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Honorable James McNulty
Secretary, Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary McNulty:

Please find attached for electronic filing the Main Brief of the Commonwealth of Pennsylvania, Department of Environmental Protection in the above referenced matter. Copies have been served on all parties listed on the enclosed Certificate of Service.

Sincerely,

/s/ Scott Perry

Scott Perry
Assistant Counsel

cc: Service List

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**MAIN BRIEF OF THE
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

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Dated: December 11, 2009

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STATEMENT OF THE CASE

I. Introduction

Pursuant to the September 30, 2009 Scheduling Order of Administrative Law Judge Susan D. Colwell, the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) files this main brief in the above captioned matter.

Act 129 of 2008 became effective November 14, 2008 and requires electric distribution companies (“EDCs”) with more than 100,000 customers to, in relevant part, develop smart meter technology procurement and installation plans. 66 Pa. C.S. § 2807 (f)(1). Act 129 further requires EDCs to furnish smart meters upon request from a customer, in new building construction, and in accordance with a distribution schedule not to exceed 15 years. 66 Pa. C.S. § 2807 (f)(2).

Act 129 also specifies the functions smart meters must provide. In order to be considered a smart meter, the meter and supporting infrastructure must 1) be capable of bidirectional communication, 2) record electricity usage on at least an hourly basis, 3) provide customers with direct access to and use of price and consumption information, 4) directly provide customers with information on their hourly consumption, 5) enable time-of-use rates and real-time-price programs and 6) effectively support the automatic control of the customer’s electricity consumption by one of the following as selected by the customer: the customer, the EDC, or a third party engaged by the customer or the EDC. 66 Pa. C.S. § 2807 (g).

Through its Smart Meter Procurement and Installation Order (“Installation Order”) at Docket No. M-2009-2092655, the Pennsylvania Public Utility Commission’s (“Commission”) established the process by which the Smart Meter Plans will be approved, the schedule under

which smart meters are to be deployed, the minimum functions the meters are to provide, and the method by which the EDC may recover its costs.

Significantly, the Installation Order established a 30 month network and installation grace period during which EDCs are not required to deploy smart meters. Installation Order at 7. Equally significant, the Installation Order also required smart meters to provide nine additional functions unless the Commission determines that the function is not cost effective. Installation Order, 30-31. Finally, the Installation Order clarified that smart meters are to be deployed throughout the EDC's service territory in less than 15 years from the date the EDC's Smart Meter Plan is approved. *Id.* at 14-15.

II. Procedural History

Pursuant to Act 129 and the Commission's Installation Order, on August 14, 2009, Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (collectively referred to as "First Energy") filed their Joint Petition for Approval of Smart Meter Procurement and Installation Plan ("Smart Meter Plan").

On August 29, 2009 the Commission published a notice of First Energy's petition in the *Pennsylvania Bulletin* which required Petitions to Intervene and comments to the Smart Meter Plan to be filed by September 25, 2009. 39 *Pa. Bulletin* 35. The Department filed its petition to intervene on September 18, 2009. On September 25, 2009, and in compliance with the Commission's *Bulletin* notice, the Department filed comments to First Energy's Smart Meter Plan. On September 29, 2009 a prehearing conference was held in this matter and the Department's petition to intervene was granted.

III. Description of First Energy's Smart Meter Plan

First Energy's Smart Meter Plan can best be described as a plan to develop a smart meter plan. The Plan as filed presents a short term, "detailed" plan and a general long term plan. Smart Meter Plan at 5.

The short term plan will be implemented during the grace period. Id. The first 24 months of the grace period will be used as an "Assessment Period" to create a deployment plan that will be filed with the Commission. Id. During the Assessment Period, First Energy will evaluate its service territory characteristics (Plan at 8), evaluate the current distributions and metering system (Plan at 9), evaluate smart meter functions offered by various vendors (Plan at 10-11), select vendors (Plan at 11-12) develop a network design (Plan at 12), assess and train staff (id.) and develop installation, testing and rollout plans to be included in the Deployment Plan (Plan at 13). Also during the Assessment Period, First Energy will submit by January 1, 2010 a proposal for EDI capabilities, including target dates for testing and certification, to the Commission. Smart Meter Plan at 17.

