COMMONWEALTH OF PENNSYLVANIA

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August 31, 2009

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan
Docket No. M-2009-2093218

Dear Secretary McNulty:

Enclosed for filing is the Main Brief of the Office of Consumer Advocate, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

Christy M. Appleby

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Assistant Consumer Advocate
PA Attorney I.D. # 85824

Enclosures
cc: Honorable Katrina L. Dunderdale
Office of Special Assistants

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan	:	Docket No. M-2009-2093218

MAIN BRIEF
OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: August 31, 2009

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I. INTRODUCTION

On November 14, 2008, Act 129 of 2008 (Act 129) became effective. Act 129 contained a requirement for the Pennsylvania Public Utility Commission (Commission) to implement an Energy Efficiency and Conservation (EE&C) Program for EDCs with more than 100,000 customers. See 66 Pa.C.S. § 2806.1 et seq. Act 129 contained provisions amending the duties of Electric Distribution Companies' (EDCs) obligation to serve; providing for Smart Meter Technology and Time of Use Rates; providing additional market power remediation for market misconduct; providing alternative energy sources; and providing a Carbon Dioxide Sequestration Network. Id. The Act makes a number of significant amendments to the Pennsylvania Public Utility Code, many of which will have a direct impact on the rates and service of customers of Pennsylvania's EDCs.

Of particular relevance here, Act 129 requires EDCs with at least 100,000 customers to present an EE&C Plan (Plan) to the Pennsylvania Public Utility Commission for approval. Id. The Plan must be designed to reduce energy demand and consumption within each EDC's service territory. 66 Pa.C.S. § 2806.1(a). Specifically, each EDC must reduce electric consumption by at least 1% of its expected load by May 31, 2011, adjusted for weather and extraordinary loads. 66 Pa.C.S. § 2806.1(c)(1). Each EDC must reduce its total energy consumption by 3% by May 31, 2013. 66 Pa.C.S. § 2806.1(c)(2). Further, each EDC must reduce peak electricity demand by a minimum of 4.5% of its annual system peak demand for the 100 hours of highest demand by May 31, 2013, as measured against the EDC's peak demand during the period from June 1, 2007 through May 31, 2008. 66 Pa.C.S. § 2806.1(d)(1). The Act also provides for specific fines for an EDC's failure to achieve the standards for reduction contained in the Act.

Act 129 states that the Commission's energy efficiency and conservation program must include the following: (1) procedures for the approval of plans submitted by EDCs pursuant to Act 129; (2) an evaluation process "to monitor and verify data collection, quality assurance and results" of each EDC EE&C plan; (3) a cost-benefit analysis of each EDC EE&C plan in accordance with a total resource cost test approved by the Commission; (4) analysis of how the Commission's program and each EDC EE&C plan will achieve or exceed Act 129's consumption reduction requirements; (5) standards to ensure that each EDC EE&C plan includes a variety of measures that are provided equitably to all customer classes; (6) procedures to make recommendations as to additional measures that will enable EDCs to improve their EE&C plans and exceed the Act's required reductions in consumption; (7) procedures to require EDCs to competitively bid all contracts with conservation service providers (CSPs); (8) procedures to review, and modify if the Commission deems necessary, all proposed contracts with CSPs prior to execution; (9) procedures to ensure compliance with the Act's requirements for reduction in consumption; (10) a requirement for the participation of CSPs in the implementation of all or part of their respective EDCs' EE&C plans; and (11) cost recovery to ensure that the measures approved are financed by the same customer class that will receive the direct energy and conservation benefits. 66 Pa.C.S. § 2806.1(a).

In late 2008, the Commission invited comments from EDCs and other interested parties to develop the specific procedures required to implement Act 129. The Office of Consumer Advocate (OCA) submitted Comments on November 3, 2008, and again on December 8, 2008. The OCA also participated in a stakeholder meeting. After considering the comments it received from EDCs and other interested parties, the Commission adopted an EE&C Program Implementation Order establishing the specific standards that each EE&C Plan must meet and providing guidance on the procedures attendant to those Plans. See, Energy Efficiency and Conservation Program, Docket No. M-2008-2069887 (Order entered January 16, 2009)(Implementation Order).

In the Implementation Order, the Commission called for the publication of the Plans in the *Pennsylvania Bulletin* and allowed for the filing of Comments on the Plan. The Commission also directed evidentiary and public input hearings be held for each EE&C plan so that recommendations for improving the plans could be submitted by the statutory advocates and the public. See Implementation Order at 8. Further, the Commission established a specific litigation schedules to meet Act 129's requirement that it rule on each EDC's EE&C plan within 120 days of submission, and provisions were established for the re-submission of rejected EE&C plans.[1] Id.; See also, 66 Pa.C.S. § 2806.1(e)(2). Also in its Implementation Order, the Commission encouraged each EDC to conduct a collaborative process during the development of its Plan to receive input from various stakeholders. As discussed more below, the OCA actively participated in the Allegheny Power stakeholder process. Also pursuant to the Order, each EDC was required to submit its consumption forecast with the Commission by February 9, 2009; the Commission approved the forecasts submitted by the EDCs in its Order entered March 30, 2009. Energy Consumption and Peak Demand Reduction Targets, Docket No. M-2008-2069887 (Ordered entered March 30, 2009).

Consistent with its Implementation Order, on May 7, 2009, the Commission issued a Secretarial Letter, which provided EDCs with an EE&C plan template to be used by the EDCs in

[1] Based on the established consideration period of 120 days, the schedule was broken down as follows: (1) each EE&C Plan is assigned to an Administrative Law Judge (ALJ), who will establish discovery, public input hearing schedule and evidentiary hearing schedules, but all hearings must be completed by September 3, 2009; (2) all briefs are due by September 14, 2009; (3) each EDCs' reply brief and/or revised plan is due by September 24, 2009; and (4) the Commission will issue is decision regarding each EDC plan by October 29, 2009. See, Implementation Order at 12. The Commission extended the opportunity to file reply briefs to all parties by Order entered June 2, 2009, at Docket No. M-2008-2069887.

preparing and filing their EE&C plans with the Commission. In the interim, various parties filed for Clarification and Reconsideration of the Implementation Order. The Commission adopted its Reconsideration Order on May 28, 2009. Energy Efficiency and Conservation Program, Docket No. M-2008-2069887 (Reconsideration Order entered June 2, 2009). On May 28, 2009, the Commission adopted Standards for the Participation of Demand Side Management Resources in an updated Technical Reference Manual (TRM). Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources - Technical Reference Manual Update, Docket No. M-00051865 (Order entered June 1, 2009). The TRM establishes the resource savings from standard energy efficiency measures that each EDC will use to calculate the amount saved by each program in its Plan. Id. at Annex pg. 1.

The Commission also invited comments from EDCs and interested parties in developing a Total Resource Cost (TRC) test. Act 129 specifically requires each EDC to demonstrate, *inter alia*, that its EE&C plan is cost-effective using a TRC test and that its plan provides a diverse cross-section of alternatives for customers of all rate classes. See, 66 Pa.C.S. § 2806.1(b)(1)(i)(I).[2] After receiving comments from interested parties on the matter, including the OCA, the Commission adopted a TRC test at Docket No. M-2009-2108601 (TRC Test) on June 18, 2009. Implementation of Act 129 of 2008 - Total Resource Cost (TRC) Test, Docket No. M-2009-2108601 (Order entered June 23, 2009).

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2 A TRC test is defined as follows:

> [A]standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures.

66 Pa.C.S. § 2806.1(m).

Allegheny Power conducted stakeholder meetings throughout its service territory to inform the stakeholders about the Plan development. The OCA was able to attend several of the stakeholder meetings.

II. PROCEDURAL HISTORY

On July 1, 2009, Allegheny Power Company (Allegheny Power or the Company) filed its Petition and Energy Efficiency and Conservation (EE&C) Plan. On July 7, 2009, the Office of Consumer Advocate (OCA) filed its Notice of Intervention and Public Statement. On July 8, 2009, the Office of Trial Staff (OTS) filed its Notice of Appearance. On July 10, 2009, the Office of Small Business Advocate filed a Notice of Intervention and UGI Corporation (UGI) filed a Petition to Intervene. On July 15, 2009, West Penn Power Industrial Intervenors (WPPII) filed a Petition to Intervene. On July 16, 2009, the Department of Environmental Protection (DEP) filed a Petition to Intervene. On July 24, 2009 Pennsylvania Association of Community Organizations for Reform Now (ACORN) filed a Petition to Intervene. On July 27, 2009, ClearChoice Energy (ClearChoice), Columbia Gas of Pennsylvania, Inc. (Columbia), and Field Diagnostic Services, Inc (FDSI) each filed a Petition to Intervene. On July 28, 2009, Direct Energy Business, LLC (Direct Energy) and The Pennsylvania State University (Penn State) filed Petition to Intervene.

