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January 5, 2010

VIA ELECTRONIC FILING

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

RE: Petition of West Penn Power Company d/b/a Allegheny Power for Expedited Approval of its Smart Meter Technology Procurement and Installation Plan; Docket No. M-2009-2123951

Dear Secretary McNulty:

Enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") are the original and nine (9) copies of the Reply Brief on behalf of the West Penn Power Industrial Intervenors ("WPPII") concerning the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and the Reply Brief, and kindly return them to our messenger for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By
Barry A. Naum

Counsel to West Penn Power Industrial Intervenors

BAN/sds
Enclosures
c: Administrative Law Judge Mark A. Hoyer (via E-mail and FedEx Overnight Delivery)
Cheryl Walker Davis, Director, Office of Special Assistants (via E-Mail and Hand Delivery)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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Dated this 5th day of January, 2010, at Harrisburg, Pennsylvania.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of West Penn Power Company d/b/a Allegheny Power for Expedited Approval of its Smart Meter Technology Procurement and Installation Plan	: : : :	Docket No. M-2009-2123951

REPLY BRIEF OF THE WEST PENN POWER INDUSTRIAL INTERVENORS

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Dated: January 5, 2010

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I. INTRODUCTION

On October 15, 2008, Governor Rendell signed into law House Bill 2200, which became Act 129 of 2008 ("Act 129" or "Act"). Among other things, Act 129 expands the Pennsylvania Public Utility Commission's ("PUC" or "Commission") oversight responsibilities and sets forth new requirements on Electric Distribution Companies ("EDCs")[1] for energy conservation, default service procurements, and expansion of alternative energy sources.

On August 14, 2009, West Penn Power Company d/b/a Allegheny Power ("West Penn" or "Company") submitted its Act 129 Smart Meter Technology Procurement and Installation Plan ("SMIP" or "Plan") in accordance with the requirements of Act 129.

On September 16, 2009, West Penn Power Industrial Intervenors ("WPPII") filed a Main Brief ("M.B.") on behalf of its Large Commercial and Industrial ("C&I") members, addressing certain issues raised by the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA") during the course of the SMIP proceeding with respect to the Company's proposed allocation of SMIP costs and cost recovery mechanism. WPPII received Main Briefs from West Penn, the OCA, the OSBA, the Pennsylvania Department of Environmental Protection ("DEP"), the Association of Community Organizations for Reform Now ("ACORN"), and Constellation Energy Commodities Group, Inc., and Constellation NewEnergy, Inc. ("Constellation"). WPPII files this Reply Brief in response to certain limited arguments raised in the Main Briefs of these parties.[2]

In this proceeding, the Company has demonstrated that Customer Information System ("CIS") upgrades and Information Technology ("IT") upgrades related to Operations and

[1] As articulated in the Act, only EDCs with at least 100,000 customers are required to submit energy efficiency and conservation programs. *See* 66 Pa. C.S. §§ 2806.1, *et seq.*

[2] WPPII's Reply Brief will not respond to every argument contained in all of the parties' Main Briefs but only those issues necessitating additional response. WPPII's decision not to respond to all arguments, however, should not be construed as agreement with the positions raised by any of the parties on any of the issues currently outstanding in this proceeding.

Maintenance ("O&M") for the Enterprise Service Bus ("ESB"), the Work Management System ("WMS"), the Geographic Information System ("GIS"), and the Outage Management System ("OMS") are all necessary to support implementation of its SMIP and thus appropriately collected through the Smart Meter Technology Surcharge ("SMT Surcharge") per Act 129.[3] For the reasons set forth in WPPII's Main Brief and this Reply Brief, the OCA has not demonstrated that these costs should be excluded from the SMT Surcharge and included in the Company's distribution base rates. Furthermore, the OCA has misinterpreted Act 129 and the Commission's Smart Meter Procurement Implementation Order ("Implementation Order") with respect to the allocation of non-direct, common SMIP costs.[4] WPPII therefore submits that none of the arguments presented by the OCA should persuade the Commission to deviate from bedrock PUC precedent requiring that meter costs – and particularly the common costs of West Penn's SMIP – be allocated to customers on a cost-causation basis.

Similarly, nothing set forth by the OSBA should sway the Commission from approving West Penn's proposal to recover SMIP costs, including the common costs of the Plan, from non-Residential customers on a customer charge basis. The Commission should disregard the OSBA's arguments in support of an alternative mechanism and affirm the Company's proposed recovery mechanism.

