

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
800-684-6560 (in PA only)

FAX (717) 783-7152  
consumer@paoca.org

June 3, 2013

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, PA 17120

RE: 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  
Docket Nos. M-2013-2341990, M-2013-2341991,  
M-2013-2341993, M-2013-2341994

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Reply Brief in the above-referenced proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely yours,

A handwritten signature in cursive script that reads "Candis A. Tunilo".

Candis A. Tunilo  
Assistant Consumer Advocate  
PA Attorney I.D. # 89891

Enclosures

cc: Honorable Elizabeth H. Barnes  
Certificate of Service

\*169701

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT PETITION OF METROPOLITAN : DOCKET NO. M-2013-2341990  
EDISON COMPANY, PENNSYLVANIA : DOCKET NO. M-2013-2341991  
ELECTRIC COMPANY, PENNSYLVANIA : DOCKET NO. M-2013-2341993  
POWER COMPANY AND WEST PENN : DOCKET NO. M-2013-2341994  
POWER COMPANY FOR APPROVAL OF :  
THEIR SMART METER DEPLOYMENT :

---

REPLY BRIEF OF THE  
OFFICE OF CONSUMER ADVOCATE

---

Christy M. Appleby  
Assistant Consumer Advocate  
PA Attorney I.D. #85824  
E-Mail: [CApplby@paoca.org](mailto:CApplby@paoca.org)

Candis A. Tunilo  
Assistant Consumer Advocate  
PA Attorney I.D. # 89891  
E-Mail: [CTunilo@paoca.org](mailto:CTunilo@paoca.org)

Counsel for:  
Tanya J. McCloskey  
Acting Consumer Advocate

Office of Consumer Advocate  
5th Floor, Forum Place  
555 Walnut Street  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
Dated: June 3, 2013

## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION</b> .....	1
<b>II.</b>	<b>SUMMARY OF ARUGMENT</b> .....	1
<b>III.</b>	<b>DISCUSSION</b> .....	4
A.	Plan Cost Estimates .....	4
1.	The Companies Have The Burden To Prove The Reasonableness Of Their Plan Costs .....	4
2.	The Companies Have Not Properly Reflected Cross-Jurisdictional Allocation Of Plan Costs Among Their Sister Utilities In Other States .....	7
3.	The Companies Should Allocate Joint Plan Costs Using The Annual Average Number Of Meters As Of June 30 .....	8
B.	Savings Estimates .....	9
1.	The Companies’ Proposal Regarding Savings Is Not Reasonable.....	9
2.	The Companies Must Reflect The Appropriate Baseline Levels Of Savings .....	11
C.	Communications Plan.....	15
1.	Early Education Materials About The New Functionalities of Smart Meters .....	16
2.	Safety Educational Materials.....	17
3.	Customer Privacy .....	18
D.	Remote Disconnection.....	19
E.	Cyber-Security.....	20
F.	West Penn CIS Costs.....	20
G.	Legacy Meters .....	26
<b>III.</b>	<b>CONCLUSION</b> .....	32

## TABLE OF CITATIONS

### Cases

Barasch v. Pa. PUC, 516 Pa. 142, 532 A.2d 325 (1987), aff'd Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989).....25

Metropolitan Edison v. Pa. PUC, 437 A.2d 76 (Pa. Commw. Ct. 1981) .....24

### Administrative Decisions

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 11012(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 entered March 8, 2011).....25

Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan, Docket Nos. M-2009-2123950 *et al.*, Order (June 9, 2010)..... 12, 13

Pa. PUC v. Metropolitan Edison Co., 1980 Pa. PUC Lexis 56 (Order entered May 23, 1980)....24

Pa. PUC v. PECO Energy Company – Electric Division, Docket No. R-2010-2161575, Order (Dec. 21, 2010) ..... 13

Petition of PECO Energy Company for Approval of Smart Meter Technology Procurement and Installation Plan, Docket No. M-2009-2123944, Order (May 6, 2010) ..... 13

Petition of West Penn Power Company for Expedited Approval of its Smart Meter Technology Procurement and Installation Plan, Docket No. M-2009-2123951.....5, 11, 20, 21, 23, 24

Re: Smart Meter Procurement and Installation, Docket No. M-2009-2092655, Implementation Order (June 24, 2009) .....5, 6, 10, 29

**Statutes & Regulations**

66 Pa. C.S. § 315(a).....5

66 Pa. C.S. § 2807(f)(7).....5, 14, 21

66 Pa.C.S. § 2807(f)(7)(i).....27

66 Pa.C.S. § 2807(f)(7)(ii).....27

## **I. INTRODUCTION**

On May 24, 2013, the Office of Consumer Advocate (OCA) filed its Main Brief regarding its positions on the issues raised in this proceeding. The OCA submits that its Main Brief provides the Pennsylvania Public Utility Commission (Commission) with a comprehensive discussion of the issues in this proceeding. The OCA's Main Brief fully addresses and responds to many of the arguments raised by the FirstEnergy Companies (Met-Ed, Penelec, Penn Power and West Penn, collectively the Companies) with regard to their Smart Meter Deployment Plan (Plan).

It is not the purpose of this Reply Brief to respond to all of the arguments contained in the Companies' Main Brief. The OCA will limit its reply to those issues requiring additional clarification and response. Thus, any failure of the OCA to address specific arguments contained in the Companies' Main Brief does not mean that the OCA agrees with the Companies' position or that the OCA has revised its position.

## **II. SUMMARY OF ARUGMENT**

As detailed in its Main Brief, the OCA submits that the Commission should direct the Companies:

- To conduct proper cost benchmarking analyses of the Companies' projected costs with those of other companies that have deployed smart meters to determine if the Companies' projected Plan costs are reasonable and prudent. Such analyses should include the seven cost categories identified by the Companies in their Plan and sub-categories, if available. Also, the Companies should use a much larger sample size of utilities than the Companies used in the analysis presented in their Plan. The Commission should direct the Companies to complete the analyses within 120 days of the Commission's order in

this matter and submit a report with the results of such analyses and any Plan changes stemming from such results in an amended Plan.