The long term plan will be provided approximately 24 months after the initial Smart Meter Plan is approved. Smart Meter Plan at 5. Approval of the Deployment Plan is expected at approximately the same time that the grace period ends. Smart Meter Plan at 6. After First Energy obtains approval of its Deployment Plan, it will commence construction of the smart meter network infrastructure in approximately April 1, 2013 with a completion date of March 31, 2016. Smart Meter Plan Exhibit A. Beginning approximately April 1, 2016, First Energy will deploy 60,000 smart meters to "de-bug" the system prior to beginning full deployment. Id., Plan at 5. "Full scale deployment is expected to commence in April 2017, with such deployment

completed no later than March, 2022. Met-Ed/Penelec/Penn Power Statement No. 1, page 9, see also Smart Meter Plan at 6.

IV. Statement of Questions Involved

Q1: Must smart meters enable a Home Area Network in order to meet the definition of “Smart Meter Technology” at 66 Pa. C.S. § 2807 (g) which requires the meter technology to “1) Directly provide customers with information on their hourly consumption. 2) Enable time-of-use rates and real-time price programs. 3) Effectively support the automatic control of the customer’s electricity consumption by one or more of the following as selected by the customer:

- (I) the customer;
- (II) the customer’s utility; or
- (III) or a third party engaged by the customer or the customer’s utility.”

Suggested Answer: Yes

Q2: Does First Energy’s Smart Meter Plan comply with the Commission’s Installation Order which requires installation of the smart meter network to be complete within the 30 month grace period when First Energy will not commence construction of the smart meter network until after the grace period expires?

Suggested Answer: No

Q3: Does First Energy’s Smart Meter Plan meet the requirements of the Commission’s Installation Order by providing “smart meter technology” after the 30 month grace period to customers upon request, in new building construction if First Energy’s smart meters do not provide all of the functions required by the Commission’s Installation Order?

Suggested Answer: No

Q4: Should First Energy complete system wide deployment of smart meters within 10 years of plan approval?

Suggested Answer: Yes

IV. Summary of Argument

The Department’s primary interests in this matter relate to the timeframe in which the smart meter network will be developed, the timeframe in which smart meters will be deployed system-wide, and the functions the proposed smart meters and infrastructure will perform and support. First Energy’s Smart Meter Plan is deficient for three reasons.

First, the plan does not specify the technology it will deploy to meet the functionality requirements mandated by 66 Pa. C.S. § 2807 (g). In order to provide these functions, the Commission has specified that EDCs must deploy meters that have the “capability to provide raw near real-time consumption data through a [Home Area Network] or similarly capable method of open protocols.” Installation Order at 23. The Commission’s Order approving First Energy’s plan should specifically require First Energy’s to deploy Home Area Network (“HAN”) enabled meters.

Second, First Energy will not complete the installation of the smart meter network at the conclusion of the 30 month grace period as required by the Commission’s Installation Order. See, Installation Order at 7. Indeed, First Energy does not propose to even begin the installation of the “necessary” infrastructure until six months after the grace period expires. Smart Meter Plan Exhibit A.

Third, First Energy will not deploy smart meters that meet the definition of “smart meter technology”, as defined by the Installation Order, after the 30 month grace period to all customers upon request and in all new building construction. Because First Energy’s smart meter infrastructure will not be installed, the meters it provides will not support the all of the functions required by the Commission. Compare Smart Meter Plan at 18 to Installation Order at 16-17.

The Department also believes that rapid deployment of smart meters is in the public interest. Because First Energy fails to complete the installation of the required smart meter network in a timely fashion, system wide deployment of smart meters is significantly delayed. The Commission should order First Energy to complete the installation of the smart meter network by the end of the grace period, provide fully functional smart meters to all customers

upon request and in all new building construction, and deploy smart meters in accordance First Energy's currently envisioned time frame such that system wide deployment is complete no later than 10 years after plan approval.