II. ARGUMENT

A. The Commission Should Reject the OCA's Proposal To Exclude from the SMT Surcharge Certain Administrative Costs Necessary To Support the SMIP.

In its Main Brief, the OCA argues that certain costs associated with upgrades to current West Penn systems, which the Company categorizes as SMIP costs, should be excluded from the

[3] WPPII's support for the Company's proposed recovery of these costs pertains only to West Penn's general categorization of such costs. WPPII trusts that the Commission will conduct a thorough review of these costs to ensure that the amounts claimed by the Company are just and reasonable.
[4] *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

SMT Surcharge and, instead, included in distribution charges and reconciled through the Company's next base rate proceeding.[5] In particular, the OCA posits that costs necessary to improve or replace West Penn's existing CIS and other Network and IT costs (*e.g.*, ESB, WMS, GIS, and OMS upgrade expenses) for West Penn's Act 129 compliance are "costs that the Company would incur in the normal course of business and are not appropriate for recovery through the special surcharge provided for smart meter deployment."[6] Rather, the OCA suggests that these costs "should be sought for recovery in a distribution base rate proceeding in accordance with ratemaking principles."[7] Although WPPII generally agrees that only those costs that are necessary to implement the SMIP should be recovered through the SMT Surcharge, the OCA has failed to prove that the costs at issue are not necessary for the Plan's implementation and rebut West Penn's evident that the costs are necessary for Act 129 compliance.

Specifically, West Penn's Plan unambiguously explains that "the Company requires new back office IT systems to support" SMIP implementation.[8] According to the Company, this includes upgrades to the CIS, OMS, GIS, and ESB.[9] These upgrades were identified by the OCA, in its Main Brief, as generally nonessential to SMIP implementation, but the OCA has provided no persuasive support in defense of its claim.[10] Contrary to the OCA's unsubstantiated allegation that such costs would be incurred in the "normal course of business,"[11] West Penn has demonstrated that "but for" Act 129 and the SMIP, these upgrades would <u>not</u> be necessary and would not otherwise be pursued by the Company.

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[5] *See generally* OCA M.B., pp. 48-51.
[6] *Id.* at 48.
[7] *Id.* at 48-49.
[8] SMIP, pp. 47-48.
[9] *Id.*
[10] *See* OCA M.B., p. 48.
[11] *Id.*

With the Company demonstrating its system requirements and satisfying its burden of persuasion in this proceeding,[12] the OCA has failed to effectively rebut West Penn's argument. Regardless of the fact that some IT systems may support normal distribution operations, the OCA has not provided compelling evidence to prove that these costs would have been incurred absent the requirements of the SMIP and Act 129. Notwithstanding the OCA's conclusions that the system upgrades in question would be needed during the normal course of business, the OCA has offered no support for this conclusion except for speculation that West Penn "would likely need to replace or upgrade its [CIS] system in the near future" simply because it "was initially installed in the 1970s."[13] The OCA's conjecture does not constitute sufficient support for rebutting the Company's proof that such system upgrades are currently necessary to support the SMIP. For this reason, the Commission should reject the OCA's argument to exclude these costs from the SMT Surcharge.

B. The Commission Must Reject the OCA's Inappropriate and Unsupported "Value of Service" Proposal for Allocation of Common Costs in West Penn's SMIP.

The critical issue presented in this proceeding with respect to cost allocation centers on the simple question of how West Penn should assign the non-direct, or "common," costs of its SMIP. The OCA opposes West Penn's reasonable and rational approach of assigning the common costs of the SMIP based on the number of customers in each class.[14] The OCA wrongly posits that the Company should assign these costs to customers "on the basis of energy and peak demand."[15] According to the OCA, such an allocation would meet the Commission's

[12] *See* 66 Pa. C.S. § 332(a).
[13] OCA M.B., p. 50.
[14] *See generally id.* at 58-63.
[15] *Id.* at 58.

requirement that all SMIP costs be allocated "in a manner that reflects the benefits of the systems being installed."[16]

As explained in detail in WPPII's Main Brief, however, the OCA's cost allocation proposal is grounded on a misinterpretation of Act 129 and the Implementation Order and would require West Penn to speculatively allocate common costs based on a "value of service" approach (*i.e.*, according to a customer's energy or demand consumption), even though no nexus exists between the cost to the Company for the SMIP and a customer's energy or demand consumption, particularly with respect to the common costs of administering the smart meter communication network and other back office IT systems.[17] Moreover, the OCA fails to provide legal support to justify any departure from traditional cost-of-service ratemaking principles and, instead, to adopt a ratemaking approach based on ethereal "value of service" concepts.