The matter was assigned to the Office of Administrative Law Judge and was further assigned to Administrative Law Judge Katrina L. Dunderdale. A prehearing conference was held on July 28, 2009, at which time a procedural schedule was established.

The OCA retained Geoffrey C. Crandall who, pursuant to the scheduled adopted by the ALJ, submitted written Direct Testimony on August 7, 2009. On that date, the OCA also filed

Comments with Secretary McNulty.[3] Pursuant to ALJ Dunderdale's Prehearing Conference Order, evidentiary hearings were held on August 19, 2009 at which time the OCA, by stipulation, entered the testimony of Mr. Crandall into the record as OCA Statement No. 1 (including Exhibits GCC-1 through GCC-3). During the course of the hearings, the OCA also moved into the record OCA Cross Examination Exhibit No. 1. The OCA submits this Main Brief in accordance with the schedule established by ALJ Dunderdale.

The OCA has significant concerns regarding the Company's Plan regarding its proposed heavy reliance on advanced metering and related rate option programs to achieve the energy efficiency and peak demand reductions required by the Act. The OCA submits that the heavy reliance on an aggressive deployment of advanced metering, and failure to consider the cost of such deployment, results in the Allegheny Power Plan being inconsistent with the requirements of Act 129. The OCA's position and concerns are detailed below.

III. DESCRIPTION OF EDC PLAN

On July 1, 2009, Allegheny Power Company filed its Energy Efficiency and Conservation (EE&C) Plan with the Commission. The proposed EE&C Plan consists of 22 voluntary programs for residential, low-income, commercial, industrial, and governmental/non-profit customers and describes a portfolio of energy efficiency, conservation, demand response and rate options. Allegheny Power Plan, Table 4, 38-39. These 22 programs are designed to meet the goals established by Sections 2806.1 and 2806.2 of Act 129.

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3 Geoffrey C. Crandall is a principal and Vice President of MSB Energy Associates, Inc. Mr. Crandall has over 35 years of experience in utility regulatory issues, including energy efficiency, conservation and load management resources program design and implementation, resource planning, restructuring, mergers, fuel purchase power and gas cost recovery and planning analysis, and related issues. Mr. Crandall has previously provided testimony to more than a dozen different public utility regulatory bodies in the United States and before the United States Congress on several occasions. OCA St. 1 at 2-3; see also, OCA St. 1 at Exh. GCC-1for Mr. Crandall's curriculum vitae.

For residential customers, Allegheny Power proposes to offer the following programs: (1) Residential Energy Star and High Efficiency Appliance Program; (2) Compact Fluorescent Lighting (CFL) Rewards Program; (3) Residential HVAC Efficiency Program; (4) Residential Home Performance Program; (5) Residential Low-Income Home Performance Check-up Audit and Appliance Replacement Program; (6) Residential Low-Income Joint Utility Usage Management Program; (7) Residential Low-Income Room Air Conditioner Replacement Measure; and (8) Programmable Thermostat Program. Allegheny Power Plan, Table 4, at 38. The Company also has proposed several new residential rates including: (1) Residential Efficiency Rewards Rate; (2) Pay Ahead Service Rate; (3) Critical Peak Rebate Rate; (4) Time of Use with Critical Peak Pricing Rate; and (5) Hourly Pricing Option Rate. Allegheny Power Plan, Table 4, at 38. Allegheny Power requests that the Commission approve all of these programs, along with the proposed rate options that are dependent upon its Smart Meter Implementation Plan, as an integrated portfolio designed to meet Act 129 energy efficiency and conservation goals in the Company's service territory.

Allegheny Power states that its programs are designed to provide customer benefits while also meeting the energy saving and peak load reduction goals set forth in the Act within the designated expenditure cap of two percent (2%) of 2006 annual revenues for each year of the four year plan. The total budget for four years equates to approximately $94.25 million. Specifically, Allegheny Power's Plan includes measures and programs to achieve the Company's calculated electricity consumption and peak load reduction targets of: a) 1% energy savings by 2011, which is 209,387 MWh; b) 3% energy savings by 2013, which is 628,160 MWh; and c) peak load reduction of 4.5% by 2013, which is 160 MW. Allegheny Power Plan at 28, Table 2; Allegheny Power St. 2 at 7.

The Company also proposes to implement an Act 129 Energy Conservation Surcharge to be applied, on a non-bypassable basis, to charges for electricity supplied to customers who receive distribution service from the Company. The Energy Conservation Surcharge is to be computed separately for residential, small commercial, large commercial and industrial classes. Allegheny Power St. 2 at 6-7. The rates for some of the larger rate schedules are as follows:

Rate Class	EE&C Surcharge Rate per kWh Post-tax	Rate per kW/kVA
Residential Schedule 10	$0.000222	--
Commercial Schedule 20	$0.00112	--
Commercial Schedule 22	$0.00099	--
Commercial Schedule 30 (small)	$0.00071	$0.34
Commercial Schedule 30 (large)	$0.00050	$0.25
Schedule 40	$0.00017	$0.13

Source: Allegheny Power Plan at 185-186.

Allegheny Power proposes that the EE&C surcharge be placed on the customer bill as a separately stated line item and applied to the monthly bill of each customer receiving distribution service from the Company. The Company proposes to levelize its cost recovery over 43 months. The EE&C surcharge will be reconciled on an annual basis for under-and over-collections of the levelized amount experienced during the previous year. The Company has reserved the right to make "mid-course" corrections in both the Plan and the cost recovery if there are major changes in the Plan.

IV. SUMMARY OF ARGUMENT

The OCA retained an expert witness to assist the Office in its review of each EDC's Final Plan. As to Allegheny Power's Plan, the OCA entered into the record on August 20, 2009 the

Direct Testimony of Geoffrey C. Crandall of MSB Energy Associates, Inc. The following is a summary of the OCA's conclusions and recommendations:

Overall Plan Assessment and Compliance with the Requirements of the Act:

- The EE&C Plan is not reasonably designed to meet the requirements for energy efficiency and demand reduction set forth in Act 129 due to its over-reliance on an aggressive deployment of Smart Meter technology to meet the goals; the failure to include the full costs of the Smart Meter deployment in the 2% spending cap; and the use of a program that is not primarily directed to energy efficiency.

- The EE&C Plan is designed to meet the requirements in Section 2806.1(b)(1)(i)(B) for savings within the government/non-profit sector.

- The EE&C Plan may fall short of the requirements in Section 2806.1(b)(1)(i)(G) for programs and savings for low-income customers.

- The EE&C Plan is designed to provide a variety of programs to all customer classes and provides the measures equitably as specified in Section 2806.1(a)(1)(5).

- The EE&C Plan as a whole cannot be found to meet the benefit/cost ratio of the Total Resource Cost Test as set forth by the Commission because the Company's TRC calculation did not include the full cost of the rate option programs.

- The EE&C Plan needs to be substantially revised before it can be found to meet the requirements of Act 129.

Program Design:

- The use of rate options dependent upon aggressive Smart Meter deployment is not reasonable for this Plan. The proposed expenditures for these programs should be redeployed to other energy efficiency and demand response measures such as direct load control, other efficiency programs and other rate options that can be achieved in the near term within the existing meter infrastructure.

- The Pay Ahead Service Rate should be rejected for residential customers.

- Additional high efficiency LED lighting technologies should be included in the EE&C Plan.

- Special emphasis should be placed on consumer education specifically targeting high consumption plasma TV's, phantom load, and entertainment systems in the implementation of the EE&C Plan.

On-Going Stakeholder Process And Plan Adjustment Process:

- An on-going stakeholder process with quarterly meetings, reports on the progress of implementation of the Plan and a two-way dialogue among a broad and diverse group of stakeholders should be an integral part of the Plan approval.

Cost Recovery

- The Company's proposal to recover the costs of the EE&C Plan on a levelized basis over 43 months, without interest, should be approved.
- The annual PUC assessment costs must be removed from the proposed EE&C surcharge.
- The Company's proposal to include a separate line item on the customer bill for the EE&C surcharge should be rejected. The EE&C surcharge should be rolled into the non-bypassable distribution rates.
- The Company should be required to bid any qualifying energy efficiency and demand response measures into the PJM RPM auctions and credit customers with any benefits received through the cost recovery mechanism.

Evaluation, Measurement and Verification Process:

- Contractors hired by Allegheny Power to perform evaluation, measurement and verification should have the necessary autonomy to offer independent, professional opinions related to the results of the EE&C Plan programs implemented by Allegheny Power.
- The Company should implement the proper accounting methodology, categorization and tracking of costs to ensure accurate accounting and tracking.

These issues will be discussed below.