- 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. To the extent any system upgrades are currently being utilized by the Companies' sister utilities, the Commission should direct that those costs be properly allocated to the sister utilities.
- To allocate joint Plan costs based on the annual average number of meters per Company as of June 30<sup>th</sup> for purposes of calculating each Company's annual SMT-C rider.
- 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 savings potential investigation of categories of savings achieved by other companies that have deployed smart meters, including the seven categories identified by Nevada Power described in Section III.B.1. below, and (2) prepare and submit a report to the Commission of his or her findings within 120 days of the Commission's order in this matter. Further, the Commission should direct the Companies to file an amended Plan detailing the potential categories and estimates of savings to be reflected in the SMT-C identified by such consultant.
- To establish baselines for measuring savings from smart meter deployment as the test year revenue requirements upon which their currently effective distribution rates are based. The Companies should be directed to provide this baseline level information with

their next annual SMT-C filing so that operational cost savings can be properly recognized in the SMT-C.

- To hold stakeholder meetings on a quarterly basis by the first quarter of 2014 in order to discuss the final Communications Plan (Comm Plan).
- To file the final Comm Plan with the Commission after the stakeholders have sufficiently reviewed and discussed the Comm Plan in the stakeholder meetings.
- To include information in the Comm Plan related to early education for customers about time-varying prices and the functionalities of smart meters.
- 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.
- 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.
- To remove the language "except as authorized by the Commission or a Federal or Pennsylvania law" in the Companies' proposed customer privacy principles.

- To memorialize in the Commission’s Order the Companies’ proposal that the Companies do not intend to use involuntary remote termination for non-payment as part of their Plan.
- To require the Companies to bring any future proposal to pursue involuntary termination for non-payment or voluntary remote disconnection for move-in/move-out to the stakeholder group for review.
- To direct the Companies to file that any future proposal to pursue involuntary remote termination for non-payment as an amendment to their Plan with the Commission for review and approval.
- To continue to discuss and address cyber-security issues with the stakeholder group on a going-forward basis.
- To report to the Commission on a regular basis regarding the status of cyber-security.
- To deny the Companies’ request to collect \$5.1 million for expenditures related to West Penn’s defunct Customer Information System (CIS) system.
- To charge the incremental cost of removal 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. 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 reflect in rates.

### **III. DISCUSSION**

#### **A. Plan Cost Estimates.**

##### **1. The Companies Have The Burden To Prove The Reasonableness Of Their Plan Costs.**

In its Main Brief, the OCA noted that Companies witness Fitzpatrick’s benchmark comparison of costs per meter was not properly conducted and that the Companies, therefore,

may not be able to meet their burden of proof that the costs of their Plan are reasonable and prudent. OCA M.B. at 10-13. As such, the OCA recommended that the Commission direct the Companies to conduct proper cost benchmarking analyses within 120 days of the Commission's order in this matter and submit a report with the results of such analyses and any Plan changes stemming from such results in an amended Plan. OCA M.B. at 13.

In their Main Brief, the Companies asserted that OCA witness Hornby placed too much emphasis on cost benchmarking. FE Companies M.B. at 18. The Companies further asserted that Mr. Hornby did not present his own cost benchmarking analysis because "he too recognized such an exercise would be meaningless or [] he did not like the results." FE Companies M.B. at 20. The Companies' argument is incorrect in several respects.

Initially, the OCA submits that it is the Companies, not OCA witness Hornby, that have the burden of proving the Companies' Plan costs are reasonable and prudent in this matter. Act 129 is clear that EDCs may recover only those costs that are reasonably and prudently incurred. See 66 Pa. C.S. § 2807(f)(7). Further, in its Implementation Order,<sup>1</sup> the Commission held that EDCs have the burden to provide sufficient support to demonstrate that all such costs incurred with respect to their smart meter plans are reasonable and prudent. Implementation Order at 29. See also 66 Pa. C.S. § 315(a).

OCA witness Hornby testified here that he had performed a cost benchmarking analysis in West Penn's 2009 SMIP proceeding<sup>2</sup>, and it helped to identify a cost concern, specifically that West Penn's SMIP's projected capital cost was more than twice as high as that of other utilities. OCA St. 1-SR at 3. Mr. Hornby provided the smart meter plan filings of twelve utilities to the

---

<sup>1</sup> Re: Smart Meter Procurement and Installation, Docket No. M-2009-2092655, Implementation Order (June 24, 2009) (Implementation Order).

<sup>2</sup> See Petition of West Penn Power Company for Expedited Approval of its Smart Meter Technology Procurement and Installation Plan, Docket No. M-2009-2123951.

Companies in responses to discovery that could have been used for cost benchmarking purposes. See OCA St. 1-SR 4. 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 4, Table 1. Such information was intended to show what proper benchmarking analyses entailed and why the performance of proper benchmarking analyses was important. As OCA witness Hornby testified:

[A] comparison by major category would have helped demonstrate whether the Companies' Deployment Plan costs in each of those categories were, or were not, within the same range as those of other utilities. By using that approach in West Penn's Smart Meter proceeding at Docket M-2009-2123951, I was able to demonstrate that the projected capital cost of West Penn's proposed Smart Meter Plan was more than twice as high as AMI projects of other utilities primarily due to its costs for Information Technology, in-home devices and Customer Information Service ("CIS").

OCA St. 1-SR at 3. As can be seen, Mr. Hornby clearly found this exercise to having meaning and produced results that can be useful.

The OCA submits that Act 129 and the Commission's Implementation Order, as detailed above, require EDCs to adequately investigate the reasonableness of the costs they expect to incur to fully deploy smart meters before they incur such costs. As such, it is the Companies' responsibility, not that of the OCA, to demonstrate that they have adequately investigated the reasonableness and prudence of the \$1.258 billion the Companies project to spend in deploying smart meters. The OCA submits that proper benchmarking analyses should have included the seven cost categories identified by the Companies in their Plan and sub-categories, if available, and using a much larger sample size of utilities. The Commission should direct the Companies to submit a report with the results of such analyses and any Plan changes stemming from such results in an amended Plan. The Commission should direct that such proper 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 Smart Meter Deployment Plan, if necessary.

2. The Companies Have Not Properly Reflected Cross-Jurisdictional Allocation Of Plan Costs Among Their Sister Utilities In Other States.

In its Main Brief, the OCA noted that OCA witness Hornby testified that the Companies do not provide the magnitude to which the Plan could benefit the Companies' sister utilities or the method by which the Companies would seek credit for such benefits to their sister utilities. OCA M.B. at 14. See also OCA St. 1 at 13. The OCA, however, recognized the merit in Companies witness Valdes' testimony, wherein he recommended that the Companies reflect any reallocation of costs to sister utilities in their annual SMT-C filings. OCA M.B. at 15. See also FE Companies St. 5-R at 5, 7. In their Main Brief, the Companies assert that Mr. Valdes' recommendations should be adopted. FE Companies M.B. at 28-29.

