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December 9, 2009

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

RE: Petition of PECO Energy Company for Approval of its Smart Meter Technology Procurement and Installation Plan
Docket No. M-2009-2123944

Dear Secretary McNulty:

Enclosed for filing is the Reply 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,

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Enclosures
cc: Honorable Marlane R. Chestnut

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for Approval of Its Smart Meter Technology Procurement And Installation Plan	: : : :	Docket No. M-2009-2123944

REPLY BRIEF
OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: December 9, 2009

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I. INTRODUCTION

As the OCA demonstrated in its Main Brief and in the testimony it presented in this proceeding, PECO's proposal to allocate the common costs of its smart meter deployment Plan on the basis of number of customers is unreasonable. The number of customers is neither a measure of the benefits derived from the smart meter system nor the causation of the system costs. The OCA submits that the appropriate basis on which to allocate the common costs is energy and demand since these costs are being incurred pursuant to Act 129. The purpose of Act 129 is the reduction of overall demand and energy costs for the benefit of all customers.

In their Main Briefs, the Company, PAIEUG and OSBA asserted that the OCA's proposed allocation method is inconsistent with cost of service principles, incorrectly characterizes the benefits that will result to the classes, and disregards environmental benefits. These assertions are wholly without merit. As the OCA explained in its Main Brief, OCA witness Dr. Dale E. Swan's proposed allocation is consistent with Act 129, the Commission's Implementation Order, and historic cost of service principles. The Company, PAIEUG and OSBA fail to acknowledge that the purpose of this massive new investment is not simply to count kilowatt hours and provide accurate bills to each individual customer, but is, instead, to reduce overall demand and energy costs. Given this purpose, it defies logic that residential customers will bear 89.9% of the costs under PECO's proposal simply because they represent 89.9% of the customers when these same customers represent only 33.9% of energy use.

The OCA has established that the appropriate common cost allocation methodology is one that reflects the purpose of Act 129 and the benefits to be derived from this initiative. Accordingly, the OCA requests that the Commission adopt the methodology that the OCA and its witness Dr. Swan have proposed that is based on the arithmetic average of the percentage shares of each class' energy at the meter and each class' contribution to PECO's annual coincident peak.[1]

II. SUMMARY OF THE ARGUMENT

The OCA and other parties to this proceeding have agreed that the direct assignment of the cost of the meters to customer classes is appropriate, and such direct assignment was included in the Joint Petition for Partial Settlement. See Settlement, ¶14.e. The OCA submits, however, that traditional cost of service principles, the language of Act 129, and the Commission's Implementation Order, all support a finding that the common costs of the PECO smart meter system cannot reasonably be allocated on the basis of the number of customers. Other parties' claims that the OCA has failed to support its proposal or that its proposal is inconsistent with cost of service principles are erroneous. As the OCA demonstrated in its testimony and Main Brief, and will also demonstrate in this Reply Brief, allocating common costs based on the number of customers is unreasonable. The number of customers is neither a measure of the benefits derived from the smart meter system nor the causation of non-meter system costs. Indeed, the common costs at issue here do not benefit one class solely nor do they benefit all classes equally. Accordingly, the OCA requests that the Commission hold that the appropriate basis on which to allocate common smart meter systems costs (other than the meters themselves) is on the basis of energy and demand as proposed by OCA witness Dr. Swan.

[1] The OCA would note that two types of costs were addressed in this proceeding: the cost of the smart meters themselves and the common costs (all other non-meter costs). In its filing, the Company proposed to directly assign the costs of the metering equipment to the classes that use that equipment. The parties agreed that this treatment was appropriate and the only issues reserved for briefing were cost allocation of common costs among classes and rate design for the commercial class. The OCA's testimony and Main Brief, as well as this Reply Brief, only address the issue of cost allocation of common costs among the classes.

III. ARGUMENT

A. PECO, PAIEUG and OSBA's Assertion that the OCA's Proposal is Inconsistent with Cost of Service Principles and Related Case Law is Erroneous.