Furthermore, the OCA misinterprets Act 129 and the Implementation Order with respect to allocation of costs and the anticipated benefits of the SMIP. As a result, the OCA proposes to treat the common SMIP costs in the same manner as the direct costs of the Plan. Specifically, the OCA's proposal ignores the undeniable fact that *all* classes of customers will derive certain benefits from SMIP common costs.[18] As such, the OCA obfuscates the clear delineation that the Commission has established between directly attributable and common SMIP costs.

For the reasons stated herein and in WPPII's Main Brief, the Commission must reject the OCA's recommendation.

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[16] *Id.* (quoting OCA Statement No. 1, Direct Testimony of J. Richard Hornby (hereinafter, "OCA St. 1"), p. 30).
[17] *See generally* WPPII M.B., pp. 13-19.
[18] *See* Implementation Order, p. 32 ("Those costs that provide benefit across multiple classes should be allocated among the appropriate classes using reasonable cost of service practices."). *See also* West Penn M.B., p. 59.

1. *The OCA Ignores the Commission's Clear Delineation Between "Direct" Costs and "Common" Costs and Provides No Support for Departing from the Commission's and the Commonwealth Court's Long-Standing Mandate To Utilize Cost-of-Service Principles To Allocate Meter Costs.*

The OCA erroneously argues that the common costs of West Penn's SMIP "should be allocated to customer classes in some reasonable proportion to the benefits received by each class from the planning and implementation of the smart meter system."[19] According to the OCA, "[t]his treatment is in keeping with the language of Act 129, as well as the Commission's Smart Meter Implementation Order."[20] With such claims, however, the OCA misunderstands the Implementation Order and its stark demarcation between SMIP direct costs and common costs. In making these conclusions, the OCA mischaracterizes the expected benefits of the SMIP and, as a result, misconstrues the cost causation concepts relating to the Plan.

To be clear, the Commission's Implementation Order expressly establishes direct costs and common costs as two separate and distinct categories of expenses that require individualized cost-allocation treatment. Specifically, the Implementation Order states:

> The Commission will require that all measures associated with an EDC's smart metering plan shall be financed by the customer class that receives the benefit of such measures. In order to ensure that proper allocation takes place, it will be necessary for the utilities to determine the total costs related to their smart metering plans [. . .]. Once these costs have been determined, we will require the EDC to allocate those costs to the classes whom derive benefit from such costs. *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.*[21]

While the Implementation Order clearly indicates that West Penn must allocate costs to the classes that will derive benefit from SMIP, the Implementation Order explicitly requires

[19] OCA M.B., p. 59.
[20] *Id.*
[21] Implementation Order, p. 32 (emphasis added).

particular cost allocation approaches be followed for: (1) "costs that can clearly be shown to benefit solely one specific class;" and (2) "costs that provide benefit across multiple classes."[22] This Commission directive plainly evidences the Commission's intent to assign direct costs (the first category) and common costs (the second category) in different manners. The express difference is that direct costs would be assigned directly to a customer class based on the benefit derived by the individual class, while common costs – those that "provide benefit across multiple classes" – would be allocated "using reasonable cost of service practices."[23]

Thus, despite the OCA's argument to the contrary, the Commission did not intend for common costs to be assigned based on the speculative "benefits" that each class might receive from such non-direct costs. Rather, the Implementation Order requires common costs to be allocated pursuant to "reasonable cost of service practices."[24] It is evident from the Implementation Order that this cost-of-service allocation approach is distinct from the simple "benefits" allocation method reserved solely for the direct costs of the SMIP.[25] In attempting to allocate common costs based on the "benefits" that a customer might receive from those costs, the OCA is attempting to allocate direct and common costs in exactly the same manner, which contravenes the Commission's express guidance and intent in the Implementation Order.

As explained below, the Company's allocation of common costs based on the number of customers in each class appropriately comports with the Commission's cost-of-service mandate and recognizes that these costs are distinct from the direct costs that West Penn has already specifically allocated. Furthermore, because the common costs of the Company's SMIP are unrelated to energy or demand, the Company's proposed allocation, consistent with a long train

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[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *See id.*

of Commission case law, is the only logical representation of each class's causal relationship to the shared benefits of these costs.[26] For these reasons, as well as the reasons provided below, the Commission must reject the OCA's proposed allocation of common costs.