As such, it appears the only difference in the recommendations of the Companies and the OCA on this issue is that the OCA recommended that the Commission direct the Companies to also provide an update on the smart meter deployment activities of their sister utilities, similar to that provided by Mr. Valdes in his Rebuttal Testimony on page 3, with the Companies' annual SMT-C filings. The OCA submits that such report submitted with the Companies' annual SMT-C filing is not overly burdensome for the Companies to provide given the importance of keeping the Commission and the parties updated on this issue. As such, the Commission should direct the Companies to provide the report.

Also, if and when the Companies' sister utilities begin planning deployment of smart meters, the Commission should direct the Companies to provide with their next annual SMT-C filing the report recommended by OCA witness Hornby and seemingly accepted by Companies witness Valdes on pages 4-5 of his Rebuttal Testimony, wherein expenditures on all components

of the Companies' Plan that have the potential to benefit their sister utilities when they begin deploying smart meters are identified, and a description of the method through which the Companies will receive credit from FirstEnergy Service Company for those expenditures is provided.

3. The Companies Should Allocate Joint Plan Costs Using The Annual Average Number Of Meters As Of June 30.

In its Main Brief, the OCA recommended that the Commission direct the Companies to allocate joint Plan costs based on the annual average number of meters per Company as of June 30<sup>th</sup> is consistent with how the Companies allocate costs within the Companies. OCA M.B. at 16-17. As stated in the OCA's Main Brief, it appeared that Companies witness Valdes did not oppose this recommendation made in OCA witness Hornby's Direct Testimony; however, Mr. Valdes testified that any change in allocation should be prospective only. OCA M.B. at 17, citing FE Companies St. 5-R at 14. The OCA does not oppose Mr. Valdes' request that any change in allocation be prospective only.

In their Main Brief, the Companies stated that the OCA's position on this issue is not reasonable or consistent with ratemaking theory. FE Companies M.B. at 30. The Companies asserted that using the number of meters as of June 30<sup>th</sup> each year in allocating joint Plan costs is more representative of the Companies' going forward costs and should be maintained. Id. The OCA submits that it is more appropriate to use the annual average number of meters as of June 30<sup>th</sup> because an annual average would better take into account normal increases and decreases in meter installations on the FirstEnergy system over a period of time than would using the meter count at one specific point in time. The OCA submits that this is consistent with proper ratemaking principles, as certain rate base items and expenses are annualized for purposes of calculating rates in base rate cases in order to account for highs and lows during a test year.

As such, the Commission direct the Companies to allocate joint Plan costs based on the annual average number of meters per Company as of June 30<sup>th</sup> is consistent with how the Companies allocate costs within the Companies.

B. Savings Estimates.

1. The Companies' Proposal Regarding Savings Is Not Reasonable.

In its Main Brief, the OCA asserted that the Companies did not develop a reasonable projection of potential savings associated with their Plan. OCA M.B. at 17-20. As such, the OCA recommended that the Commission direct the Companies 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 savings potential investigation of categories of 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, the Commission should direct the Companies to file an amended Plan detailing the potential categories and estimates of savings identified by such consultant within 30 days thereafter. OCA M.B. at 20.

In their Main Brief, the Companies asserted that OCA witness Hornby's observations and recommendations regarding the Companies' projected Plan savings should be disregarded because his examination of other companies' smart meter deployment plans included only savings estimates. FE Companies M.B. at 20-21. Further, the Companies asserted that some of the savings that other companies have achieved were derived from functionalities that the FirstEnergy Companies do not intend to use, such as remote disconnection. Id. at 21.

While the OCA agrees that there are some savings projected by other companies in their smart meter deployment plans that might not translate in their entirety to the smart meter

deployment parameters in Act 129 and the Implementation Order, the OCA submits that it is appropriate to review the estimated savings projected by other companies in their smart meter deployment plans when the FirstEnergy Companies project the estimated savings in their own Plan. The point is that the Companies should have conducted a more intensive and thorough investigation into the types and amounts of savings that their Plan could achieve. The Commission identified six categories of potential savings in the Implementation Order.<sup>3</sup> In the WPP Settlement, West Penn was required to conduct a projected savings analysis similar to that conducted by Nevada Power, wherein Nevada Power identified seven categories<sup>4</sup> of potential savings in its smart meter deployment plan. OCA St. 1 at 16. Yet, the FirstEnergy Companies identified only four categories of potential savings from smart meter deployment.<sup>5</sup> See FE Companies Exh. GLF-4.

In their Main Brief, the Companies stated that they have already looked at or fully intend to look at all eight categories of potential savings in OCA witness Hornby's Surrebuttal Testimony.<sup>6</sup> FE Companies M.B. at 22. The Companies further stated that they intend to investigate and track all sources of potential savings to flow through to customers in the SMT-C riders. Id. The Companies, however, disagreed with the OCA's contention that they hire an

---

<sup>3</sup> 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.

<sup>4</sup> The seven categories are: meter reading, revenue protection, load research, distribution planning, credit & collections, billing, and meter operations. OCA St. 1 at 16.

<sup>5</sup> The four categories identified by the Companies are meter reading, meter services, back-office and contact center. FE Companies M.B. at 20.

<sup>6</sup> The eight categories are: meter reading; revenue protection; load research; distribution, substation and transmission planning; credit/collections; billing; meter operations and outage reductions. See OCA St. 1-SR at 8, Rev. Table 2.

independent expert to perform a proper savings investigation, calling it a waste of time and money. Id.

The OCA submits that, at this time, it is necessary and proper to direct the Companies to conduct a comprehensive investigation into additional categories of savings and report the findings to the Commission. The Companies' proposal to figure any savings out as they go is not appropriate. As OCA witness Hornby explained:

If the Companies do not develop an approach for estimating the potential for savings in these other areas now, in this proceeding, it is reasonable to conclude that they will not find any savings to report and to credit to ratepayers.

OCA St. 1-SR at 9. Furthermore, in order to fulfill the commitments in the WPP Settlement, the Companies must conduct a more thorough potential savings analysis like that conducted by Nevada Power. OCA St. 1 at 16.

As such, the Commission should direct the Companies 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 savings potential investigation of categories of 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, the Commission should direct the Companies to file an amended Plan detailing the potential categories and estimates of savings identified by such consultant within 30 days thereafter.

