COMMONWEALTH OF PENNSYLVANIA

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March 1, 2010

HAND DELIVERED

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

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

Dear Secretary McNulty:

Enclosed for filing are the original and nine (9) copies of the Reply Exceptions, on behalf of the Office of Small Business Advocate, in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Daniel G. Asmus
Assistant Small Business Advocate
Attorney ID No. 83789

Enclosures

cc: Parties of Record

Robert D. Knecht

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY EXCEPTIONS
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

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Dated: March 1, 2010

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I. INTRODUCTION-PROCEDURAL HISTORY

Each electric distribution company ("EDC") with at least 100,000 customers was required to file a smart meter technology procurement and installation plan ("SMIP") with the Pennsylvania Public Utility Commission ("Commission") pursuant to Act 129 of 2008. Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), and Pennsylvania Power Company ("Penn Power") (collectively, "First Energy" or "the Companies") filed a Joint Petition for Approval of a SMIP ("Petition") with the Commission on August 14, 2009.

The Office of Small Business Advocate ("OSBA") filed a Notice of Intervention and Public Statement on September 25, 2009. Other parties to this proceeding include the Commission's Office of Trial Staff ("OTS"); the Office of Consumer Advocate ("OCA"); the Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA") and Penn Power Users Group ("PPUG") (collectively, "the Industrials"); the Commonwealth of Pennsylvania, Department of Environmental Protection ("DEP"); Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (collectively, "Constellation"); and the Pennsylvania Association of Community Organizations for Reform Now ("ACORN").

The OSBA filed a pre-hearing memorandum and participated in the pre-hearing conference on September 29, 2009, before Administrative Law Judge ("ALJ") Susan D. Colwell. In accordance with the Commission's prior notice, a technical conference was held on October 20, 2009, in Harrisburg before ALJ David A. Salapa. The OSBA filed the Rebuttal Testimony of its witness, Robert D. Knecht, on November 9, 2009.

An evidentiary hearing took place on November 19, 2009, at which the parties submitted their testimony for the record. ALJ Colwell admitted the testimony and exhibits into the record.

On December 11, 2009, the OSBA filed its Main Brief pursuant to the procedural schedule set forth in the September 30, 2009, Scheduling Order of ALJ Colwell. The OSBA's Main Brief addressed the issues of cost allocation and cost recovery. The OSBA filed its Reply Brief on December 31, 2009.

The Commission issued ALJ Colwell's Initial Decision ("ID") on January 28, 2010. Exceptions to the ID were filed on February 17, 2010, by the OTS, the OCA, the Companies, and DEP. These Reply Exceptions are being filed by the OSBA in response to the OCA's Exception No. 2 regarding the allocation of SMIP common costs.

II. REPLY EXCEPTION

A. REPLY TO OCA'S EXCEPTION NO. 2 REGARDING THE ALLOCATION OF SMIP COMMON COSTS: The ALJ correctly rejected OCA's proposal to allocate SMIP common costs on the basis of demand and energy rather than the number of customers in each class. (ID at 48-55)

The ALJ rejected the OCA's proposal to allocate SMIP common costs on the basis of demand and energy, agreeing with the Companies, the Industrials, and the OSBA that common costs should be allocated on the basis of the number of customers in each of the three rate class groups, *i.e.*, Residential, Commercial, and Industrial.[1] In its Exception No. 2, the OCA excepted to this recommendation of the ALJ, and presented the following three arguments:

.1. Smart meter common costs are being caused by the requirements of Act 129 in order to benefit customers through reductions in demand and energy costs.

2. Because the benefits of smart metering accrue to all classes, the bulk of costs should not be placed on residential customers.

3. Allocating common costs on an energy and demand basis is consistent with accepted ratemaking principles.[2]

The OSBA agrees with the conclusion of the ALJ that the Companies' plan should be approved, with respect to the allocation of common costs. In support of that conclusion, the OSBA offers the following arguments:

1. Implementation Order

Section 2807(f)(7) of the Public Utility Code, 66 Pa. C.S. §2807(f)(7), states that "[a]n electric distribution company may recover reasonable and prudent costs of providing smart meter

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[1] ID at 48-55.

[2] OCA Exceptions at 8-17.

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technology" through base rates or "through a reconcilable automatic adjustment clause under section 1307." With regard to the allocation of these costs among the rate class groups, the Commission has offered the following guidance:

> 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, as discussed in E.1. 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.[3]

By definition, what First Energy has characterized as "common costs" are what the Commission has labeled as "costs that provide benefit across multiple classes." Therefore, according to the Implementation Order, these costs "should be allocated among the appropriate classes *using reasonable cost of service practices.*"[4] (emphasis added) The disagreement in this proceeding is over what constitute "reasonable cost of service practices."

2. Allocation of "Common Costs"

First Energy proposes to allocate the common costs to the three rate class groups on the basis of the relative number of customers in each group.[5] The OSBA and the Industrials support First Energy's proposal for allocating the common costs among the rate class groups.[6] With the

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[3] *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009) ("Implementation Order"), at 32; ID at 48.