In addition to ignoring the express delineation between direct costs and common costs, the OCA's proposal constitutes a "value of service" approach that would violate the Commission's explicit mandate that common costs be allocated on a cost-of-service basis.[27] In its Main Brief, WPPII explained that the Commission and the Commonwealth Court of Pennsylvania ("Commonwealth Court") require cost-of-service to be the "polestar" among ratemaking considerations and recognize that this methodology cannot be trumped by other considerations, including "value of service" analyses.[28]

Notwithstanding precedent to the contrary, the OCA concludes that a "causal relationship between costs and benefits is an accepted cost-of-service principle that is directly applicable here."[29] To support this contention, the OCA cites only federal court appeals from Federal Energy Regulatory Commission ("FERC") orders that address costs that are not similar to the SMIP costs at issue here.[30] Even if factually applicable, these FERC decisions do not in any way bind the Commission in this or any other proceeding; indeed, only Pennsylvania law controls what the Commission must do in implementing state law. The OCA has not provided any reference to a Pennsylvania PUC order, Commonwealth Court decision, or other Pennsylvania court ruling to support its claim that it would be appropriate to assign SMIP common costs on

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[26] *See* Part II.B.2, *infra*.
[27] *See* WPPII M.B., pp. 13-19.
[28] *See id.* at 10-11 (citing *Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010, 1020 (Pa. Commw. 2006); *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket Nos. R-2008-2073938, 2009 WL 884424 *5 (Order entered Mar. 26, 2009); *Re Gas Transportation Tariffs*, Docket No. L-00930084, 171 P.U.R. 4th 496, 530 (Order entered Aug. 28, 1996); *Pa. Pub. Util. Comm'n v. Peoples Natural Gas Co.*, Docket Nos. R-901607, *et al.*, 1992 WL 315144 at *9 (Order entered Aug. 21, 1992); *Pa. Pub. Util. Comm'n v. PPL Elec. Utilities Corp.*, Docket No. 00049255, 2007 WL 2198189 *7-10 (Order entered Jul. 25, 2007).
[29] *See* OCA M.B., pp. 61-63.
[30] *Id.*

the basis of "value of service," rather than on the ratemaking "polestar" of cost-of-service.[31] The Commission must follow the established PUC and Pennsylvania court precedent as explained in WPPII's Main Brief,[32] which requires approval of West Penn's proposed allocation of common costs.

2. *The OCA's "Benefits" Approach for Allocating Common Costs Is an Inappropriate and Unjustified Attempt To Shift Residential Costs to C&I Customers.*

The Commission must reject the OCA's proposal to assign common costs on speculative "value of service" concepts not only because the OCA has failed to offer valid legal support or justification for its proposal, but also because the OCA's proposal is incurably flawed in a number of other ways. Primarily, the OCA's "value of service" approach obfuscates the Commission's clear cost-of-service mandate and mischaracterizes the benefits that the General Assembly anticipates will result from the SMIP.[33] Moreover, the OCA neither substantiates the energy and demand "benefits" that it alleges will result from the Plan nor explains how C&I customers will experience these purported "benefits" to a greater degree than Residential customers. In short, the OCA's proposal constitutes nothing more than a smokescreen for shifting a large proportion of common costs from the Residential class to the C&I classes, in general, and the Large C&I class, in particular. Particularly considering current economic conditions and struggles to keep jobs in the area, such a shift of customer-class cost responsibility disadvantages large commercial, industrial and institutional customers in stark contradiction to established law, and would clearly be bad public policy for the Commonwealth of Pennsylvania.

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[31] *See Lloyd*, 904 A.2d at 1020.
[32] *See generally* WPPII M.B., pp. 10-19.
[33] *See id.* at 13.