2. The Companies Must Reflect The Appropriate Baseline Levels Of Savings.

In its Main Brief, the OCA recommended that the Commission direct the FirstEnergy 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 and provide this baseline level information with their next annual SMT-C filing. OCA M.B. at 22. In their Main Brief, the Companies asserted that it would be inappropriate to establish their baselines in the manner recommended by the OCA for the following reasons: (1) it does not comply with the savings language in the Companies' SMT-C riders, which language was directed by the Commission to be included in the riders; (2) it would violate the plain language of Act 129; and (3) it would violate the prohibitions against single-issue ratemaking and retroactive ratemaking. FE Companies M.B. at 23-27.

With regard to the language in the Companies' SMT-C riders, in the 2009 SMIP proceeding of Met-Ed, Penelec and Penn Power, the OCA recommended that the Commission direct the Companies to modify their SMT-C riders to include language to explicitly state that any reduction in operating expenses or avoided capital expenditures would be deducted from the incremental costs of the SMIP to determine net recoverable costs through the riders. See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan, Docket Nos. M-2009-2123950 *et al.*, Order at 42 (June 9, 2010) (2009 SMIP Order). The Companies disputed the OCA's recommendation, asserting that it would be more appropriate to collect the costs of the SMIP on a full and current basis through the SMT-C riders and recognize savings in future base rate proceedings. Id.

In the 2009 SMIP Order, the Commission accepted the OCA's argument that because the FirstEnergy Companies chose to use a reconcilable rider to recover the costs of smart meter deployment, the Companies must, therefore, account for savings in the reconcilable rider as well. Id. at 44. In accepting the OCA's argument, the Commission directed the Companies to include in their SMT-C rider tariffs the same savings language as PECO, which stated in part: "[s]uch

reductions shall include any reductions in the Company's current meter and meter reading costs.”

Id.

The Companies indicated that this language requires that they use the proposed baseline level of their costs at December 31, 2013. FE Companies M.B. at 23-24. As explained further below, the Companies have taken this language out of context and have not applied it as other EDCs have in passing through savings from smart meter deployment. It bears noting at this point, however, that if the Companies' interpretation is accepted, it would be expected that the Companies would have passed through to customers the meter reading savings that Met-Ed, Penelec and West Penn realized recently when they stopped reading meters monthly. See FE Companies St. 4-R at 17.

With regard to the language from PECO's smart meter rider that the Commission required be included in the Companies' SMT-C riders, PECO's last base rate case was filed on March 31, 2010, with rates effective on January 1, 2011. See Pa. PUC v. PECO Energy Company – Electric Division, Docket No. R-2010-2161575, Order at 1, 31 (Dec. 21, 2010). PECO's 2009 SMIP was approved by the Commission by Order entered May 6, 2010. See Petition of PECO Energy Company for Approval of Smart Meter Technology Procurement and Installation Plan, Docket No. M-2009-2123944, Order (May 6, 2010). As can be seen from this timeline, PECO's last base rate case was ongoing when the Commission approved its 2009 SMIP and accompanying rider. Therefore, the savings PECO reflects through its smart meter rider are based on the then-current baseline levels from PECO's 2010 base rate case. The OCA submits this is proper because the savings reflected in PECO's smart meter rider are and will be calculated based on the rates that customers are paying for the capital cost and expense categories where savings are realized during smart meter deployment.

This is exactly the point that the OCA made in this matter – that the FirstEnergy Companies must calculate savings from smart meters using the levels of costs and expenses that are currently reflected in rates for the categories of savings. See OCA M.B. at 20-22. Instead, the Companies seek to avoid passing through all the savings realized by moving the baseline.

The Companies' assertion that using the baseline levels of costs established in the Companies' revenue requirements from their last base rate cases violates the plain language of Act 129 also fails. The Companies stated that since there is no mention in Section 2807(f) that EDCs must examine the record in prior base rate cases to quantify the savings generated by smart meter deployment, then EDCs need not do so. FE Companies M.B. at 24-25. Act 129 permits EDCs the choice of collecting costs, netted of savings, in a future base rate case or through a reconcilable rider. See 66 Pa. C.S. § 2807(f)(7). The FirstEnergy Companies chose a reconcilable rider, and by doing so, the Companies have, in effect, chosen to carve the costs and savings categories out of base rates in order to collect these specific categories of costs on a full and current basis in a rider. As such, the OCA submits that costs incurred would be current, but savings must be based on the baseline amounts customers were paying in base rates. Doing so is the only proper way to true up the carve-out of the cost categories from base rates and match those categories with the savings from base rates.

The Companies' assertions that the OCA's recommendation violates the prohibitions on single-issue ratemaking and retroactive ratemaking must also fail. See FE Companies M.B. at 26-27. The fact that Act 129 specifically permits the categories of costs, netted of savings, incurred from smart meter deployment be collected on a full and current basis through a rider mechanism addresses this issue. As stated above, the Companies chose to use the rider mechanism to collect smart metering costs on a full and current basis, and therefore, the

Companies must appropriately reflect the savings associated with carving certain costs out of base rates.

As such, the Commission should direct the FirstEnergy 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 and provide this baseline level information with their next annual SMT-C filing.

C. Communications Plan.

The Communications Plan (Comm Plan) is designed to coordinate the Companies' internal and external communications regarding its Smart Meter Deployment Plan. In their Main Brief, the Companies stated that they have submitted a high level Comm Plan as part of the Smart Meter Deployment Plan (Joint Petitioners' Exhibit No. 2), but the Companies acknowledge that "[t]he Companies do not consider the Comm Plan to be complete." FE Companies M.B. at 38. The Companies stated that they plan to use the expertise of the members of the stakeholder group in order to finalize the communications messages when the time is right. FE Companies M.B. at 38. The OCA agrees that the Comm Plan is not final, that it will need to remain flexible as the scope of customer educational issues evolve, and that the Comm Plan should be discussed with the stakeholder group prior to its finalization. See OCA M.B. at 23-24.

Preliminarily, the OCA recommends that the Companies commence holding stakeholder meetings on a quarterly basis by the first quarter of 2014 in order to discuss the Comm Plan. As the Comm Plan is an essential part of the Smart Meter Deployment Plan, the OCA also recommends that the Comm Plan be filed with the Commission after the stakeholders have sufficiently reviewed and discussed the Comm Plan in the stakeholder meetings. This will

establish an important framework and timeline for review, finalization, and filing of the Comm Plan with the Commission.