VI. Argument

As the petitioner for a Commission Order in this matter, First Energy has the burden of proving that the aspects of its proposed Smart Meter Plan meet the requirements of Act 129 and the Installation Order. 66 Pa.C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, the Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

The Department's primary interests in this matter relate to the timeframe in which the smart meter network will be developed, the timeframe in which smart meters will be deployed system-wide, and the functions the proposed smart meters and infrastructure will perform and support. The Department contends that First Energy has not met its burden of proving that its Smart Meter Plan satisfies the requirements of Act 129 and the Commission's Order for three reasons. First, the plan does not specify the technology it will deploy to meet the functionality requirements mandated by 66 Pa. C.S. § 2807 (g). Second, First Energy will not complete the installation of the smart meter network at the conclusion of the 30 month grace period as

required by the Commission's Installation Order. Third, First Energy will not deploy "smart meter technology" as defined by 66 Pa. C.S. § 2807 (g) and the Installation Order, after the 30 month grace period to all customers upon request and in all new building construction. Because of these deficiencies, First Energy's petition for approval of its Smart Meter Plan should be denied.

1. First Energy's Smart Meters Must Meet the Definition of "Smart Meter Technology" in 66 Pa. C.S. § 2807 (g) and the Installation Order.

Act 129 of 2008 requires EDCs with more than 100,000 customers to, in relevant part, develop smart meter technology procurement and installation plans. 66 Pa. C.S. § 2807 (f)(1). Act 129 further requires EDCs to furnish smart meters upon request from a customer, in new building construction, and in accordance with a distribution schedule not to exceed 15 years. 66 Pa. C.S. § 2807 (f)(2). In order to meet these statutory requirements, the EDC's Smart Meter Plan must provide for the deployment of smart meters that meet the definition of "smart meter technology".

66 Pa. C.S. § 2807 (g) defines "smart meter technology" as follows:

[T]echnology, 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. The technology shall provide customers with direct access to and use of price and consumption information. The technology *shall* also:

- 1) Directly provide customers with information on their hourly consumption.
- 2) Enable time-of-use rates and real-time price programs.
- 3) Effectively support the automatic control of the customer's electricity consumption by one or more of the following *as selected by the customer*:
 - (i) the customer;
 - (ii) the customer's utility; or
 - (iii) or a third party engaged by the customer or the customer's utility. (Emphasis added)

With regard to the enumerated functions mandated by Act 129, the critical element of the definition is allowing *the customer* to be in control of establishing the automatic control of their electricity consumption through the smart meter – whether it be on their own, through a conservation service provider, or through the EDC. Accord, 66 Pa. C.S. § 2807 (g). The Installation Order directly addresses these mandated functionalities as follows:

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

Installation Order at 23.

As made clear by the Installation Order, the purpose of these functions is to effectively enable customers to control their energy consumption by responding to price signals sent directly to them through the meter system.

Given the clear benefits of these functions and the equally clear direction of the legislature and the Commission, it is critical that First Energy deploy smart meters that enable HAN devices. While First Energy’s Smart Meter Plan indicate that HANs, may be provided as part of its plan (Smart Meter Plan at 18), First Energy has not expressly stated it will deploy smart meters with this device. Because the functions listed in Act 129 are mandatory and the Commission’s Installation Order specifies how those requirements will be met, First Energy’s Smart Meter Plan must specify the deployment of smart meters that enable a HAN.

2. The Smart Meter Network Must Be Installed at the End of the Grace Period

First Energy’s Smart Meter Plan will not be implemented within the time frame required by the Installation Order. The Installation Order grants EDCs a 30 month “network development

and installation grace period” with which to install the network necessary to provide smart meters. Installation Order at 7. The reason for this network installation grace period is that “a fully functional smart meter that supports the capabilities required by Act 129 and as outlined below (listing additional functions), involves an entire network, to include the meter, two-way communication, computer hardware and software, and trained support personnel.” Installation Order at 6. As such, absent the network a meter cannot provide the functions to make it a smart meter. Accord, id.

First Energy’s plan does not propose to complete the analysis of its current system until September 2010 (Plan at 9) or to “commence build out of necessary infrastructure” until April 2013 (Plan at 6), a full 6 months after the anticipated end of the grace period. Id. Indeed, network construction will not even be completed until March 2016. Id. Because the Installation Order clearly requires the network infrastructure to be in place at the end of the grace period so that fully functional meters can be deployed, the Commission should order First Energy to submit a revised plan that requires the installation of the necessary infrastructure within the grace period.