The OCA attempts to characterize its "value of service" ratemaking proposal as a cost-of-service approach by claiming that the costs of the SMIP, for each customer class, are derived from the "benefits" that each class will receive and that these "benefits" are somehow related to energy and demand reductions.[34] To support this "value of service" cost allocation, the OCA claims that "larger customers . . . will derive far greater benefits from both the smart meter systems and the enhanced technological capabilities" by reason of their higher energy and demand consumption characteristics.[35] The OCA, in addition to misstating the explicit cost allocation guidance provided in the Implementation Order,[36] also fails to provide any reasonable support for this summary conclusion. Furthermore, the OCA's energy and demand "benefits" test ignores the stated benefits that Act 129 anticipates will directly result from smart meter implementation: "access to and use of price and consumption information" and the ability to participate in dynamic pricing programs.[37]

Even assuming, *arguendo*, that the OCA is correct in claiming that "common costs should be allocated to customer classes in some reasonable proportion to the benefits received by each class from the planning and implementation of the smart meter system,"[38] the OCA fails to set forth a means to quantify such "benefits." Thus, the OCA fails to provide a basis upon which common costs could be reasonably allocated even if its legal argument were endorsed (despite clear precedent to the contrary).[39]

Perhaps because the quantification of such speculative benefits cannot occur, the OCA has attempted to shift the responsibility for demonstrating these purported benefits to the Company, by arguing that West Penn should provide a cost-of-service study that "develop[s]

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[34] *See generally* OCA M.B., pp. 62-63.
[35] OCA M.B., p. 59.
[36] *See* Part II.A.1., *supra*.
[37] WPPII M.B., pp. 1, 20-21, 24 (quoting 66 Pa. C.S. § 2807(g)).
[38] OCA M.B., p. 59.
[39] *See* WPPII M.B., p. 13.

an[] allocator for the joint and common costs on a basis that properly reflects the incurrence of those costs," presumably based on the OCA's energy and peak demand "benefits" test.[40] The OCA, however, not only fails to identify or quantify what these energy and demand "benefits" might be, it also provides no credible evidentiary basis, or even a reasonable causal link between these "benefits" and the energy and demand requirements of West Penn's various customers, to support this broad conclusion. Moreover, as West Penn has already noted, a cost-of-service study "is used to identify existing costs using a historical period but is not used to determine regulatory treatment of future costs."[41] As such, a cost-of-service study "would not provide any additional value to the Company's cost allocation" because the supposed energy and demand "benefits" of the SMIP, if any, will occur in the future, along with any associated costs.[42]

The OCA fails to prove that these energy and demand benefits even exist, regardless of whether, if existent, they could be quantified. Although the OCA is correct that the purpose of West Penn's new investment in smart meters is not simply to "count kilowatt hours and provide accurate bills to each individual customer,"[43] the OCA is incorrect in concluding "that the primary reason for . . . accelerated smart meter deployment is to meet the energy efficiency and demand reduction goals of Act 129."[44] Likewise, the Company's implicit acceptance of energy and demand reductions as benefits of the SMIP is erroneous.[45] To be clear, as noted above, the actual purpose of Act 129's requirement for smart meter procurement and installation, as expressed by the General Assembly, is to provide customers with "*access to and use of* price and consumption information," as well as the ability to participate in dynamic pricing programs.[46]

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[40] OCA M.B., p. 57.
[41] West Penn M.B., p. 58.
[42] *Id.*
[43] OCA M.B., p. 59.
[44] *Id.* at 58.
[45] *See e.g.*, West Penn M.B., p. 47.
[46] WPPII M.B., pp. 1, 20-21, 24 (quoting 66 Pa. C.S. § 2807(g)).

Indeed, the OCA is simply wrong in stating that West Penn's "entire [EE&C] Plan rests on the need for smart meters to meet these energy efficiency and demand reduction goals."[47] The installation of a smart meter, and the administration of the smart meter network, cannot and will not produce a single kW or kWh reduction, absent some further step taken by the individual customer.[48]

A customer's reduction of energy and demand is entirely dependent upon the customer's behavior in response to consumption and pricing data. As such, *access to* consumption information and dynamic pricing mechanisms is the only concrete customer benefit known now that will proceed directly from West Penn's SMIP.[49] The OCA acknowledges, albeit indirectly, that the SMIP is only able to *assist* customers in modifying their behavior when it makes reference to, and relies on, West Penn's statement that "the measures, programs and rate offerings described in [the Company's] EE&C and DR Plan . . . rely on Smart Metering Infrastructure . . . in *helping customers modify their energy usage* with the aim of reducing overall consumption and decreasing peak demand for electricity."[50] Any energy, demand, or price reductions that a