PECO, PAIEUG, and OSBA allege that the OCA's proposal is inconsistent with traditional cost of service principles and related case law. See PECO M.B. at 6-7, OSBA M.B. at 13, PAIEUG M.B. at 8-9. The parties point to Lloyd, a 1987 Penn Power case, and the 1983 Rate Case Handbook to support their position. Lloyd v. Pa.PUC, 904 A.2d 1010 (Pa. Commw. Ct. 2006) (hereinafter Lloyd); Pa.PUC v. Pa. Power Co., 85 P.U.R.4th 323, 392-93 (1987) (hereinafter Penn Power); Cawley, James H. and Norman James Kennard, Rate Case Handbook-A Guide to Utility Ratemaking Before the Pennsylvania Public Utility Commission, 1983. The OCA's proposed allocation methodology, however, is in keeping with traditional cost of service principles found in the cases and treatise cited by the parties. Dr. Swan explained, that the OCA's cost allocation proposal is based on cost causation. In his Surrebuttal testimony he stated:

> The fundamental rule in cost of service studies is to allocate costs based on the cause of the costs. The costs at hand would not be incurred if it were not for the expectation that benefits will be realized from the incurrence of those costs. As the expected benefits are what will cause those costs to be incurred, it is fully consistent with normal cost allocation practice to allocate the costs on the expected distribution of those benefits.

OCA St. 3S at 7.[2]

In making their arguments regarding cost of service, the other parties overlook the basic fact that for PECO, which acknowledges that it has already reaped the benefits of more advanced meter reading and billing technologies in its current meters, these meters are not being

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[2] PECO and PAIEUG attempt to argue that Dr. Swan has employed a "value of service" not cost of service methodology. This is incorrect. These parties only reach this conclusion by failing to ask the fundamental question of why these costs are being incurred in the first place.

installed for billing purposes. Instead, these meters are being installed to impact demand and energy consumption. The preamble to Act 129 states that one of the main goals of the Act is to reduce the cost and price instability of electric energy:

> The General Assembly recognizes the following public policy findings and declares that the following objectives of the Commonwealth are served by this act:
>
> (1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time and the impact on the environment.

Act 129, 66 Pa.C.S. § 2806.1 *et seq*, pmbl. The purpose of this massive new investment is not simply to count kilowatt hours and provide accurate bills to each individual customer. Rather, it is to reduce overall demand and energy costs for the benefit of all customers. As was noted by PECO witness Kelly and in the Company's ARRA Application, the major intended benefits in the near term will take the form of improved efficiency of use of electricity to the extent that customers respond to time of use and real-time pricing options and cost savings resulting from greater participation in demand response programs. PECO St. 4 at 10; PECO Hearing Exh. 2, Vol. I, Project Plans at 28-33. The Company's American Recovery and Reinvestment Act (ARRA) Application provides greater detail on expected benefits from the smart meter system and indicates that responses to dynamic pricing solutions are expected to generate significant capacity and energy savings. PECO Hearing Exh. 2, Vol. I, Project Plans at 28-33. Further, the Company indicates that it expects to experience important operational efficiency improvements resulting in further reductions in the cost of providing capacity and energy to its customers. Id.

A review of the language quoted by PECO itself in its Main Brief from the Rate Case Handbook contradicts the other parties' assertion that the OCA's allocation methodology is inconsistent with cost of service principles. The Rate Case Handbook excerpt specifically addresses the breakdown of principal cost classifications into demand/capacity costs, commodity/energy costs, and customer costs. As to the demand/capacity costs, the Rate Case Handbook provision quoted in PECO's Main Brief states:

> 1. Demand/Capacity Costs- These are the capital and operating expenses incurred to provide sufficient capacity to meet peak demand. These costs are not affected by the number of customers or annual usage, but rather are put in place to serve the peak

PECO M.B. at 7. With respect to demand/capacity costs, the smart meter network technology is to be installed to ensure that the Company's peak demand can be met. The smart meter technology is to enable demand response programs that will assist in meeting peak demand obligations and reduce peak demand costs.

As to the commodity/energy costs, the Rate Case Handbook provision quoted in PECO's Main Brief states:

> 2. Commodity/Energy Costs- Costs which vary in direct proportion to the volume of service consumed. These costs are not related either to capacity or customer costs

PECO M.B. at 7. With respect to the commodity/ energy costs, the new metering technology is intended to affect the energy consumed by all customers. The meters will enable and allow for programs targeted at consumption.