The Companies averred that “[w]hile the Companies do not necessarily disagree with Ms. Brockway’s observations, specific action on her concepts is premature given where the Companies are in their smart meter deployment timeline.” FE Companies M.B. at 38-39. As discussed more fully in the OCA’s Main Brief at pages 25-31, the OCA has identified several areas that should be included in the discussion and the resulting Plan. These areas include: (1) early education about the new functionalities of smart meters; (2) the provision of safety educational materials as smart meters are being deployed; and (3) recommendations with advising customers about the privacy of their smart meter data. See OCA M.B. at 25-31; OCA St. 2 at 8-13, 17-23; OCA St. 2-SR at 1-6. The OCA disagrees that its recommendations are premature and recommends this information be incorporated into the stakeholder process and the final Comm Plan. The OCA submits that it is important that the Commission acknowledge in its Smart Meter Deployment Order that these areas should be incorporated into the Comm Plan.

1. Early Education Materials About The New Functionalities of Smart Meters.

Contrary to the Companies’ averments in their Main Brief, the OCA submits that it is not premature to address early education about the functionalities of smart meters because customers should understand the options that they will have and how to exercise them before large numbers of smart meters are deployed. See FE Companies M.B. at 38-42. This early education will help to pave the way for the later introduction of time-varying rates and programs by helping customers to understand early the capabilities of smart meters. OCA St. 2 at 10. The OCA recommends that the FirstEnergy Companies broaden the scope of their education planning before customers gain access to a larger set of programs and rates made possible through smart

metering and include information in the Comm Plan related to early education for customers about time-varying prices and the functionalities of smart meters.

2. Safety Educational Materials.

As discussed in their Main Brief, the Companies entered into a Joint Stipulation of Position (Joint Stipulation) with Direct Energy regarding information that should be included in the Comm Plan. FE Companies M.B. at 42. Specifically, the Joint Stipulation provided that the Comm Plan would make information available on a website about the communities scheduled for deployment. FE Companies M.B. at 41-43; Joint Stipulation of Position at ¶ 1.

If this deployment information is to be made public, it is critical to consider the safety educational materials that should accompany this information. The OCA submits that if installation zones are to be publically identified to a wide audience, then safety educational information must be provided to each individual customer in the deployment area in order to avoid risk of fraudulent individuals attempting to gain access to homes during the smart meter deployment period. OCA witness Brockway testified:

On the question of disclosing installation zones, in addition to the risk of fraud cited by Mr. Fitzpatrick, I would add the need to protect the safety of customers from entry by unauthorized persons purporting to represent the utility. Redundant identification by installers (e.g. badges, uniforms, truck logos, etc.) will help to enable customers to distinguish between genuine FirstEnergy installers and others. If and to the extent FirstEnergy uses contractors to perform installation, it should likewise ensure that the contractors have multiple forms of identification, making it harder for unauthorized persons to present themselves as FirstEnergy representatives. In the education materials for Maryland utilities rolling out smart meters, for example, customers are shown pictures of the uniforms and truck logos of contractors, to provide one level of security against unauthorized personnel gaining entry. Customers are also given explicit advice to check identification of the installers if they have any doubt, and given a number to call to verify any given installer's identification, which provides a further defense against safety risks and fraud.

OCA St. 2-SR at 2-3. On cross-examination, the Companies witness Fitzpatrick agreed that each of these recommendations was generally a good idea. Tr. 122-124. Therefore, since the information about disclosure of the locations of the roll-out of smart meters is being included in the Comm Plan, the OCA submits that it is not premature to include the OCA's recommended safety educational materials to counter act the potential for fraud and to address safety.

3. Customer Privacy.

In their Main Brief, the Companies proposed that customer privacy be addressed in a statewide proceeding. FE Companies M.B. at 40-41. The OCA submits that the FirstEnergy Companies will be deploying meters and must address this issue with or without a statewide initiative.<sup>7</sup> Smart meters have the capacity to provide information about a customer's interval usage on a very granular level. This information can provide a great deal of information about a customer's life and habits or about a business operation. Currently, the Companies only provide a general Privacy and Legal Statement and a Know Your Rights booklet which includes a page called the "Right to Restrict Your Personal Information." OCA St. 2 at 18-19; OCA St. 2 at Exh. NB-3 and NB-4. The Companies do not currently have any more specific policy that relates to how a customer's granular, interval usage data will be protected.

The OCA submits that having a sound privacy policy in place prior to deployment is essential to protect privacy and to assure customers. The Companies do not currently have any privacy policy which addresses the granular interval data that smart meters will capture, and this issue must be considered before wide scale deployment is initiated. As OCA witness Brockway testified:

Privacy should be built into the design of its smart grid implementation. The Companies should not go forward with the creation and collection of such granular data until a fully-developed privacy policy is in place.

---

<sup>7</sup> At this time, there is not a statewide initiative. If one is implemented, it will take time to complete.

OCA St. 2 at 20-21.

As discussed at pages 29-31 of the OCA's Main Brief, the OCA recommends that the Comm Plan specifically address privacy concerns as they relate to the smart meter deployment and not wait for a statewide initiative to be developed. See OCA M.B. at 29-31; OCA St. 2 at 17-23; OCA St. 2-SR at 1-6. OCA witness Brockway proposed that the Companies have both appropriate principles and protocols in place to protect the privacy of customers' usage and other personally-identifying information before even installing the data-creating technologies. OCA St. 2 at 24. The OCA recommends 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.

D. Remote Disconnection.

In their Main Brief, the Companies stated: "Ms. Brockway agrees with the Companies' approach to exploring remote disconnection issues, including the intent to work through a collaborative effort. ... The collaboration includes addressing compliance with Chapters 14 and 56." FE Companies M.B. at 40. Further, the FirstEnergy Companies averred that like customer privacy and cyber security, remote disconnection is an issue that should be addressed by the Commission on a statewide basis. FE Companies M.B. at 40-41.

The OCA agrees that issues of remote termination for non-payment should be initially discussed with the stakeholder group if the Companies decide in the future to utilize the remote disconnection or remote termination for non-payment features of smart meters. However, for the reasons stated in its Main Brief, the OCA also recommends that the Order to this proceeding memorialize the Companies' position that the Companies do not intend to use remote

termination for non-payment as part their Plan. See OCA M.B. at 32-34. The Commission should also direct that the Companies be required to bring any future proposal to pursue either voluntary remote disconnection for move-in/move-out or remote involuntary termination for non-payment to the stakeholder group for further discussion. Further, the OCA recommends that due to the potential implications of Chapter 14 and Chapter 56, that any proposal to pursue involuntary remote termination for non-payment in the future should be considered an amendment to the instant Plan and should be filed with the Commission for review and approval. See OCA M.B. at 32-34.

