not to exceed 15 years'" is inconsistent with the legislative history and development of Act 129 with regard to smart meters? If you dispute this, please explain what it is you dispute and why.**

**Q9 (f) Does WPP dispute that the opt in right of Act 129 § 2807 (f) (2) (i) was rendered null and void by the PUC's Implementation Order through the alteration of clauses (ii) and (iii), changing (ii) to mean effectively "in all new construction", and changing (iii) from an accounting term to mean "required system-wide deployment"? If you dispute this, please explain what it is you dispute and why.**

**Q9 (g) Does WPP dispute the parallels in intent of the Implementation Order of June 2009 and the explicit wording of the PUC's March 5, 2009 "Act 129 of 2008 Overview and Implementation" of Q8 with regard to furnishing (or providing) smart meters? If you dispute this, please explain what it is you dispute and why.**

**Q9 (h) Does WPP dispute that, given all of the above history and documentation, that Act 129 § 2807 (f) (2) has been altered in the PUC's Implementation Order of June 2009 from what was written, intended and passed by lawmakers? If you dispute this, please explain what it is you dispute and why.**

**Q9 (i) Does WPP dispute that a law (Act 129) whose first and foremost clause (§ 2807 (f) (2) (i)) is for a non-mandatory opt-in smart meter provision would intentionally negate this provision with its next two clauses (§ 2807 (f) (2)(ii) and (iii))? If you dispute this, please explain what it is you dispute and why.**

**Q9 (j) We revisit our Interrogatory 3, Question 5, to ask again “Does West Penn Power recognize the inconsistencies between Act 129 §2807 (f) and the PUC’s Implementation Order of June 2009?” If no, please explain why not.**

**Q9 (k) Does WPP dispute that if the PUC has the authority to interpret the law, it additionally has a parallel duty to ensure the interpretation is consistent with and obedient to the law? If you dispute this, please explain what it is you dispute and why.**

**Q9 (l) Does WPP dispute that it is following the PUC Implementation Order and is not following the law (Act 129 §2807 (f) (2) as was written, intended and passed)? If you dispute this, please explain what it is you dispute and why.**