[47] OCA M.B., p. 59.
[48] *See* WPPII M.B., p. 20-21.
[49] *See generally id.* at 20-22; *see also* West Penn M.B., p. 33 (acknowledging that the SMIP "affords customers and authorized third parties with direct but secure access to consumption and pricing information that will allow them to better manage and conserve their energy with a concomitant opportunity to save money with their electric bills.").
[50] *See* OCA M.B., pp. 60-61 (quoting SMIP, p. 5) (emphasis added). Here, the OCA erroneously relies on the Company's statement as a confirmation that "the cause of [the Company's] smart meter deployment is Act 129 and [the Company's] initiative to reduce energy usage and peak demand." *Id.* As discussed, however, the OCA's reliance of this statement is an acknowledgment, albeit indirect, that the SMIP will only provide customers with access to information and not with actual reduction in energy and demand consumption.

customer might realize are entirely dependent upon the customer's participation in programs that would facilitate such reductions.[51]

Simply put, there is absolutely no direct causal connection between: (1) energy and demand savings; and (2) the procurement and installation of smart meters, and the administration of the smart meter system.[52] Moreover, the OCA has failed to provide any evidence to refute the solid position shared by West Penn, WPPII, and the OSBA that the common costs of the SMIP are not connected to customer usage, "but instead are incurred because of the existence of those customers on the Company's system," regardless of their consumption and/or demands.[53] However, even if the Commission agrees that some level of energy and demand benefits inure to customers through the SMIP, these "benefits" are already accurately captured in the design and construction of the meters themselves – the costs of which are directly assigned by West Penn's SMIP to each customer that has a smart meter installed in their home or place of business.[54]

The OCA's suggested cost allocation obfuscates the issues related to the expected "benefits" of the SMIP and misconstrues the appropriate cost-of-service analysis that West Penn should use in assigning the common costs of the SMIP. The Commission should avoid further confusion in attempting to parse the "benefits" of the SMIP by approving the Company's

[51] Of further note, the benefit of access to consumption information and dynamic pricing that *might* be provided to the Large C&I class by reason of the SMIP is very limited. While the OCA suggests that the SMIP will provide benefits through the ability of customers to participate in demand response programs, as noted in WPPII's Main Brief, the sophistication of Large C&I customers actually dictates that these entities "intensively manage their energy needs and pursue energy efficiency and demand response opportunities," and "have already made substantial investments in smart meter technology." WPPII M.B., p. 21. As the OCA has already admitted, many of these customers *already* participate to some degree in the PJM Interconnection, L.L.C. ("PJM"), hourly and day-ahead markets and thus *already* have, and have paid for, the advanced metering capability necessary to facilitate this participation. *See id.* at 21-22. *See also id.* at 21 n.65 (citing, by analogy, Connecticut Power & Light's conclusion that smart meters have little actual impact on customer behavior).

[52] *See id.* at 15-17.

[53] *Id.* at 16-17 (citing WPPII Statement No. 1-R, Rebuttal Testimony of Richard A. Baudino (hereinafter, WPPII St. 1-R"), p. 5); *see also* West Penn M.B., pp. 58-59 (noting that "SMIP benefits do not change with changes in energy consumption"); OSBA M.B., pp. 7-8 (noting that "joint and common costs do not vary based upon customer usage or size").

[54] WPPII M.B., p. 15.

reasonable cost allocation approach, which appropriately observes reasonable and long-standing cost-of-service ratemaking principles that this Commission has adopted and observed in the context of all other utility metering costs. Accordingly, the Commission must reject the OCA's argument.

C. The OSBA's Proposal To Recover Costs from the C&I Classes Through an Energy Charge Mechanism Would Result in Unjust, Unreasonable and Discriminatory Rates.

As a preliminary matter, if the Commission correctly determines that the Company has appropriately allocated the common costs of the SMIP, there is no need to decide whether any SMIP costs should be recovered from non-Residential ratepayers through a volumetric cost recovery mechanism.[55] West Penn's allocation approach for the common costs of the Smart Meter Plan is appropriate and reasonable; to require West Penn to assign any common costs on the basis of energy or demand consumption would produce unjust, unreasonable and inappropriately discriminatory rates.[56] Because cost causation is the correct basis for allocating the costs of the SMIP, so too should cost causation be the basis for any mechanism employed by West Penn to recover these costs.[57]

Contrary to such principles of cost causation, the OSBA suggests that all non-Residential customers, including those in the Large C&I class, should be subject to a volumetric, kWh-based charge for recovery of SMIP common costs, in the event that the Commission adopts the OCA's proposed cost allocation methodology.[58] According to the OSBA, if the Commission determines that customers who use greater amounts of energy should be responsible for paying higher costs,