E. Cyber-Security.

In their Main Brief, the Companies recommended that cyber security issues be addressed at the state level “on a more global basis so as to provide uniformity of expectations and requirements for all electric distribution companies.” FE Companies M.B. at 40-41. As more fully discussed in the OCA’s Main Brief at pages 34-35, the OCA recommends that this issue continue to be regularly monitored, that the Companies inform the Commission of its efforts, that the Companies be aware of emerging issues, and that these issues should be discussed at the stakeholder group on a going-forward basis. OCA St. 2 at 8. Cyber security should not await development on a global basis given its criticality to sound smart meter deployment.

F. West Penn CIS Costs.

As part of its Smart Meter Procurement and Installation Plan (SMIP) filing at Docket No. M-2009-2123951, West Penn included approximately \$45.1 million in 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 the proceeding entered into an Amended Joint Petition for Settlement (WPP Settlement) in that proceeding which reserved the issue of whether the

collection of \$5.1 million for certain costs related to the CIS system for the Company's next base rate case and/or as part of its Revised SMIP filing. All parties reserved their respective rights in future litigation. WPP Settlement at ¶ 19. In this proceeding, West Penn sought to recover the remaining \$5.1 million. OCA St. 1 at 23-25; FE Companies M.B. at 30-34. The Companies claimed that the \$5.1 million: (1) proved to be used and useful in the smart metering design solution; (2) supported West Penn's ability to deploy the approximately 25,000 smart meters that enabled West Penn's Energy Saver Rewards Program; and (3) was inextricably related to the recoverable costs West Penn incurred as part of its development of its 2009 plan. FE Companies M.B. at 32. The OCA submits that the Companies' arguments do not support recovery of the \$5.1 million for CIS.

In their Main Brief, the Companies claimed that the \$5.1 million for replacement of West Penn's outdated CIS system qualifies as a "system upgrade" under Section 2807(f)(7) of Act 129. FE Companies M.B. at 31-34. Section 2807(f)(7) states that EDCs may claim the "cost of any system upgrades that the [EDC] may require to enable the use of the smart meter technology which are incurred after the effective date of this paragraph." 66 Pa.C.S. §2807(f)(7). The Companies' claim here presents two problems. First, the system upgrade was of the type that should have been undertaken in the normal course of business and was not specifically related to smart metering. Second, West Penn's CIS has been abandoned and is not used and useful.

The OCA submits that West Penn's CIS changes were not a smart meter technology "system upgrade" recoverable through the SMT-C Rider. As discussed in West Penn's prior SMIP proceeding, OCA witness Hornby opposed the inclusion of CIS costs because it was not a "system upgrade." The changes made to the older CIS system were an investment that a utility would make in its normal course of business for such a system, and recovery costs should be

accomplished in a base rate proceeding. In this proceeding, OCA witness Hornby recounted his position on this issue:

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 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 proceedings 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.

Both FirstEnergy Companies witness Valdes and OCA witness Hornby agree that West Penn had not changed its CIS system for over thirty years. FE Companies M.B. at 33. Where OCA witness Hornby and Companies witness Valdes diverge is about whether the expenditure is one that is typically incurred in the normal course of business. Companies witness Valdes claims that the system was "a home-grown, customized system that was specifically tailored to meet the needs of West Penn" and that but for the requirements of Act 129, West Penn would have not changed its CIS system. FE Companies St. 5-R at 16; see also FE Companies M.B. at 33. This argument is belied by the fact that these very same upgrades were used by West Penn's sister companies who had no smart meter deployment plans. As Mr. Hornby testified, West Penn's sister companies recovered the expense as a normal business expense in their respective base rate

proceedings. OCA St. 1 at 24. West Penn allocated 52 percent of the costs of the CIS system to its sister utilities Potomac Edison Company in Maryland and Monongahela Power in West Virginia. OCA St. 1 at 24; Tr. 52. Neither of the two sister utilities had any requirement to deploy smart meters or AMI, nor were either engaged in any smart meter deployment. OCA St. 2 at 24; Tr. 53.

Moreover, most every other utility in Pennsylvania made 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 submits that there is no reason that West Penn should be treated differently because it incurred this expense after Act 129 was passed.

In their Main Brief, the FirstEnergy Companies argued that since the decision to change West Penn's CIS system was made in 2009, after the effective date of Act 129, and would support West Penn's Energy Efficiency and Conservation Plan, recovery should be allowed. FE Companies M.B. at 34; Tr. 40-42. The FirstEnergy Companies argued that the CIS system was "used and useful" in that it supported West Penn's ability to deploy approximately 25,000 smart meters that enabled West Penn's Energy Saver Rewards Program for the summer of 2012 as part of its Energy Efficiency and Conservation (EE&C) Plan.<sup>8</sup> FE Companies M.B. at 34. The OCA submits that the Companies' argument does not overcome the fundamental fact that while West Penn expended the dollars for the CIS system in anticipation of deploying its smart metering

---

<sup>8</sup> The OCA notes that West Penn agreed to deploy the 25,000 smart meters as part of its Final Amended Settlement of the 2009 SMIP filing "to support customer requests and the Amended EE&C/DR Plan offerings." WPP Settlement at ¶ 17. This Final Amended Settlement was not filed until March 9, 2011, nearly a year following the filing of West Penn's merger with the FirstEnergy Companies.

design solution and to deploy the smart meters for its EE&C Plan, West Penn's original smart meter plan and original EE&C Plan were never adopted by the Commission.<sup>9</sup>

Using the CIS as the basis for the "smart meter design solution" or as the basis for rolling out smart meters for its EE&C program is not the same being as "used and useful" for ratemaking purposes. In Pa. PUC v. Metropolitan Edison Co., the Commission defined this important distinction between being used or useful to the Company and being "used and useful" for ratemaking purposes:

In our opinion, the legislature anticipated and intended a difference in these phrases. "Used or useful" has a broader, more inclusive connotation and is employed to define the types of property which are subject to the reporting, accounting, and certification requirements. See 66 Pa. C.S. §§ 1102(a)(3), 1702, and 1703(a). Whereas, "used and useful" has a narrower, less inclusive connotation and is employed to define and describe the types of property which are includable in the utility's rate base for purpose [sic] of fixing rates. 66 Pa. C.S. §§ 1102(a)(3)(iii), 1307(a), 1301(a), 1310(d), and 1311. Since our present focus is on the status of TMI-1 for rate-making purposes, the phrase "used and useful" is appropriate.