V. ARGUMENT

A. Act 129 Conservation and Demand Reduction Requirements

Under Act 129, Allegheny Power's Plan must be designed to reduce energy demand and consumption within each EDC's service territory. 66 Pa.C.S. § 2806.1(a). OCA witness Crandall testified that the Company's Plan will not meet all of its targets within the spending limits based upon its Plan design. OCA St. 1 at 6, 10. OCA witness Crandall also testified that the Plan design could compromise the Company's ability to achieve the required reductions in the timeframe required. Id. The specific requirements of Act 129 are discussed below.

1. Overall Conservation Requirements

Under the requirements of Act 129, Allegheny Power must achieve energy savings of 628,160 MWh and peak demand reductions of 160 MW by May 31, 2013. See, Allegheny Power Plan at 28, Table 2; Allegheny Power St. 2 at 7; See also, Energy Consumption and Peak Demand Reduction Targets, Docket No. M-2008-2069887.

a. 2011 Requirements

Allegheny Power must reduce electric consumption by at least 1% of its expected load by May 31, 2011, adjusted for weather and extraordinary loads. 66 Pa.C.S. § 2806.1(c)(1). For Allegheny Power, 1% of the baseline usage forecast for the period from June 1, 2009 to May 31, 2010 is 209,387 MWh. Allegheny Power Plan at 28, Table 2; Allegheny Power St. 2 at 7. While the filed Plan purports to show achievement of this requirement, as discussed in Section 6(a)(i) below, Allegheny Power's Plan heavily relies on accelerated deployment of Advanced Meter Infrastructure (AMI) and its Smart Meter Plan for achieving the consumption and demand reduction targets. The OCA submits that this heavy reliance on AMI and AMI-dependent programs is flawed and as discussed more fully below, may prevent the Company from achieving its energy consumption reduction targets.

b. 2013 Requirement

Allegheny Power must also reduce its total energy consumption by 3% by May 31, 2103. 66 Pa.C.S. § 2806.1(c)(2). This 3% of the baseline usage forecast for the period from June 1, 2009 to May 31, 2010 equals 628,160 MWh. Allegheny Power Plan at 28, Table 2; Allegheny Power St. 2 at 7. While the filed Plan also alleges to show achievement of this requirement, as discussed in Section 6(a)(i) below, Allegheny Power's Plan heavily relies on Advanced Meter Infrastructure (AMI) and its Smart Meter Plan for achieving the consumption and demand reduction targets. The OCA submits that this heavy reliance on AMI and AMI-dependent programs is flawed and, as discussed more fully below, may prevent the Company from achieving its 2013 energy consumption reduction targets.

2. Overall Peak Demand Reduction Requirements

Under Act 129, Allegheny Power must reduce peak electricity demand by a minimum of 4.5% of its annual system peak demand for the 100 hours of highest demand by May 31, 2013, as measured against the EDC's peak demand during the period from June 1, 2007 through May 31, 2008. 66 Pa.C.S. § 2806.1(d)(1). Allegheny Power's Act 129 demand reduction goal is 160 MW. Energy Consumption and Peak Demand Reduction Targets, Docket No. M-2008-2069887 (Order entered March 30, 2009). While the filed Plan also alleges achievement of this requirement, as discussed in Section 6(a)(i) below, Allegheny Power's Plan heavily relies on Advanced Meter Infrastructure (AMI) and its Smart Meter Plan for achieving the consumption and demand reduction targets. The OCA submits that this heavy reliance on AMI and AMI-dependent programs is flawed and, as discussed more fully below, may prevent the Company from achieving its demand reduction targets.

3. Requirements for a Variety of Programs Equitably Distributed

The Act requires that the EE&C Plan include a variety of measures and that those measures be provided equitably to all customer classes. 66 Pa.C.S. § 2806.1(a)(5). The Company's Plan contains twenty-two (22) different programs distributed across all of its customer classes. The Company has provided at least one energy efficiency and one demand response program for each class in accordance with the Commission's Implementation Order and, in fact, offers multiple programs for each customer class. EE&C Plan at 33-34.

While determining reasonableness or equity can be subjective, the OCA reviewed the required Budget and Parity Analysis found in Table 5 of Allegheny Power's EE&C Plan, the information shown in the charts below, and other information presented by OCA witness Crandall when evaluating whether the Plan achieved a reasonable and equitable balance. Allegheny Power Plan, Table 5, at 40. The OCA also considered the specific requirements of the Act for low-income customers, government/non-profit sector and the need for the Plan to be cost-effective under the Total Resource Cost test.

Some of the information considered by the OCA and its experts included:

CHART 1

Customer Class	2006 Revenue	Percent of Total Customer Revenue	Budget	Percent of Total Budget
Residential	$494,664,993	42%	$53,722,623	57%
C&I Small	$293,832,582	25%	$19,460,085	21%
C&I Large	$382,115,769	32%	$15,465,105	16%
Governmental/ Non-Profit			$5,602,059	6%
Street Lighting	$7,516,761	1%		
Total	$1,178,130,105		$94,249,873	

Source: Allegheny Power Plan at 40, 177-178.

CHART 2

Customer Class	Energy Usage Forecast MWh	Percentage of Consumption Total	MWh Saved Through 2012	Percentage of Total MWh Saved Goal Through 2012
Residential	7,231,347	35%	282,249	44.93%
Sm. C&I	5,097,326	24%	222,734	35.46%
Large C&I	8,557,651	41%	76,878	12.24%
Street Lighting	52,326	0%		
Gov't/Non-Profit			63,997	10.19%
Total	20,938,650		645,859	
Commission Goal			628,160	

Source: Allegheny Power Plan at 36, 177.

When these charts are reviewed and other information is reviewed -- considering the other requirements of the Act for particular customer segments, budgetary constraints and the need for the Plan to pass the TRC -- the OCA submits that Allegheny Power's EE&C Plan is designed to provide a variety of programs to all customer classes and provides the measures equitably to all customer classes as specified in Section 2806.1(a)(1)(5).

4. <u>10% Government/Non-Profit Requirement</u>

Section 2806.1(b)(1)(i)(B) establishes a specific requirement for achieving reductions from the government/non-profit/school sector. The section provides:

> (B) A minimum of 10% of the required reductions in consumption under subsections (c) and (d) shall be obtained from units of Federal, State and local government, including municipalities, school districts, institutions of higher education and nonprofit entities.

66 Pa.C.S. § 2806.1(b)(1)(i)(B). Allegheny Power's expected compliance with this requirement is set forth in Table 2 on page 28 of the Company's EE&C Plan. Table 2 shows that the

Company expects to realize 63,997 MWh from the government/non-profit sector. This is about 10.2% of required reduction of 628, 160 MWh. Allegheny Power Plan, Table 2, at 28. The OCA submits that the Company's Plan meets the specific requirements of Section 2806.1(b)(1)(i)(B).

5. Low Income Program Requirements

Section 2806.1(b)(i)(G) establishes a requirement for specific energy efficiency measures for low-income households. Section 2806.1(b)(1)(i)(G) reads, in pertinent part:

> (G) The plan shall include specific energy efficiency measures for households at or below 150% of the Federal Poverty income guidelines. The number of measures shall be proportionate to those households' share of the total energy usage in the service territory.

66 Pa.C.S. § 2806.1(b)(1)(i)(G). The OCA submits that the General Assembly sought to establish a set aside for low-income customers through this language to ensure that low-income customers received the benefits that energy efficiency can bring to a customer. This becomes even more pressing in light of the Commission's conclusion in its Implementation Order that all customers should be required to pay the costs associated with Act 129, including low-income customers. Implementation Order at 37.

The language of the Act uses the terms "measures" within the Section but also refers to "in proportion to usage." The OCA submits that the most effective way to implement this Section is to require each EDC to ensure that a specific percentage of the overall savings to be achieved from the Plan is realized through programs and measures directed to the low-income customer segment. This approach would parallel the set aside approach for the government/non-profit sector. 66 Pa.C.S. § 2806.1(b)(1)(i)(B).

The OCA questions whether Allegheny Power's Plan meets the requirements of Section 2806.1(b)(1)(i)(G). The Direct Testimony of ACORN witness Ian Phillips also raised this concern. ACORN witness Ian Phillips testified that Allegheny's Plan provides insufficient information to determine whether households with incomes at or below 150% of the FPL have been properly targeted; whether the Company can reasonably expect that low income customers will obtain a share of the residential energy savings proportionate to low income households' share of total energy usage; and whether the low income programs' budgets reasonably can be expected to secure the necessary energy savings for low-income customers. ACORN Direct Testimony at 4.

ACORN witness Phillips recommended the following methodology for determining the necessary proportion of low income savings:

> First, determine the number of low income households in the service territory by referring to the latest United States census information and sampling. Then, multiply the number of low income households by the average annual energy usage of a residential household (the average annual energy usage of a household in the Customer Assistance Program may also be an appropriate multiplier.) Third, determine the overall energy usage in the service territory. Fourth, divide the low income household usage by the total usage to determine the proportion of low income households' usage in the service territory. Finally, that resulting proportion will provide the percentage target of residential energy savings that must accrue to low income households.