3. First Energy’s Plan to Does Not Provide Smart Meters After the Grace Period to Customers Upon Request and in New Construction

After the grace period, the Installation Order requires EDCs to supply a smart meter upon request by a customer (if the customer pays the incremental cost) and in new construction. Installation Order pages 9-13. These meters must meet the functionality requirements of 66 Pa.C.S. § 2807(g) and the Installation Order or they cannot be considered “smart meters”. Accord, 66 Pa.C.S. § 2807(g), Installation Order 16-17.

It should be noted that there is no “grace period” provided in Act 129 within which to avoid providing the statutorily mandated smart meters to requesting customers or in new

construction. The Department agrees that it would be unreasonable to expect EDCs to have the necessary infrastructure in place to support smart meters for these customers upon passage of the law or even 9 months thereafter. Given the fact that the Commission provided a grace period where none existed in Act 129, there is no excuse for failing to install a meter capable of providing the functions required by the Commission. However, due to the delayed installation of First Energy's smart meter infrastructure, First Energy will not be able to deploy meters that provide the functions mandated by the Commission.

First Energy's proposal to deploy meters to requesting customers or in new construction will be dependent on the "nature of information desired". As state in the Plan:

If the customer desires price signals for purposes of real time pricing, the customer will receive a meter that includes a communication card that will enable transmittal of Real Time Pricing ("RTP") price signals. Meter reading can be done electronically. If, on the other hand, the customer desires only to receive pulse data for purposes of time of use ("TOU") rates, the customer will receive a meter with a network card. These meters will be read manually.

Customers will have the capability to obtain un-validated data from the smart meter provided that they have some type of compatible HAN technology" Smart Meter Plan at 18.

It is clear that the meters installed at a requesting customers location or in new construction must provide the functions mandated by 66 Pa. C.S. § 2087(g) regardless of the results of any cost benefit analysis. These functions include the ability to support both time-of-use *and* real-time-price programs. Accord, 66 Pa. C.S. § 2087(g). As made clear by First Energy's Smart Meter Plan, the meters provided in new construction cannot possibly meet this requirement as they cannot provide both functions. That is, First Energy requires a customer to tell it whether it wants a meter that provides time-of-use *or* real-time-price programs. Presumably, if a new construction customer does not specify the function it wishes, First Energy

will not provide a meter that provides any of the smart meter functions. There is absolutely no evidence in the record to suggest otherwise.

Even assuming the meters described above meet the definition of “smart meter technology” in 66 Pa. C.S. § 2087(g), there is no evidence to suggest that the meters First Energy intends to deploy meet the additional requirements of the Installation Order immediately after the grace period. The only way an EDC can avoid providing these meters is if they are granted a waiver from the Commission. Installation Order at 17. First Energy has not requested such a waiver. Smart Meter Plan at 10.

Given the following facts: 1) Act 129 and the Installation Order require smart meters to provide certain functionalities, 2) First Energy bears the burden of proving its plan meets the requirements of the Act and Order, and 3) there is no evidence to suggest that First Energy intends to deploy meters that provide the functions mandated by Act 129 and the Installation Order, the Commission should require First Energy to submit a revised plan that requires the installation of the necessary infrastructure within the grace period such that it can provide smart meters capable of meeting Act 129 requirements to requesting customers and in new construction after the grace period.

4. Smart Meters Must be Deployed System Wide in a Timely Fashion

The Pennsylvania legislature recognized the clear benefits of smart meters and the benefits of an educated energy consumer when it required Electric Distribution Companies to provide smart meters throughout their service territory and offer all customers the option of enrolling in real time or time of use pricing programs. 66 Pa. C.S. § 2806(f). However, and most importantly, none of the benefits that smart meters provide can be realized if the meters and the functions they support are not in the hands of the consumer.

First Energy's Smart Meter Plan would provide smart meters on an expedited basis but for the company's failure to install the smart meter network in a timely fashion. First Energy's Smart Meter Plan calls for Installation of 60,000 meters to "de-bug" the system in April 2016 and complete deployment of smart meters by April 2022. Smart Meter Plan at 6. If this process began at the conclusion of the grace period, as it should, smart meters would be fully deployed by October 2018. Accord, *id.* Because First Energy's current deployment schedule envisions a six year meter deployment period, the Commission should require First Energy to maintain that deployment schedule such that smart meters are deployed throughout First Energy's service territory no later than 10 years from the date of the Commission's Order in this matter.