Pa. PUC v. Metropolitan Edison Co., 1980 Pa. PUC Lexis 56, \*18-19 (Order entered May 23, 1980); remanded on other grounds Metropolitan Edison v. Pa. PUC, 437 A.2d 76, 79, 81 (Pa. Commw. Ct. 1981). The Commission went on to conclude that although TMI-1 had an operating history, the question of whether TMI-1 was related to the provision of utility service was not the issue. Id. at \*21-\*22.

West Penn filed its initial plan for approval of its SMIP on August 14, 2009. FirstEnergy Companies witness Valdes stated that due to the EE&C Plan, West Penn planned to roll-out

---

<sup>9</sup> In their Main Brief, the Companies cite to ALJ Hoyer's approval of the CIS costs in his Initial Decision in Docket No. M-2009-2123951. FE Companies M.B. at 32-33. ALJ Hoyer's Initial Decision was never addressed by the Commission because the Initial Decision was issued on April 29, 2010, and on May 14, 2010, FirstEnergy filed for its proposed merger with West Penn's parent company. The proposed CIS system anticipated in ALJ Hoyer's Initial Decision was subsequently "retired."

smart meters in 2010 and “because of that, West Penn needed to proceed with its smart metering plan which includes the CIS upgrades during 2009 prior to actually receiving Commission approval.” Tr. 42. But, since the initial WPP SMIP, much has changed. On May 14, 2010, FirstEnergy filed for its proposed merger with West Penn’s parent company, Allegheny Power, and on March 8, 2011, the Commission approved the merger. 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 11012(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 entered March 8, 2011).

As a result of the merger, West Penn “retired” its CIS system, transitioned to using the CIS system of the FirstEnergy Companies, and the CIS system for which West Penn expended the \$5.1 million is not currently used and useful to ratepayers for smart metering purposes. Companies’ witness Valdes confirmed this in cross-examination and testified, “[s]o even though the merger occurred, yes, the merger occurred, therefore the CIS system merged with FirstEnergy’s billing system.” Tr. 53. The fact is that the West Penn CIS system was never actually used and useful in service to Pennsylvania ratepayers for smart metering purposes because West Penn retired this CIS system and transitioned to use FirstEnergy’s CIS before the West Penn CIS was put into place. The Energy Saver Rewards program was not implemented until the Summer of 2012, after the merger occurred. There is no evidence to support the recovery of costs for an abandoned CIS system from ratepayers. See Barasch v. Pa. PUC, 516 Pa. 142, 532 A.2d 325 (1987), aff’d Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989).

The OCA submits that the Companies' proposal to recover \$5.1 million for expenditures related to West Penn's abandoned CIS system must be denied.

G. Legacy Meters.

The FirstEnergy 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. FE Companies M.B. at 34. OCA witness David Effron explained the Companies' proposal as follows:

The Companies are seeking authorization to create regulatory assets for the Legacy Meters being retired. 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 (Met-Ed/Penelec/Penn Power/West Penn St. No. 5, page 17.

Any salvage value realized from the disposition of the Legacy Meters will be credited to the regulatory asset. The Companies are proposing to treat the cost of removal for Legacy Meters as operation and maintenance ("O&M") expense and to recover that cost as a component of the Smart Grid rider.

OCA St. 3 at 3. The Companies proposed to separately account for the cost of removal of the meters and the salvage value of the meters.<sup>10</sup> OCA witness Effron recommended:

I recommend 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. This will result in removal being treated symmetrically with salvage value. In addition, the 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.

---

<sup>10</sup> The OCA notes that the FirstEnergy Companies also raised an alternative proposal in which the Companies would "use salvage value received as an offset to the incremental costs of removal collected in the SMT-C Rider." FE Companies M.B. at 36. The OCA is opposed to recovering these costs through the SMT-C Rider. For the reasons set forth regarding the Companies' primary proposal to recover the costs of removal through the SMT-C Rider, the OCA also opposes the Companies' alternative proposal to recover both the salvage value and the costs of removal through the SMT-C Rider.

OCA St. 3 at 5.

In their Main Brief, the FirstEnergy Companies argued that the OCA's proposal is inconsistent with the rider recovery option that the FirstEnergy Companies are permitted to select under Act 129 and with Pennsylvania ratemaking. The Companies argued that the OCA's proposal would deny the Companies recovery of all of their smart meter related costs. FE Companies M.B. at 35. The OCA submits that the OCA's recommendations are consistent with Act 129, traditional ratemaking requirements and allow the Companies full recovery for all of their smart meter related costs.

The OCA's recommendation is consistent with the rider recovery option that the FirstEnergy Companies are permitted to select under Act 129 and in fact, eliminates a double-recovery of the costs of removal already included in base rates of Met-Ed, Penelec and West Penn Power that results from the FirstEnergy Companies' selection of the rider. The FirstEnergy Companies stated that Act 129 "provides that an electric distribution company may recover smart meter technology costs either through a deferral for future base rate recovery or on a full and current basis through a reconcilable automatic adjustment clause." 66 Pa.C.S. § 2807(f)(7)(i), (ii). The FirstEnergy Companies have requested regulatory asset treatment for their unrecovered investment in meters currently in place (also referred to as the Legacy Meters) that will be replaced by smart meters with the regulatory asset treatment to be addressed in the Companies' next base rate proceeding. FE Companies M.B. at 34. The OCA's proposal relates to the treatment of the cost of removal under this regulatory asset structure. The OCA proposes that if the regulatory asset is to be utilized and the regulatory asset is to be reflected in the next base rate case, then the cost of removal must be treated symmetrically.

OCA witness Effron explained:

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 the 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.

\*\*\*

I recommend 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. This will result in removal being treated symmetrically with salvage value. In addition, the 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.

OCA St. 3 at 4-5. OCA witness Efron's proposal is in accord with ratemaking principles, will address double recovery and will smooth out year-to-year variations.

The FirstEnergy Companies' interpretation of the inclusion of cost of removal of Legacy Meters within the SMT-C surcharge is also contrary to the Commission's Implementation Order regarding Act 129. The Implementation Order states:

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 there are stranded costs that need to be recovered the Commission agrees with EA, PECO and Duquesne 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. The OCA submits that 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 depreciation schedule occurs with the regulatory asset, not through the SMT-C riders. Separating out the cost of removal from the salvage value and depreciation does not minimize the cost to consumers. 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.