[55] As discussed below, the OSBA argues that such a volumetric cost recovery mechanism should be adopted by the Commission only if the Commission accepts the OCA's cost allocation proposal. The OSBA, however, agrees that the OCA's cost allocation proposal should be rejected by the Commission. *See* OSBA M.B., p. 9.
[56] WPPII M.B., p. 26.
[57] As noted in the Main Brief, WPPII does not oppose a kWh charge for the limited application to the Residential class; however, this acquiescence should not be interpreted as any acceptance by WPPII of the OCA's energy and demand based cost allocation proposal. *See id.* at 26-27.
[58] *See* OSBA M.B., p. 9.

then "this cost allocation methodology would imply that larger customers within each non-residential rate class group are responsible for higher costs than smaller customers within the rate class group."[59] The OSBA points to the "very diverse nature of customers in the non-residential rate class groups" to support its claim that, under these circumstances, an energy charge mechanism "would appear particularly applicable to cost recovery within non-residential rate class group."[60]

Importantly, the diverse nature of non-Residential rate classes, particularly West Penn's C&I classes, is precisely why an energy charge approach for these ratepayers is inappropriate and unreasonable. The Residential class consists of consumers whose consumption characteristics are essentially the same, which results in the energy charge mechanism proposed by the OCA being a plausible alternative for that class.[61] This is clearly not true for the C&I classes, whose wide array of consumption characteristics would result in the larger customers shouldering an unwarranted and unreasonable portion of the class's common costs, notwithstanding the OSBA's unsupported assumption that "customers within the non-residential rate class groups . . . who use more energy should pay higher SMIP chargers than customers within the non-residential rate class who use less energy."[62]

In this regard, the OSBA recognizes that West Penn's non-Residential ratepayer classes encompass a broad range of C&I customers under the Company's "single-phase" or "three-phase" smart meter programs, from the smallest Commercial operations to the smallest Industrial ratepayers.[63] In many instances, the largest customers in each of the Company's various rate schedules have energy and demand characteristics similar in scope to customers in the next

[59] *Id.*
[60] *Id.* at 26.
[61] *See* WPPII M.B., p. 27.
[62] OSBA M.B., p. 26.
[63] *See id.*

highest rate schedule but lack the overall energy and demand requirements to have the option of participating in the next rate. Contrary to the OSBA's conclusion that "it would be both inappropriate and inequitable to require the smallest non-residential customer in the single-phase (or three-phase) rate class group to pay exactly the same monthly charge as the largest non-residential customer" in the respective rate class group,[64] the OSBA's proposal would actually result in unjust and discriminatory rates for the largest customers in each rate class group. As WPPII noted in its Main Brief, "an energy charge . . . mechanism would disproportionately assign greater costs to higher energy . . . users within a class of similar customers, despite the fact that the actual cost of the meter installation and the costs of administering the network and data system for every like customer would not vary."[65]

In order to ensure just and reasonable rates for all customers, the Commission should approve West Penn's proposed cost-based allocation. In addition, the Commission should ensure such just and reasonable rates for non-Residential customers by using the Company's proposed customer charge cost recovery mechanism.[66] If the PUC approves the OCA's allocation methodology, the Commission must still protect the concerns of all C&I customers by using a customer charge cost recovery mechanism for all non-Residential ratepayers. For these reasons, the Commission should reject the OSBA's proposal and adopt the Company's proposed rate structure as filed and modified only by the OCA's limited request for the Residential class.

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[64] *See id.* at 26-27.
[65] WPPII M.B., p. 26.
[66] *See id.* at 25-27; *see also* West Penn M.B., p. 60.

III. CONCLUSION

WHEREFORE, the West Penn Power Industrial Intervenors respectfully requests that the Pennsylvania Public Utility Commission: (1) reject the OCA's argument for non-direct costs of the West Penn Power Company Smart Meter Technology Procurement and Installation Plan to be allocated on the basis of energy consumption; (2) reject the OSBA's argument for recovering any costs from non-Residential customers through an energy charge mechanism under any circumstances; and (3) approve West Penn Power Company's Smart Meter Procurement and Installation Plan as filed, including the cost allocation and cost recovery mechanism proposed by the Company therein.

Respectfully submitted,

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