As to the customer costs, the Rate Case Handbook provision quoted in PECO's Main Brief states:

> 3. Customer Costs- The costs addressed directly by the number of customers served regardless of usage are included in this category. They include the cost of meter, meter reading, billing and some portion of the distribution system.

PECO M.B. at 7. With respect to customer costs, PECO has already reaped the benefits of more advanced meter reading and billing technologies in its current meters—the new meters are not being installed and read for billing purposes. Instead, these are incremental investments for a different purpose. Accordingly, rather than call Dr. Swan's proposal into question, as the parties assert, the Rate Case Handbook supports his methodology.

Additionally, as the OCA explained in its Main Brief and Testimony, the OCA's proposed allocation is consistent with both the language and intent of Act 129, as well as the Commission's Implementation Order. The Commission required that all measures associated with an EDC's smart metering plan be financed by the customer class that receives the benefits of such measures. Smart Meter Procurement and Installation, Docket No. M-2009-2092655 at 32 (Order entered June 24, 2009)(Implementation Order). The Commission stated:

> …we will require the EDC to allocate those costs to the classes whom derive the benefit from such costs.

Implementation Order at 32. The Commission went on to say:

> Any costs that can be clearly shown to benefit solely one specific class should be assigned wholly to that class. Those costs that provide benefit across multiple classes should be allocated among the appropriate classes using reasonable cost of service practices.

Id. As indicated in the Implementation Order, smart meter plan costs are appropriately allocated to those customer classes who derive the benefits from such costs. Implementation Order at 32. The number of customers is neither a measure of the benefits derived from the smart meter system nor the causation of the system costs. Dr. Swan further elaborated on Act 129 and the Implementation Order in his Surrebuttal testimony:

> Mr. Cohn [from PECO] and Mr. Baudino [from PAIEUG] conclude that these common costs should be allocated based on the number of customers without asking the fundamental question why these costs are going to be incurred in the first place. As I stated

> in my direct testimony, the General Assembly made clear that one of the main goals of Act 129 was to reduce the cost and price instability of electric energy for customers. That is, the General Assembly has required that Pennsylvania distribution utilities incur these costs to bring about savings for its customers. That requires that one look beyond mechanical cost allocation approaches to determine the factors that caused these costs to be incurred in the first place. The Commission explicitly recognized this relationship in its June 18, 2009 Implementation Order when it stated that "...we will require the EDC to allocate those costs to the classes whom derive benefit from such costs."

OCA St. 3S at 2-3. Dr. Swan then addressed Mr. Cohn and Mr. Baudino's reliance on the language of the Implementation Order addressing cost of service practices. He stated:

> They [Mr. Cohn and Mr. Baudino] argue that the common costs of the Company's smart meter program (Network Communication System, IT Applications and Support, Management and Internal Labor, and Customer Acceptance and Testing costs) are the type of costs that are typically allocated on the number of customers and that should be dispositive of how these costs should be treated in this case. Mr. Cohn and Mr. Baudino fail to ask what factors caused these costs to be incurred in the first place, which is fundamental in observing reasonable cost of service principles. In so doing, I believe they ignore the dictates of the Commission in requiring that costs be allocated to the classes whom derive benefits from those costs.

OCA St. 3S at 3.

Allocating these common costs based on energy and demand recognizes the purpose of Act 129 and also recognizes that larger customers (in terms of demand and energy usage) will derive far greater benefits from both the smart meter systems and the enhanced technological capabilities. This allocation is consistent with Lloyd, Penn Power, and the Rate Case Handbook. The common costs at issue do not benefit one class solely nor do they benefit all of the classes equally. It is simply inappropriate to allocate the exact same dollar level of these costs to an individual 500 kWh per month residential customer as to the largest industrial or commercial customer on the PECO system.

B. <u>OSBA and PAIEUG's Assertion that Common Costs and Environmental Benefits are Akin to CAP Programs and Should be Similarly Allocated is Without Merit</u>.