VII. Conclusion

For the foregoing reasons, the Department respectfully requests that the Commission deny First Energy's Joint Petition for Approval of Smart Meter Technology Procurement and Installation Plan and require First Energy to resubmit a Smart Meter Plan that complies with the proposed ordering paragraphs provided below.

VIII. Proposed Findings of Fact

- 1) First Energy will not commence installation of its smart meter network until after the 30 month grace period expires. Smart Meter Plan at 6.
- 2) First Energy's Smart Meter Plan does not require First Energy to install smart meters that enable Home Area Networks.
- 3) First Energy is not, at this time, seeking a waiver from the Commission from the requirement to install smart meters that provide all of the functions required by the Commission's Smart Meter Procurement and Installation Order. Smart Meter Plan page 10.
- 4) The meters First Energy will install after the 30 month grace period but before system wide deployment can enable either real-time-pricing or time-of-use rates, but not both price programs. Smart Meter Plan page 18.
- 5) After First Energy's smart meter network is installed, First Energy will deploy smart meters throughout its service territory in approximately six years. Smart Meter Plan page 6.

- 6) If First Energy completed installation of the smart meter network within the 30 month grace period, it could deploy smart meters throughout its service territory by approximately October 2018. Smart Meter Plan page 6.

IX. Proposed Conclusions of Law

- 1) First Energy's Smart Meter Plan does not satisfy the requirements of 66 Pa. C.S. § 2807(f), (g) and the Commission's Smart Meter Procurement and Installation Order.
- 2) The smart meter network must be installed within the 30 month grace period provided by the Commission's Smart Meter Procurement and Installation Order. Installation Order page 7.
- 3) A Home Area Network enabled meter provides the functions that meet the definition of "smart meter technology" at 66 Pa. C.S. § 2807(g).
- 4) A Home Area Network or similarly capable method of open protocols is required in every smart meter.
- 5) A meter must provide all of the functions required by Commission's Smart Meter Procurement and Installation Order for the meter to meet the definition of "smart meter technology" in 66 Pa. C.S. § 2807(g) and the Commission's Smart Meter Procurement and Installation Order.
- 6) First Energy's Smart Meter Plan does not require First Energy to provide "smart meter technology" as that term is defined by 66 Pa. C.S. § 2807(g) and the Commission's Smart Meter Procurement and Installation Order, to all customers who request a smart meter after the 30 month grace period as required by the Commission's Smart Meter Procurement and Installation Order.
- 7) First Energy's Smart Meter Plan does not require First Energy to provide "smart meter technology" as that term is defined by 66 Pa. C.S. § 2807(g) and the Commission's Smart Meter Procurement and Installation Order, on all new construction after the 30 month grace period as required by the Commission's Smart Meter Procurement and Installation Order.

X. Proposed Ordering Paragraphs

- 1) First Energy's Joint Petition for Approval of Smart Meter Technology Procurement and Installation Plan is denied.
- 2) First Energy is ordered to resubmit a Smart Meter Technology Procurement and Installation Plan that meets the following minimum requirements within 30 days of this order.
 - a. First Energy shall complete the installation of its smart meter network prior to the end of the 30 month grace period provided by the Commission's Smart Meter Procurement and Installation Order.

- b. Every smart meter installed by First Energy shall enable a Home Area Network that meets nationally recognized open standards and protocols.
 - c. Smart meters that provide the functions required by the Commission's Smart Meter Procurement and Installation Order, unless otherwise waived by the Commission, shall be provided to all customers who request a smart meter and agree to pay the incremental cost of the meter after the 30 month grace period but in advance of system wide deployment.
 - d. Smart meters that provide the functions required by the Commission's Smart Meter Procurement and Installation Order, unless otherwise waived by the Commission, shall be installed on all new construction after the 30 month grace period.
 - e. Smart meters that provide the functions required by the Commission's Smart Meter Procurement and Installation Order, unless otherwise waived by the Commission, shall be deployed throughout First Energy's service territory within 10 years.
- 3) First Energy's 30 month grace period shall begin on the date of this Order.

Respectfully submitted,

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of Smart Meter Technology Procurement and :
Installation Plan :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, Main Brief of the Commonwealth of Pennsylvania, Department of Environmental Protection, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner upon the persons listed below:

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