ACORN Direct Testimony at 20. The OCA submits that ACORN's proposed methodology for calculating the proportion of energy savings that the Company must obtain from low-income customers under Section 2806.1(b)(1)(i)(G) is reasonable and appropriate. Importantly, the methodology set forth by ACORN witness Phillips seeks to capture all low-income customer usage.

The Company calculated the proportion for the low-income program share in two ways. First, the Company culled from the Company's billing system the "confirmed or stated" low-income customers. Company witness Miller testified that under this methodology, Allegheny Power counted the number of low-income customers in its billing system who were universal service participants, received payment agreements or received low-income grants such as LIHEAP. Tr. 153-154; see also, Allegheny Power St. 2-R at 27, 29. The Company identified 39,140 confirmed or stated low-income customers through this process. Allegheny Power St. 2-R at 27, 29. Mr. Miller acknowledged on cross-examination that this methodology does not capture all low-income customers in its service territory since many low-income customers do not participate in these programs. Tr. 153. The Company then performed a second estimate of the number of low-income customer using census data. This is the methodology recommended by ACORN witness Phillips and supported by the OCA. The Company identified approximately 90,000 low-income customers through reviewing the census data for Allegheny Power's service territory. Allegheny Power St. 2-R at 29.

Allegheny then applied its average residential usage to the number of low-income customers it had estimated to determine the low-income usage on its system. OCA Cross Exam. Exh. 1, Question No. 3. Allegheny Power performed this calculation for the 39,140 low-income customer estimate and the 90,000 customer estimate. The low-income usage results were then compared to total system usage to develop a percentage which is the proportion of low-income usage to the total system usage referenced in Section 2806.1(b)(1)(i)(G).

Allegheny Power identified a range of 2.1 percent (confirmed low-income customers) to 4.8 percent (census data low-income customers) as the proportion of the low-income usage to the total system usage. Allegheny Power's Plan states that 2.7 percent of the Company's projected savings, or 2.8 percent of the Commission's identified goal, are targeted to be achieved by the low-income programs.[4] Allegheny Power St. 2-R at 29; See also, Allegheny Power Plan, Table 2, at 28; Tr. 155-156. The OCA submits, however, that the Company Plan should seek to achieve 4.8% of its savings from low-income customer programs. The 4.8%, based on census data, is a more accurate estimate of all households at or below 150% of the Federal Poverty Level in Allegheny Power's service territory. As Company witness Miller states in his Reply Testimony, "[b]ased on low-income program statistics, typically 30% of eligible customer will participate in programs and bill assistance." Allegheny Power St. 2-R at 29. Therefore, the Company's reliance upon the number of "confirmed" low-income customers in its billing system and low-income programs will exclude a significant number of low-income customers. This is particularly demonstrated by the 50,000 low-income customer difference between the Company's number of confirmed low-income customers (39,140) and the number of low-income customers according to the census data (90,000). See, Id.

Based on the August 7, 2009 Direct Testimony of ACORN witness Phillips and OCA Cross-Examination Exhibit 1, Nos. 2 and 3, the OCA submits that the Company has not shown that it has met its low income program requirements. The OCA submits that the Company should be required to increase the savings that are obtained from the low-income sector to about 4.8% and provide further information to the Commission and stakeholders as to how it will achieve this requirement.

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4 Company witness Miller stated in cross-examination that the Company's Plan projects that it will exceed its Commission identified goal for total program savings. Tr. at 155.

6. Issues Relating to Individual Conservation and Demand Reduction Programs.

a. Residential

The OCA has significant concerns with the over-reliance in the Plan on aggressive Smart Meter deployment to achieve the energy efficiency and demand reductions necessary under the Act. The Plan, as proposed, raises significant issues as to whether the requirements of the Act can be achieved, and if so, whether they will be achieved within the spending cap and cost-effectiveness requirements of the Act.

i. The Company's Reliance on Advanced Meter Infrastructure/Smart Meter Plan For Achieving The Consumption And Demand Reduction Targets Cannot Be Supported.

a) Introduction

The Company proposes to achieve consumption savings and demand reductions from a number of rate option programs that depend on an aggressive deployment of AMI/Smart Meters for operation. The programs include the Residential Efficiency Rewards, Programmable Controllable Thermostat Program, Pay Ahead (Smart) Service Rate, Customer Load Response Program, Critical Peak Rebate Rate, Time of Use Rate With Critical Peak Pricing Rate, Distributed Generation Program, Contracted Demand Response and the Hourly Pricing Option Rate. Allegheny Power St. 2 at 9-10; Allegheny Power St. 4-R at 4-5. OCA witness Crandall estimates that these programs collectively are expected to provide approximately 50% of the peak demand reductions and 3.9% of the Company's total energy savings of the Plan. OCA St. 1 at 6-7.

The reliance on aggressive Smart Meter deployment to meet the goals of the Act as provided in the Company's Plan is flawed for several reasons. First, the Company has not included the full costs of these programs in either its Total Resource Cost (TRC) test or in its expenditure budgets. Importantly, even prior to adding the meter deployment costs, Allegheny Power's budgeted expenditures are already at the 2% spending limitation. When the full cost of these metering programs is included, the Company's Plan will far exceed the 2% spending limitation required by the Act. OCA St. 1 at 10. Moreover, when the cost of the meter deployment is included in the TRC, it is not at all clear that the Plan will meet the cost-effectiveness screen.

Second, deployment of Smart Meters will be a massive undertaking and has been projected by Allegheny Power to require a capital outlay of $548 million. Tr. 159.[5] Such a deployment requires technical analysis, cost/benefit analysis, technology selection, field testing, meter calibration and the like, all of which can take significant time. Tr. 189-190. Allegheny Power acknowledged on cross-examination that it has not even selected a meter technology. Tr. 189. The Commission's Smart Meter Implementation Order does not contemplate a decision on the Smart Meter Deployment Plans until Spring of 2010. Yet, as Allegheny acknowledged, the meters must be deployed, tested and operational before it can enroll even one customer into a program. Allegheny Power, though, must reach its first reduction goal by May 31, 2011, only about a year after Commission approval of any deployment Plan. This alone raises significant questions as to whether Allegheny Power can meet the 2011 requirements.

While the OCA supports the use of rate options that can be implemented within the existing infrastructure and within the 2% spending limitation to meet the energy efficiency and demand reduction goals of the Act, this is not the approach taken by Allegheny Power. OCA witness Crandall explained the problem with Allegheny's approach and his recommendation:

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[5] Allegheny Power witness Edward Miller confirmed on the record at the evidentiary hearing that Allegheny Power's Smart Meter filing requests $548 million for implementation of its proposed AMI plan.

> AP should include the AMI rate and related portions of the EE&C Plan as part of its AMI/Smart Meter related filing that it is now preparing. There are many complex, public policy issues and potentially capital intensive issues that the Commission will be reviewing in conjunction with the AMI, Smart Meter technology application. In this EE&C plan application AP has identified many issues such as: the merits of dismantling the existing (legacy) customer billing system, customer management system changes, customer information system modifications, deploying AMI on a piecemeal basis or on a 100% basis, impacts on meter reading, the elimination of estimated bills, development of more accurate and timely customer bills, identification of outages, dispatching service crews more efficiently, restoring customer service more expeditiously, improving tamper detection, reducing electricity theft, improvements to distribution reliability, voltage stability, impact of these technologies on vulnerable customers, more expeditious disconnections and service restorations, etc. These issues are not primarily energy efficiency or demand reduction related activities but are more related to customer billing rules, regulations, billing systems and operations efficiency. I believe there could be significant risk to the health and safety of senior citizen/low income customers (e.g., keeping track of these accounts) resulting from changes that have been briefly described in this application regarding billing systems, metering, rate offerings, etc.
>
> Because of that risk I believe these issues must be thoroughly and carefully considered in the proper forum before being approved by the Commission. AMI, Smart Meters, customer billing rules, regulations and related issues are not appropriately considered in this docket. These issues should be removed from the EE&C plan and dealt with in the AMI/Smart Meter docket that is expected to be filed shortly by AP. Act 129 established such a forum for specific consideration of these issues. These issues are well beyond the scope of this proceeding.

OCA St. 1 at 15-16.