The FirstEnergy Companies averred that the OCA's proposal is contrary to established ratemaking practice and that the OCA would be mixing ratemaking recovery mechanisms. FE Companies M.B. at 37. The OCA submits that it is the FirstEnergy Companies who are mixing ratemaking recovery mechanisms, not the OCA. OCA witness Effron testified that:

It is no more "contrary to established ratemaking practice" than is the Company's proposal to recover the cost of removal on a dollar for dollar basis through a rider mechanism. As described by Mr. Valdes, the cost of removal has traditionally been an item included in the base rate revenue requirement. My proposed method would continue to treat it as a base rate item, with any incremental cost of removal being deferred, amortized, and recovered as part of the electric distribution service revenue requirement.

In addition, my proposed method does not "ignore the fact that the undepreciated cost in rate base is consistent with the recovery of the cost over time and from a

present value perspective puts both investors and customers in the same position as if the cost of removal was recovered as the cost was incurred.

As noted above, cost of removal is a plant related cost. Other plant related costs are capitalized and depreciated or amortized over time. The fact that the return requirement of the plant costs could be avoided if the costs were recovered as current expenses does not justify treating other plant related costs as current expenses. Similarly, the fact that the undepreciated amount of the cost of removal will earn a return does not imply that my proposed treatment of the incremental cost of removal is improper or that treating the cost of removal as a current operation and maintenance expense is appropriate.

OCA St. 3-SR at 2-3.

The FirstEnergy Companies also argued that the OCA's proposal will deny the recovery of the cost of smart meter related costs. FE Companies M.B. at 37. The FirstEnergy Companies witness Valdes states that the Companies' distribution expenses would increase without any off-setting revenues. FE Companies M.B. at 37. Under the OCA's proposal, the FirstEnergy Companies will be permitted full recovery of their costs. OCA witness Effron explained why FirstEnergy Companies witness Valdes is incorrect and the FirstEnergy Companies would receive full cost recovery of the cost of removal:

In my Direct Testimony, I recommended that the incremental cost of removal 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. The cost of removal is a plant related cost and under my proposal would, in effect, be treated as a capital cost, as are other plant related costs. By being included as a component of the regulatory asset for legacy meters, the cost of removal would be recovered as part of the base rate revenue requirement for electric distribution service. This in no way denies the Companies recovery of the cost of removal for legacy meters or of any other smart meter related costs.

OCA St. 3-SR at 1-2.

Finally, in their Main Brief, the FirstEnergy Companies stated that the OCA's proposal was "in part driven by a desire to smooth year-to-year variations in Legacy Meter costs for customers." FE Companies M.B. at 37. The OCA agrees that this is one benefit of its approach.

The OCA's recommendation, however, is based upon the fact that for Met-Ed, Penelec and West Penn Power, the cost of removal is already being recovered in base rates, and the Companies are proposing to also recover these same costs of removal for the Legacy Meters through their SMT-C riders. The OCA proposal is to eliminate the double recovery of costs. See OCA St. 3 at 4-5.<sup>11</sup>

The OCA recommends that the cost of removal incurred by Penn Power and the incremental cost of removal incurred by Met-Ed, Penelec, and West Penn 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. 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.

---

<sup>11</sup> 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. See OCA St. 3 at 4-5.

**III. CONCLUSION**

The Office of Consumer Advocate respectfully requests that the Commission reject the FirstEnergy Companies' Smart Meter Deployment Plan as filed and direct the FirstEnergy Companies to submit an amended Smart Meter Deployment Plan with the modifications described in the OCA's Main Brief and in this Reply Brief.

Respectfully Submitted,

*Candis A. Tunilo*

---

Candis A. Tunilo  
Assistant Consumer Advocate  
PA Attorney I.D. # 89891  
E-Mail: CTunilo@paoca.org

Christy M. Appleby  
Assistant Consumer Advocate  
PA Attorney I.D. # 85824  
E-Mail: CAppleby@paoca.org

Counsel for:  
Tanya J. McCloskey  
Acting Consumer Advocate

Office of Consumer Advocate  
5th Floor, Forum Place  
555 Walnut Street  
Harrisburg, PA 17101-1923  
Telephone: (717) 783-5048  
Facsimile: (717) 783-7152

DATE: June 3, 2013  
169961.doc

CERTIFICATE OF SERVICE

Joint Petition of Metropolitan Edison Company :  
Pennsylvania Electric Company, Pennsylvania : Docket Nos. M-2013-2341990  
Power Company, and West Penn Power Company : M-2013-2341991  
For Approval of their Smart Meter Deployment : M-2013-2341993  
Plan : M-2013-2341994  
:

I hereby certify that I have this day served a true copy of the foregoing, the Office of Consumer Advocate's Reply Brief, 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 and upon the persons listed below:

Dated this 3rd day of June 2013.

SERVICE BY E-MAIL and INTEROFFICE MAIL

Richard A. Kanaskie, Esq.  
Charles Daniel Shields, Esq.  
Carrie B. Wright, Esq.  
Bureau of Investigation & Enforcement  
Pa. Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, P.O. Box 3265  
Harrisburg, PA 17105-3265

SERVICE BY E-MAIL and FIRST CLASS MAIL

John F. Povilaitis, Esq.  
Buchanan, Ingersoll & Rooney, P.C.  
409 North Second Street, Suite 500  
Harrisburg, PA 17101-1357

Kathy J. Kolich, Esq.  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44309

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

Thomas P. Gadsden, Esq.  
Kenneth M. Kulak, Esq.  
Catherine G. Vasudevan, Esq.  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Daniel Clearfield, Esq.  
Deanne O'Dell, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
213 Market St., 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
[ELanza@eckertseamans.com](mailto:ELanza@eckertseamans.com) (e-mail only)

Susan E. Bruce, Esq.  
Charis Mincavage, Esq.  
Vasiliki Karandrikas, Esq.  
Teresa K. Schmittberger, Esq.  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

Mr. Robert D. Knecht  
Industrial Economics Inc.  
2067 Massachusetts Avenue  
Cambridge, MA 02140

*Candis A Tunilo*

---

Candis A. Tunilo  
Assistant Consumer Advocate  
PA Attorney I.D. # 89891  
E-Mail: [ctunilo@paoca.org](mailto:ctunilo@paoca.org)  
Christy M. Appleby  
Assistant Consumer Advocate  
PA Attorney I.D. # 85824  
E-Mail: [cappleby@paoca.org](mailto:cappleby@paoca.org)

Counsel for  
Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
165542