PAIEUG states that PECO's proposal for allocating common costs is similar to the way in which Customer Assistance Programs (CAP) are currently allocated. PAIEUG M.B. at 20. This attempted analogy completely fails. These smart meter system costs are not, as PAIEUG claims, "societal benefits" but are, instead, direct benefits to customers. Act 129 requires full smart deployment to all customers, and the benefits of this smart meter deployment are seen in energy savings and demand reductions. Therefore, the 500 kWh customer is not receiving the same benefit as the 500,000 kWh customer. Accordingly, PAIEUG's analogy is wholly without merit.

The OSBA argues that the OCA has ignored the fact that "environmental benefits" are also a goal of Act 129 and that environmental benefits will accrue to all citizens regardless of their energy use.[3] OSBA M.B. at 14. OSBA also states concerns about how these benefits would be allocated. OSBA M.B. at 14. OSBA uses this argument to support its assertion that any customer benefit standard for cost allocation can lead to "a morass of conflicting interpretations as to (a) what the benefits of the SMIP are and (b) which customers and customer classes received these benefits." OSBA M.B. at 14-15; OSBA St. 1 at 4. This notion that an allocation analysis, if difficult, should not be performed completely ignores the fact that cost of service analysts must always make interpretations and utilize their judgment regarding multi-purpose cost elements. The benefits here, however, are not difficult to discern as the specific goal of the smart meter initiative is to affect the cost of energy and capacity. Act 129, 66 Pa.C.S. § 2806.1 *et seq*, pmbl.

[3] The OCA would note that the environmental costs that are being avoided by consumption and demand reduction will actually become part of the cost of energy when any legislation is enacted calling for reductions in carbon-dioxide emissions.

As was discussed above, the OCA's proposal is consistent with cost of service principles—principles that are the foundation for normal cost of service studies. Indeed, FERC requires the demonstration of a causal relationship between costs and benefits for approval of rates to be shared by utilities. See OCA M.B. at 16-17. Additionally, no party to this proceeding has demonstrated that the supposed "difficulty" of measuring benefits in the smart meter context exceeds the difficulty of measuring benefits in any other type of proceedings. See, e.g. Illinois Commerce Commission v. FERC, 576 F.3d 470, 475 (Seventh Cir. 2009).

C. PECO and PAIEUG's Claims that the OCA Has Failed to Support its Discussion of Class Benefits is Erroneous.

Both PECO and PAIEUG assert that Dr. Swan has provided no evidence to support his claim that each customer class will derive benefits from smart meter technology common costs that are proportionate to the class' demand and energy. PECO M.B. at 12; PAIEUG M.B. at 14-17. This is simply not the case. As a preliminary matter, Dr. Swan did not measure the benefits to each class as PECO has not yet developed a benefit-cost analysis. The Company did, however, clearly indicate in its ARRA proposal that these benefits will take the form of energy and capacity savings to customers. PECO St. 4 at 10; PECO Hearing Exh. 2, Vol. I, Project Plans at 28-33. In fact, Company witness Cohn agreed with this as he specifically stated:

> It is reasonable to assume that smart member technology will provide benefits to customers by assisting them in achieving demand and usage reductions.

PECO St. 5R at 6.

Dr. Swan explained that participation in these types of programs, although available to everyone, will likely be much higher among Large C&I customers than among residential customers because of the nature of the Large C&I customers. OCA St. 3 at 6. Large

C&I customers are much more sophisticated electricity consumers and they often have staff that are dedicated to managing their firm's energy use since the cost of energy to these firms will have significant impacts on the bottom line. Dr. Swan further explained:

> Moreover, the savings to these customers from participation in these programs will be in proportion to their energy use or their peak demands. Even if the participation rates in these programs were the same among all the classes, which they will not be, the average benefit per customer will be significantly higher for the largest C&I customers than for the much smaller residential customers. It is naive to assume that the benefits will be the same for all customers, and it is erroneous to conclude that these common costs should be allocated on the number of customers.

Id.