The OCA submits that Allegheny Power's heavy reliance on advanced meter deployment to achieve savings and demand reductions should not be approved. The Company should be required to redirect the funding for Smart Meter dependent programs to other energy efficiency and demand reduction programs.

b) <u>Conflict Of AMI And Act 129 Goals</u>

Allegheny Power states that it proposed a Plan dependent upon Smart Meter deployment because Smart Meter deployment is also a part of Act 129. OCA witness Crandall describes the conflict between Allegheny Power's proposal and the different provisions of Act 129. Mr. Crandall testified:

> On page 9 of its Application, AP states that "a symmetrical implementation if its EE&C plan and its Smart Meter Plans is the most effective and economical method to achieve the EE&C goals and Smart Meter goals." In my reading of Act 129, though, there are two different time frames and two different processes related to the development of the Energy Efficiency and Conservation Plans and the Smart Meter Technology Procurement and Installation Plan. The EE&C Plan was to be filed first on July 1 and the Commission was provided a very tight time frame to review the Plans. The Smart Meter Technology Procurement and Installation Plan was not to be filed until August and there is no specified time frame for Commission review. The Act also appears to contemplate a deployment schedule for the smart meters over a long period of time, including a depreciation schedule not to exceed 15 years. Early deployment of smart meters would be provided ***upon request from a customer*** (emphasis added) that agrees to pay the cost of the smart meter at the time of the request. The Act also contemplates that rate filings for time of use rate options will be made in 2010, well after approval of the EE&C Plans by the Commission. AP does recognize these points when it indicates that it intends to file a Smart Meter Implementation Plan in August 2009 and rate filing in 2010.

OCA St. 1 at 7-8. As can be seen, while both energy efficiency and Smart Meter deployment are part of Act 129, the purpose of EE&C Plans was to quickly enter into energy efficiency and demand response to provide immediate impacts. The Smart Meter provisions would then allow for Smart Meter deployment and the development of further rate initiatives to build on the energy efficiency and demand response already being achieved. The Company's proposal to merge these initiatives is not required by the Act nor is it reasonable in the manner that Allegheny Power has proposed.

c) Reliance On Smart Meter Deployment Is Not A Reasonable Strategy.

Allegheny Power has proposed nine programs that it asserts are dependent upon substantial Smart Meter deployment. These programs represent about 4% of the energy savings under the Plan and 50% of the peak demand reductions. OCA St. 1 at 7; Allegheny Power St. 2-R at 3. Allegheny Power designed its Plan in this manner despite the significant challenges and uncertainties with this approach. Allegheny Power also designed its Plan in this manner without knowing, or accounting for, the full costs of such an approach. The OCA submits that Allegheny Power's approach is not reasonable and cannot be found to meet the requirements of the Act.

Allegheny Power witness Cohen's testimony acknowledges that the Company will be significantly challenged by its reliance on Smart Meter deployment. Allegheny Power witness Cohen testified:

> [a] significant challenge to Allegheny Power in implementing AMI is the scale of financial investment required to deploy enabling technologies during an economic downturn. I note that the deployment of advanced meters and other enabling technologies requires very significant outlays of capital on the part of utilities. AMI involves changing out 100 percent of residential and small commercial meters, replacing them with more expensive meters, installing a system-wide communication network, developing a new meter data management system and rewriting software and business operation protocols to make optimal use of the new data and operational capabilities.

Allegheny Power St. 4 at 10. Mr. Cohen also acknowledges that the deployment of Smart Metering technology infrastructure will take time for design, field testing and calibration to work out the "bugs" of the Smart Meter system. As Mr. Cohen testified, "once the technology is selected, it goes through a series of field trials to make that it's functioning properly." Tr. 189-190. The Company, however, has not even selected a meter technology or initiated these many efforts, yet the Company designed its Plan to rely heavily on this challenging and uncertain undertaking. The OCA submits that Allegheny Power's approach provides no assurance that it can achieve the statutory goals.

Equally important, the OCA submits that based on the information presented, the Commission cannot determine whether Allegheny's Plan passes the TRC or stays within the 2% spending limit. The Company has not included any costs associated with the AMI in either its TRC analysis or its program budgets. As to the TRC, the OCA submits that without inclusion of the AMI costs for the nine rate option programs in the TRC analysis, it is impossible to properly conduct a TRC test on the programs or the Plan. OCA witness Crandall testified:

> These programs cannot properly be considered for cost-effectiveness nor can the entirety of the Plan. I do not see a basis upon which these programs can be included in the EE&C plan as proposed by AP if they are dependent upon smart meter deployment by the Company as they have stated. To do so, would be based on incomplete and erroneous information.

OCA St. 1 at 9-10.

The OCA submits that the impact of ignoring these costs in the TRC could be significant. The AMI Infrastructure costs have recently been estimated by Allegheny Power to be $548 million, while the total net lifetime benefit of the Plan is about $400 million. Tr. 161; Allegheny Power Plan, Table 1, at 27. Changing the TRC for nine of the Company's proposed twenty-two programs could impact the overall TRC of 4.1 and compromise the cost-effectiveness of the Plan.

Additionally, the OCA submits that the Plan cannot be found to be within the 2% spending limit. The Company did not include any costs of Smart Meter deployment as part of its Plan. The Plan is already at the statutory 2% spending cap. When costs associated with the advanced meter deployment are included in the Plan, it will far exceed the 2% spending limit. The General Assembly was clear that the total cost of any plan is not to exceed the 2% limit.

With Allegheny Power's Plan already at the 2% limit without accounting for the cost of Smart Meter deployment necessary to implement the nine rate option programs, the cost of the Plan will exceed the 2% spending limit when these meter costs are properly accounted for in the Plan.[6]

e) Conclusion

The OCA submits that the Company's Plan as filed with its reliance on Smart Meter deployment for energy savings and demand reduction cannot be found to meet the requirements of the Act. At this time, the OCA submits that the Commission should direct Allegheny Power to consider rate options or other programs that Allegheny Power could offer within its existing meter structure. Such options should include consideration of residential Direct Load Control for demand reduction purposes. If the Company can show that some of its rate options can be deployed within the budget limitation and TRC requirements of the Act, some of these program could go forward on a limited basis. OCA St. 1 at 10.

In general, though, the OCA submits that the funds that have been directed toward the Smart Meter rate options should be redeployed to other cost-effective energy efficiency programs and other rate options that can be achieved in the near term within the existing meter infrastructure.

ii. The Pay Ahead Smart Service Rate Should Not Be Approved Under Any Circumstances.

The Company has proposed a Pay Ahead (Smart) Service Rate as part of its filing. Under this program, the residential customer would make a pre-payment for a specified dollar amount

6 On cross-examination, Allegheny Power witness Cohen stated that customers who seek to enter the programs before deployment of the meter to their home would be entered into the program with the cost of such early deployment being included in the Smart Meter cost recovery and not charged to the customer. Tr. at 190-191. Act 129 provides that such early requests are to be at the expense of the requesting customer. 66 Pa.C.S. § 2807(f)(2). This provision highlights another complication with Allegheny Power's Plan.

of energy usage.[7] The customer would use an associated in-home display which would show the customer consumption relative to the prepaid account balance. Under this program, the customer's service would not be automatically disconnected when the pre-payment amount is reached. The program would be targeted to customers with high consumption levels, college students or landlord accounts. See, Allegheny Power Plan at 74; OCA St. 1 at 11; Tr. at 192-193. The OCA submits that this program should not be approved.

The question of pre-paid service, whether voluntary or not, raises significant public policy concerns that cannot be addressed in the context of this proceeding. Importantly, the use of pre-paid service as an energy efficiency measure has not been demonstrated to be effective or supported in any way. See, OCA St. 1 at 11. The Company's own testimony shows that this service is more of a billing management service than an energy efficiency service. In fact, it is described in the Plan as a "billing option." Allegheny Power Plan at 19. It simply has no place in an EE&C Plan.

Although offering this program, the Company has not addressed the requirements of 52 Pa. Code § 56.17 regarding the specific requirements of a prepayment program for residential customers. The Company states that it would not plan to terminate customers or violate Chapter 56, but the Company has not expressed how the proposed program actually meets the requirements of 52 Pa. Code § 56.17. The OCA would note that the Company's proposal to offer this program to landlord accounts in particular may violate Section 56.17, which requires that service can only be "rendered to an individually-metered residential dwelling, and the ratepayer and occupants are the only individuals affected by the installation of a prepayment meter." 52 Pa. Code § 56.17(3)(iii). Additionally, the Company must ensure that the customer

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[7] The Company also proposes to offer this program to small commercial, industrial and governmental/non-profit customers. Allegheny Power Plan at 74.

is not low-income, as Section 56.17 contains specific prohibitions regarding households with incomes below 150% of the Federal Poverty Level.

In addition to the fact that the PASR program does not meet the requirements of Section 56.17, the TRC for this program also cannot be properly analyzed. The Company has not provided complete data regarding both the costs and benefits of the program. As discussed in Section 6(a)(i) above, the cost analysis for the PASR is flawed because the cost of fundamental components, the Smart Meter, the in-home display and the O&M regarding the meter, is not presented in this Plan. OCA St. 1 at 12.

The analysis regarding the proposed benefits of such a program is also flawed. OCA witness Crandall testified:

> The basis for the benefits, i.e. the energy savings for this proposed program is based on a study entitled "Residential Energy Use Behavior Change Pilot" done in April 20, 2009. That study included a review of available research supplemented with interviews in an efforts to identify activities by utilities to influence energy-use behavior. The study did not include consumer reactions and behavioral changes related to pay ahead program strategies. This study was targeted to customer behavior relative to: direct feedback programs providing real time information to customers, indirect feedback through on-line interfaces and mail to consumers and programs based on AMI and smart metering.
>
> While the study did include AMI related consumer reactions, it did not include consumer reactions to pay ahead service programs involving AMI nor did it include savings correlated to pay ahead service programs. The usefulness and transferability of this study is highly questionable and cannot be relied upon to support any level of energy or demand savings from pay ahead service.
>
> AP has failed to substantiate the proper costs or a reliable basis for the energy or demand savings for the proposed program. This proposed pay ahead approach is more in line with a special billing arrangement or payment arrangement rather than an energy efficiency and demand reduction program.

OCA St. 1 at 12-13.

Also of importance, the Company admitted that it cannot identify the "disaggregated quotient of estimated energy and demand savings by customer class and type for the PASR." Allegheny Power witness Cohen testified that:

> it is not feasible to estimate with accuracy the interest, take-up rate, saturation rate or responsiveness of Pennsylvania customers for the PASR prior to program implementation. Allegheny Power has estimated energy and demand savings for the PASR in this filing based on industry benchmark information.

Allegheny Power St. 4-R at 14. The benchmark programs relied upon by the Company were the Salt River project, the Oklahoma Electric Cooperative project and a Northern Ireland Electricity project.

The programs that the Company based its estimate on, however, do not support the claim of savings. When asked on cross-examination about the average energy savings of these other programs that were used as the Company's benchmark and whether service was shut off if the customer exceeds the prepaid amount, Mr. Cohen stated that he was "not familiar with the specific details of the programs. Specifically the administration of shutoff of service." Tr. 197. Further, he also testified that he did not examine what measures the customers took to achieve savings or whether savings were achieved from customers foregoing electric service when the prepayment amount ran out. Tr. 197-198. The OCA submits that Allegheny Power cannot support this program as an energy efficiency measure.

The Company also has not properly evaluated the potential risks to vulnerable, low-income, elderly or disabled customers from participation in such a program. While Allegheny Power witness Cohen stated that there was no evidence of concern for these customers, OCA witness Crandall specifically identified concerns with the health and safety impact of this program on vulnerable and low-income customers who sign up for this program in an attempt to save energy and money.

OCA witness Crandall testified:

> The pay ahead service rate may appear to be a desirable option for certain customers who are trying to be conscientious and pay their bills but their health or well being could be adversely affected. According to a recent study done on behalf of the National Energy Assistance Directors Association, low income households face life threatening challenges in meeting their heating and cooling bills. (See OCA Exhibit GCC-3). According to their findings in the 2008 NEADA survey (dated April 2009), 42% of LIHEAP-recipient households went without medical or dental care, 38% went without filling prescriptions or taking the full dose of a prescriptive medicine and 32% went without food for at least one day partly as a result of high energy costs (in the past five years). As can be seen this segment of the population are conscientious in trying to pay their utility bills. They may sign up for such a service to try to save money even though it would not be best suited for them.

OCA St. 1 at 13-14. Company witness Cohen attempts to discount this evidence as being limited only to the situation where the customer is faced with an inability to pay the bill. Allegheny Power St. 4-R at 10. But Company witness Cohen misunderstands the point of the evidence. The OCA submits that this population of customers identified in the NEADA survey are already the customers that are more likely to do without, or to choose options that constrain energy usage to the detriment of their welfare, in order to pay their utility bills. The PASR would essentially create a situation in which these customers may select an option against their own interest.

Similarly to the OCA assessment, Mary Bach, on behalf of AARP, testified that:

> We all know that utility service is crucial to health and personal welfare, especially for older consumers who need to have air-conditioning during the summer and heat during the winter in order to maintain their health...We are concerned that high-income and high-usage consumers might benefits from the use of AMI, while low-income and low-usage customers, which includes many seniors, especially those who in live in one or two person

> households, would pay more or worse, might not use their air conditioner when they should during hot days or their furnaces when they should during cold days...The PUC should ensure that vulnerable populations, such as low-income consumers and consumers with health problems do not suffer adverse consequences due to substantially higher electric bills when they use needed energy during peak periods.

Tr. at 57-59. The OCA submits that as demonstrated by the NEADA Study and the AARP public input testimony that low-income, elderly, and vulnerable populations can potentially be adversely affected by programs such as the proposed PASR.

This fact is particularly concerning as Company witness Cohen testified that the program may be appropriate for:

> 2) A cost conscious electric **customer on a fixed income** who wanted to pre-determine and allocate a specific economic cost for electricity and selectively increase that budget once the economic resource in that budget is exhausted. An example of the types of electric customer envisioned here might include, but would not be limited to, **a retired person, a person on disability,** a college student or a business with self-determined desire to control the variable costs of electricity.

Allegheny Power St. 4-R at 8 (emphasis added). The OCA submits that these are exactly the types of customers that would potentially be harmed by the PASR. A person on a fixed income or a retired person is more likely to fall into the category of vulnerable, elderly, or low-income than other categories of customers. Further, a person on a fixed disability income is more likely to require the use of electric-intensive equipment, and therefore, would be more likely to be harmed by such a program.

The OCA would note that other jurisdictions that have considered such programs have moved away from these programs either for technical reasons or because policy-wise they were not appropriate programs. OCA witness Crandall described in his testimony the experiences in other jurisdictions that have considered this type of service:

> It is my understanding that Woodstock Hydro, based in Woodstock, Ontario has terminated its pay ahead service program and has been unable to find a suitable smart meter to operate its pay ahead service. Their pay ahead program was reportedly terminated due to significant technical difficulties regarding the operation of a pay ahead service in conjunction with an AMI system.
>
> Also the Commission should be aware that a pay ahead program was proposed by Connecticut Light and Power Company to the Connecticut Legislature in 2009 and was not acted upon. According to an article published on July 15, 2009 in the New Haven Register, Connecticut Attorney General Blumenthal indicated "I think it would be a misguided effort in the name of energy efficiency and it seems to undercut key protections for low-income customers without any real tangible benefit.

OCA St. 1 at 14-15.

The OCA submits that, for all of the reasons identified above, the proposed Pay Ahead (Smart) Service Rate is not an appropriate component of an energy efficiency and conservation plan. This program should be removed from the Plan for residential customers.[8]

b. Commercial

The OCA has not addressed any issues related to the Commercial sector.

c. Industrial

The OCA has not addressed any issues related to the Industrial sector.

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[8] The OCA would also note that Allegheny Power witness Cohen acknowledged on cross-examination that a program with in-home displays could be developed that would allow a customer to track usage compared to a monthly budgeted amount. No pre-payment of any sum would need to occur for the customer to see how their usage compares to their budget. Tr. 195-196. A program that does not involve pre-payment, includes proper screening and proper education, may be more reasonable for consideration.

7. Proposals for Improvement of EDC Plan

a. Residential

The OCA found the bulk of the energy efficiency and demand response programs, other than the Smart Meter rate options, to be soundly designed and reasonable for achieving the goals of Act 129. The OCA does have the following suggestions to further improve the Plan:

i. The Company Should Consider Solid State Lighting Technologies.

With the emergence of solid state lighting (SSL) technologies and the promise that they hold, the OCA recommends that Allegheny Power should give more consideration to the SSL measures in the EE&C Plan. The Company only included very limited LED technology, such as exit lights and traffic lights in its Plan. OCA witness Crandall recommended that in the custom program for commercial customers and government/non-profit customers, there may be opportunities to assess and include SSL technologies and incentives to customers. OCA St. 1 at 17.

Company witness Edward Miller's Reply Testimony stated that the Plan "includes higher efficiency lighting measures including compact (CFLs), T8's LED Exit Signs and LED Traffic Signals" and has relied upon the American Council for an Energy Efficient Economy (ACEEE) Exemplary Programs and other best practice programs in the development of its portfolio. Specifically, Mr. Miller testified that:

> Allegheny Power anticipates that new lighting technologies will continue to develop and that CFLs will become the standard residential lighting option in the future. As the Company only plans to provide incentives to customers to employ high efficiency equipment and devices, the Company is planning on evaluating and modifying the Compact Fluorescent Lighting (CFL) Rewards Program (or a replacement Lighting Efficiency Program) to provide incentives for new higher efficiency lighting measures that are commercially available and economical as this transpires. At

> this time the Company anticipates that specialty and LED lighting technologies will be the likely candidates. In short, the Company has already factored SSL measures into its EE&C Plan and plans to continue to do so.

Allegheny Power St. 2-R at 8-9. The OCA recommends that the Company continue to consider ways to include SSL measures in its initiatives on a going-forward basis.

ii. The Company Should Consider An Incandescent Light Bulb Turn-In Feature And A Recycling Component To Its CFL Rewards Program.