In its Main Brief, PAIEUG claims that Large C&I customers will not see additional benefits from the installation of smart meters as the Large C&I class already participates, to some degree, in the PJM Interconnection, LLC (PJM) hourly and day-ahead markets and currently has the advanced metering capabilities necessary to facilitate this participation. PAIEUG M.B. at 19. This argument ignores the fact that the smart meter technology that PECO will install will expand the options available to the Large C&I class. If this were not the case, then the smart metering aspect of Act 129 would serve no purpose. This expansion of services will include programs beyond those offered by PJM and will include a full menu of dynamic pricing options. Further, the increased information about usage that will result from the new smart meter installation will bring competition with many more pricing options specific to each Large C&I customer's usage. Indeed, Constellation New Energy filed testimony in this proceeding addressing how the new smart meter technology will increase the amount of data being collected and will allow EGSs to better understand usage patterns and help customers with functions such as energy efficiency and peak load reductions. Constellation St. 1 at 6-7.

Constellation specifically discussed these "increasingly sophisticated energy strategies" and stated:

> Overlaying Smart Meter technologies onto existing open platforms makes it possible to more successfully harness and shape load whether the load is distributed across a single facility, college campus or retail chain with multiple locations throughout a large geographic area. This ability to shift and shape load across multiple building is going to reveal itself to be the smartest and most efficient way to create the virtual peaking plans and intelligent buildings of the greener energy grid of the future...This shift in direction, however, while *possible* is only *likely* to occur if the proper access to data is available to customers and their EGSs in quick, easy and straightforward manners, and if the data provided by such new Smart Meter technologies is as specific and frequent as possible.

Constellation St. 1 at 7-8 (Emphasis in original). PAIEUG's argument that the Large C&I customers have already reaped all of the benefits of smart meters is simply incorrect.

Dr. Swan also provided information from the Duquesne Light Company's ARRA proposal that included specific initial estimates of benefits accruing to each customer class. OCA St. 3S at 5. For Duquesne's initial meter installation, Large C&I customers are estimated to receive 67 to 69 percent of savings; Medium C&I customers 27 to 28 percent of savings; and residential customers only 2.7 to 5.5 percent of the savings—even though more than half of the meters to be installed by Duquesne in the initial deployment will be for residential customers. Id.

As the OCA has provided both analytical and empirical evidence to support its claim that each customer class will derive benefits from smart meter technology, PECO and PAIEUG's assertions are without merit.

D. PECO and PAIEUG's Assertion that Common Costs are driven by the Number of Customers is Incorrect.

Both PECO and PAIEUG address customer-related costs and assert that common costs are driven by the number of customers. PECO M.B. at 6-9; PAIEUG M.B. at 13-14. PECO and PAIEUG allege that the size of the network to read the meters and the size of the systems to store the data are a function of the number of meter locations. PECO M.B. at 6-9; PAIEUG M.B. at 13-14. Even if PECO and PAIEUG are correct regarding the relationship between the size of these systems and the number of meters, the conclusion that costs should be allocated based on the number of customers still does not hold. As Dr. Swan explained:

> When one steps back to ask why the General Assembly has required PECO to incur these costs, it is clear that the driver is the energy and capacity savings that the implementation of a smart meter system is expected to realize. Without the expectation of those savings these costs would not be incurred. The costs are incurred to realize the savings and it follows that the allocation of these costs should be with regard to the distribution of the expected savings.

OCA St. 3S at 4. As was mentioned above, the Company's current Automated Meter Reading (AMR) system already realizes the benefits associated with the elimination of physical meter reading and also generates savings associated with quicker outage notification and better control on meter tampering and theft. PECO St. 4 at 9. PECO witness Kelly stated that customers will benefit from the new metering system through an expanded opportunity to participate in energy efficiency and demand response programs, enabling customers to better understand and manage their energy needs. Id. The benefits expected from this initiative are not related to the number of customers.

IV. CONCLUSION

For the reasons set forth above, in its Main Brief, and in its testimony, the OCA respectfully requests that the Commission hold that the appropriate basis on which to allocate common smart meter systems costs (other than the meters themselves) is on the basis of energy and demand, as provided by OCA witness Dr. Swan.

Respectfully Submitted,

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Dated: December 9, 2009
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CERTIFICATE OF SERVICE

Petition of PECO Energy Company for Approval of its Smart Meter Technology Procurement and Installation Plan	: : :	Docket No. M-2009-2123944

I hereby certify that I have this day served a true copy of the foregoing document, the Reply 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 9th day of December 2009.

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