The OCA recommends that Allegheny Power offer an incandescent light bulb turn-in program as an element of its CFL Rewards Program. The OCA proposes that this approach be available to residential, commercial, non-profit, governmental or industrial customers and could be incorporated within the existing education initiatives in the EE&C Plan. The OCA recommends that if a customer turns in two (functioning and operational) 100 watt incandescent light bulbs, they would be provided one equivalent 100 watt CFL bulb in exchange. The OCA submits that such a program would provide multiple benefits, including improving customer awareness of newer highly efficient lighting technologies, stimulating and increasing customer participation in the Company's proposed CFL rebate program, and accelerating the EISA initiatives to eliminate inefficient lighting that is currently in operation. As OCA witness Crandall testified, "[t]he sooner existing inefficient lighting stock is purged and replaced with high efficiency equipment, the sooner customers will save energy and costs and the sooner there will be less strain on the AP system." OCA St. 1 at 19-20.

In addition, the OCA also supports the DEP proposal that a statewide CFL recycling program be considered for the CFL Rewards program. DEP St. 1 at 23. The Company's current Plan does not include a recycling component. Tr. 148. As DEP witness Guttman stated, "[w]ithout a state-wide recycling program, these bulbs- and their mercury content- will invariably end up in landfills and potentially into our precious land or water resources." Id. Mr. Miller agreed that the proper disposal and recycling of CFLs is important due to the mercury contained in the CFL and stated that the Company is planning to educate customers on the proper disposal of the CFL bulbs. Tr. 149. Education on proper disposal may not be adequate if the customers do not have ready access to a recycling site. As such, the Company should further consider adding a recycling component to its CFL Rewards Program.

iii. The Company Should Expand Its Energy Education Information.

The OCA recommends that the Company specifically include in its EE&C Plan marketing and implementation public education activities, with an emphasis on energy consumption of home entertainment systems, TVs and phantom power loads. OCA St. 1 at 20-22. Company witness Edward Miller stated that:

> Allegheny Power believes that customer communications and education is very important to support customer initiatives regarding energy efficiency and conservation. Allegheny Power plans to include information regarding phantom power load, including entertainment systems and TVs, in public education activities to communicate their potential electric consumption.

Allegheny Power St. 2-R at 10. The OCA supports inclusion of this information in Allegheny Power's energy efficiency and conservation education initiatives.

b. Commercial

The OCA has not addressed any issues related to the Commercial sector.

c. Industrial

The OCA has not addressed any issues related to the Industrial sector.

B. Cost Issues

The Company's Direct Testimony sets forth Allegheny Power's proposed cost recovery mechanism for its EE&C Plan expenses. Specifically, Company witness Valdes states that an EE&C Surcharge will be implemented. Allegheny Power St. 3 at 10. The EE&C Surcharge will operate as a reconcilable recovery mechanism, and as the EE&C Plan is expected to benefit both shopping and non-shopping customers, the surcharge will be non-bypassable. Allegheny Power St. 3 at 4. The surcharge would appear as a separate line-item on the customers' bills. Id. at 10. The Company proposes to levelize its cost recovery over a period of 43 months. Id. at 11-12. The Company has not included interest as part of this levelized recovery on any over-and under-collections in its surcharge cost recovery mechanism. The Company has proposed to include a PUC assessment charge in the surcharge recovery.

In order to ensure that EE&C measures are paid for by the same customer class that receives the energy and conservation benefits of those measures, Allegheny Power proposes to directly assign the costs relating to each measure to those classes that will receive the benefits. Id. at 5. For costs related to EE&C measures that are applicable to more than one customer class, Allegheny Power proposes to allocate such common costs separately for the residential customer class and the non-residential customer classes. These common costs were then allocated to specific programs or equally shared by programs "that would have applicability to the common costs." Id. at 6.

The Company also proposes to separately calculate the applicable EE&C costs for each of four major customer classifications: (1) residential, (2) small commercial and industrial, (3) large commercial and industrial, and (4) governmental/school/non-profit. Id. at 6. These costs will vary in each program year of the EE&C Plan. In other words, in some program years, the costs may be greater than the annual 2% cost cap, while in other years, the costs may be less than the cap. Id. at 11-12. Over the four program years, the total costs of the EE&C Plan for all customers will not exceed $94.25 million. Id. at 12.

The Company proposes that cost recovery will be accomplished via per kilowatt-hour energy surcharge for Schedules 10 (residential), 20, and 22 (small commercial) since the majority of customers on these rate schedules do not have demand meters. Since all customers on the Company's other rate schedules have meters capable of recording demand, cost recovery will be accomplished via a per kilowatt-hour energy surcharge and a per kilowatt (or kilovolt-ampere) demand surcharge. Id. at 11. The EE&C program costs allocated to each tariff and tariff rate schedule are separated into an energy-related portion and a demand-related portion, based upon the resultant load factor calculated from the energy and demand savings projections for each program. Id.

The Company's proposed EE&C surcharge would be subject to an annual reconciliation as to collection of the levelized amount and a reconciliation to actual expenditures near the end of the Plan.

1. Plan Cost Issues

The OCA initially raised a concern with administrative costs related to the Customer Load Response and Distributed Generation programs for 2009 and 2010. As stated at the evidentiary hearing, however, in light of Company witness Edward Miller's Reply Testimony, the OCA can accept the Company's inclusion of the administrative costs for the Customer Load Response and Distributed Generation programs for 2009 and 2010. Tr. 140-141. The OCA withdraws its objection with respect to these administrative costs.

However, the OCA does have concerns with respect to the annual PUC assessment charge included in the proposed surcharge, as discussed below in Section 4(d).

2. Cost Effectiveness/Cost-Benefit Issues

As discussed above, the OCA submits that with the cost-effectiveness of the Plan cannot be determined due to the Company's failure to include significant Smart Meter and infrastructure costs in the calculation of the Plan's TRC. Although the Company's Plan indicates an overall TRC of 4.1, without the inclusion of Smart Meter and infrastructure costs necessary to support nine of the programs, it is questionable whether the TRC calculated by the Company is meaningful. See Section 6(a)(i) above for further discussion of this issue.

3. Cost Allocation Issues

The OCA has no Cost Allocation issues it wishes to address at this time.

4. Cost Recovery Issues

a. The OCA Supports The Levelized Cost Recovery Mechanism Proposed By Allegheny Power Without Interest Collections.

The OCA anticipates that Plan expenditures will vary, perhaps significantly on a year by year basis. To provide more stability for customer rates, the Company is proposing to recover the same levelized amount each year from customers. This will allow the Company the flexibility to spend each year based on program ramp up needs, program success and market conditions (within the total spending cap) to maximize Plan implementation without undue volatility in customer rates. The OCA supports this approach to cost recovery, particularly for residential customers to avoid any undue volatility and confusion in rates. OCA St. 1 at 22-23.

The OCA also supports the Company's proposal that no interest be charged on any under- or over-collection that may occur as a result of this levelization. The spending constraint in the Act does not contemplate any interest charges. In other words, the OCA submits that Allegheny Power can spend an amount of $94.25 million, not $94.25 million plus interest.

b. The Company Should Be Required To Bid Qualifying Energy Efficiency And Demand Response Resources Into The PJM RPM Auction And Credit Customers For The Value Received In The Cost Recovery Mechanism.

As of May 8, 2009, PJM has modified its Reliability Pricing Model (RPM) auction process to allow for the inclusion of energy efficiency and demand response resources. Qualifying energy efficiency and demand response resources can now bid into the PJM auctions as a capacity resource and if cleared receive capacity payments. The OCA submits that Allegheny Power should be directed to explore this option and to bid its qualifying resources into the auctions. Capacity payments can provide a significant value that should then be credited to all customers through the cost recovery mechanism to offset the costs that they must bear under the Act. OCA St. 1 at 27.

Company witness Edward Miller agreed with this recommendation. Mr. Miller stated:

> The Company plans to participate in the PJM bidding process upon approval and implementation of its EE&C program if participation is estimated to be economically beneficial. The benefit of participation relies on market prices while some of the costs to participate will include the costs of: plan preparation, reporting to PJM; auditing the program; and measuring and verifying the auctioned amounts. Should the Company participate; [sic] proceeds from the auction for EE&C will be netted against the Company's costs to participate and the program costs.

Allegheny Power St. 2 at 13. The OCA supports Allegheny Power bidding the qualified energy efficiency and demand response resources into the PJM capacity market and netting the proceeds against the Company's costs to participate and the program costs.

c. The Company Should Not Include The Costs Of Its EE&C Plan As A Separate Line Item On The Customer Bill.

The OCA does not support the Company's proposal to include the costs of its EE&C Plan as a separate line item on the customer bill. As OCA witness Crandall testified:

> Customer bills consist of charges to cover numerous costs incurred by Allegheny Power to serve its customers, such as the costs of meter reading, customer billing systems and activities, legal costs, health care for employees, transmission, distribution, insurance, safety, regulatory activities, financing, salaries & wages, security, operations and maintenance, fleet vehicle costs, operations of buildings, etc. The EE&C Plan would be implemented to acquire energy efficiency and demand response resources. This is now a normal, ongoing, business activity for the Company.

OCA St. 1 at 24.

Moreover, the OCA submits that showing only the costs on the bill completely ignores the benefits of energy efficiency and demand reduction. Showing only the costs of these initiatives on the bill means that the customers will see only one side of the story. If the Company wishes to place costs on the bill as a separate line item, it should also recognize the benefits on the bill. OCA St. 1 at 25. Company witness Valdes states that showing the netting of costs and benefits would be novel and confusing to customers. Id. The OCA submits, however, that the Company's surcharge is what will be confusing to customers because it is an incomplete presentation of the energy efficiency and demand reduction initiatives. OCA St. 1 at 24-25. Without understanding the corresponding benefits, customer reaction to the Company's energy efficiency programs may be negative. The OCA submits that including the EE&C surcharge as a separate line item on the bill is not appropriate.

The OCA recommends that the Company include the EE&C costs in the non-bypassable distribution rates and treat these expenses the same as any other normal, on-going expense.

d. PUC Assessment

The Company has included costs associated with its annual PUC assessment in its surcharge recovery mechanism. Recovery of the PUC assessment as part of the Section 1307 cost recovery mechanism should not be permitted by the Commission. These costs are normal operating expenses of a utility that are recovered in base rates.

Act 129 permits Allegheny Power to recover only those costs that are related to the provision and management of the Act 129 Plan. Act 129 specifically states that:

> An electric distribution company shall recover on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307, all reasonable and prudent costs incurred in the provision or management of a Plan provided under this Section.

66 Pa.C.S. § 2806.1(K)(1). The OCA submits that PUC assessments are not related to the costs of the provision and management of Allegheny Power's EE&C Plan.

The OCA submits the PUC assessment charge is traditionally recovered through the Company's base rates. The PUC assessments are not directly attributable to Act 129 and are influenced by many factors outside of Act 129. Section 2806.1(K)(1) only allows the recovery of costs which are incurred through the provision or management of a Plan, and PUC assessment costs are not incurred for this purpose.

C. CSP Issues

The OCA does not have any CSP Issues at this time.

D. Implementation and Evaluation Issues

1. Implementation Issues

The OCA does not have any Implementation Issues at this time.

2. QA Issues

The OCA does not have any QA issues at this time.

3. Monitoring and Reporting Issues

a. Stakeholder Meetings and Involvement

The OCA recommends an on-going stakeholder process be included in any Final Plan that is approved. The OCA submits that the Commission should include details regarding the stakeholder process in Allegheny Power's Plan and its Order to ensure that the process continues on a regular basis.

OCA witness Crandall recommended that stakeholder meetings be an ongoing activity with regularly scheduled meetings. Mr. Crandall testified that "[a] meaningful process for the two-way exchange of ideas needs to be developed on an on-going basis to assist program implementers to develop, modify and continuously refine these programs." OCA St. 1 at 20. The OCA recommends that the stakeholder process should include meetings on a quarterly basis, at a minimum, during the Plan implementation. The Company should provide the stakeholders with necessary information regarding Plan implementation, including reports on the progress of selecting Conservation Service Providers, the expected costs, the progress toward implementation, penetration rates and savings achieved to date, and cost recovery to date. The OCA would also expect that the Company will work with the stakeholder group to review implementation issues, program issues that arise, educational or promotional materials that are being developed so that the stakeholders can provide their input. Other information and exchanges would also be included within the process, such as information regarding American Recovery and Reinvestment Act (ARRA) funding or any new legislation that impacts the EE&C

Plan. In particular because of issues arising from the development with ARRA funding and other federal developments, OCA witness Crandall testified that:

> a meaningful stakeholder and public input process is needed to enhance coordination. Initiatives such as the Energy Independence Security Act (EISA), the National Energy Conservation Policy Act (NECPA) and Obama Administration appliance efficiency standards will all need to be coordinated with the EE&C Plan to improve implementation effectiveness and customer acceptance.

OCA St. 1 at 21.

The OCA recommends that the process be an open exchange of ideas and information and that a broad and diverse group of stakeholders be included. A meaningful process needs to be developed to assist in program implementation, mid-course corrections, and necessary program adjustments. The OCA submits that ongoing stakeholder involvement is critical to the design, implementation, monitoring, evaluation, modification or elimination of programs and to the ultimate success of energy efficiency programs.

Given the significance of the effort needed to implement the EE&C Plan in a cost-effective manner for all customers, the OCA urges that this process be included in the Commission Order in a detailed manner so that all stakeholders can count on continuing to make contributions to the EE&C Plans.

b. Tracking of Costs

The Company should implement the proper accounting methodology, categorization and tracking of costs to ensure accurate accounting and tracking. The Company responded in its Reply Testimony that it plans to use the Systems Application Product (SAP) to track internal costs by resource type including, but not limited to, labor, material & supplies and outside services. Allegheny Power St. 2-R at 14. Monthly reports will be prepared and reviewed by Allegheny's corporate accounting department, internal auditing department, and a financial support specialist. Id. The OCA agrees that the Company's plan to track and monitor this information is acceptable.

4. Evaluation Issues

Contractors hired by Allegheny Power to perform evaluation, measurement and verification (EM&V) should have the necessary autonomy to offer independent, professional opinions related to the results of the EE&C Plan programs implemented by Allegheny Power. OCA St. 1 at 28. OCA witness Crandall expressed a concern that if Allegheny Power has the ability to unilaterally dismiss the EM&V contractor, then the results of the process and impact evaluation may lack the necessary independence and credibility. Id. The OCA recommends that a firewall be established between Allegheny Power and the third party evaluator. The OCA submits that dismissal of an EM&V contractor should only be permitted for "just cause and with the proper consent of the Commission or the Commission Staff." Id. The Commission must ensure that the EM&V contractor does not have a conflict of interest with Allegheny Power.

E. Other Issues

The OCA does not have any additional issues.

VI. CONCLUSION

Allegheny Power's EE&C Plan is not reasonably designed to meet the requirements for energy efficiency and demand reductions set forth in Act 129 due to the Plan's over-reliance on an aggressive deployment of Smart Meter technology, the failure to include the full costs of the Smart Meter deployment in the 2% spending cap and Total Resource Cost test, and the use of the Pay Ahead (Smart) Service rate option. Additionally, the Allegheny Plan may not fall short of the Act 129 requirements for programs and savings for low-income customers. The EE&C Plan must be revised to meet the requirements of Act 129.

VII. PROPOSED ORDERING PARAGRAPHS

IT IS HEREBY ORDERED THAT:

The Act 129 Energy Efficiency and Conservation Plan Of Allegheny Power filed at Docket No. M-2009-2093218, is modified as follows:

1. Allegheny Power is directed to modify programs dependent upon aggressive Smart Meter deployment. The proposed expenditures for these programs should be redeployed to other energy efficiency and demand response measures such as direct load control, other energy efficiency program and rate options that can be achieved in the near term within the existing meter infrastructure.

2. The Company is directed to remove the Pay Ahead (Smart) Service Rate from the Plan.

3. The Company is directed to increase the proportion of low-income customer energy savings under the Plan so that such savings represent 4.8% of the total required energy savings.

4. The Company is directed to include additional high efficiency LED lighting technologies in the EE&C Plan.

5. The Company is required to place special emphasis on consumer education, specifically targeting high consumption plasma TV's, phantom load, and entertainment systems in the implementation of the EE&C Plan.

6. The Company is directed to implement an on-going stakeholder process with quarterly meetings, reports on the progress of implementation of the Plan and a two-way dialogue among a broad and diverse group of stakeholders to address any issues that arise should be an integral part of the Plan approval.

7. The Company is directed to remove the annual PUC assessment costs from the EE&C surcharge.

8. The Company is directed to include the EE&C surcharge in its non-bypassable distribution rates.

9. The Company is directed to bid any qualifying energy efficiency and demand response measures into the PJM RPM auctions and credit customers with any benefits received through the cost recovery mechanism.

10. The Company is directed to ensure that contractors hired by Allegheny Power to perform evaluation, measurement and verification will have the necessary autonomy to offer independent, professional opinions related to the results of the EE&C Plan programs implemented by Allegheny Power.

11. The Company is directed to implement the proper accounting methodology, categorization and tracking of costs to ensure accurate accounting and tracking.

Respectfully Submitted,

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Dated: August 31, 2009

CERTIFICATE OF SERVICE

Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan	:	Docket No. M-2009-2093218

I hereby certify that I have this day served a true copy of the foregoing document, Enclosed for filing is the Main Brief of the Office of Consumer Advocate, 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 31st day of August 2009.

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