[4] OSBA Main Brief at 8; OSBA Reply Brief at 9-10.

[5] ID at 48.

[6] ID at 52-54, citing OSBA Main Brief at 4-5, 11; Industrials Main Brief at 7-8.

exception of the OCA, no other party took a position with respect to the allocation of common costs.

The OCA opposed First Energy's proposal and recommended an alternative. Specifically, instead of allocating the common costs on the basis of the relative number of customers in each rate class group, the OCA proposed to allocate 50% of the common costs on the basis of the relative energy consumption by each rate class group and 50% of the common costs on the basis of the relative coincident peak of each rate class group.[7]

The OCA's proposal would effectuate a dramatic reduction in the share of the common costs allocated to the Residential rate class group and a dramatic increase in the share of the common costs allocated to the Commercial and Industrial rate class groups, as shown in the following Table.[8]

TABLE ONE

Allocation of Common Costs by Class[9]

Met-Ed

	Met-Ed (% of Total Costs by Class)	OCA (% of Total Costs by Class)
Residential	88.23	35.5
Commercial	11.45	36.7
Industrial	00.32	27.8
Total	100	100

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[7] ID at 49; OCA Main Brief at 30.

[8] ID at 53, incorporating a table from the OSBA's Main Brief at 11; OSBA's Reply Brief at 12.

[9] Sources: The percentage of customers in each class for each individual company has been calculated from the number of customers in each class, as set forth in the August 14, 2009, Plan, at 9, Table 4. The OCA's allocation by class can be found in OCA Statement No 1S, Ex. JRH-3.

Penelec

	Penelec (% of Total Costs by Class)	OCA (% of Total Costs by Class)
Residential	85.85	38.5
Commercial	13.75	34.6
Industrial	00.40	26.9
Total	100	100

Penn Power

	Penn Power (% of Total Costs by Class)	OCA (% of Total Costs by Class)
Residential	87.71	39.5
Commercial	12.15	29.5
Industrial	00.14	31.0
Total	100	100

The common costs will include such things as meter data management, network management, and administrative costs.[10] These are costs that bear no relation to energy or demand, but do bear a relation to each customer that is serviced by First Energy. These costs do not vary from customer to customer, and do not vary based upon the customer's energy usage. Therefore, it is logical to spread these costs evenly across all the First Energy customers, as proposed by the Companies.[11]

3.   Cost Basis for First Energy's Proposal

As noted above, First Energy's common costs include the Companies' meter data management, network management, and administrative costs. First Energy has classified these costs as "customer-related" and has proposed to allocate them to each rate class group through an unweighted customer allocator, *i.e.*, on the basis of the relative number of customers in each rate class group.[12] According to the Companies, these "costs are akin to traditional metering and

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[10] Met-Ed/Penelec/Penn Power Plan at 21.

[11] Met-Ed/Penelec/Penn Power Main Brief at 39, citing to Companies' Statement No. 3-R at 2-3.

[12] OSBA Reply Brief, citing Met-Ed/Penelec/Penn Power Plan at 21.

meter-related costs" and are properly allocated on a per customer basis "because it [customer-based allocation] is the same method that utilities, with the Commission's approval, have employed for many years to allocate metering, meter-related and customer accounting costs among customer classes."[13]

As stated by ALJ Colwell, "because these costs will be incurred without regard to energy consumption or customer demand, and because the smart meter technology will be provided to all metered customers, any costs relating to the Companies' SMIP that cannot be directly assigned to a specific customer class should be allocated based on the number of customers in each class, as the Companies propose."[14]

4.   No Cost Basis for OCA's Proposal

The OCA has proposed to allocate the "common costs" on the basis of peak demand and energy consumption.[15] The OCA's proposal flows from the conclusion that common costs should be allocated on the basis of the "benefits" produced by the SMIP.[16] Relying on the testimony of its witness, Mr. Richard Hornby, the OCA concludes that each of the three rate class groups is more likely to benefit from the SMIP in proportion to that group's energy consumption and peak demand than in proportion to the number of customers in that group.[17]

There are three fundamental flaws in the OCA's assumptions. First, the OCA is ignoring the fact that the General Assembly mandated the deployment of smart meters to *all* customers

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[13] ID at 55, citing Met-Ed/Penelec/Penn Power Statement No. 3-R at 2-3.

[14] ID at 55. In its Main Brief at 11, the OSBA cited the testimony of OSBA witness Mr. Robert Knecht, who concluded that the First Energy proposal for allocating common costs is "within the range of normal cost allocation practice for these costs." *See also* OSBA Statement No. 1 at 6.

[15] ID at 49, citing OCA Statement No. 1 at 15-16.

[16] *Id.*

[17] OCA Main Brief at 30.

over a 15-year period of time, regardless of how many of those customers will actually be able to save money by using those smart meters to adjust their consumption profile.[18]

Second, the OCA assumes (without offering any evidence in support) that customers in the Commercial rate class group are more likely (or at least as likely) to be able to reduce their electric bills through the use of smart meters than are customers in the Residential rate class group. However, as OSBA witness Mr. Knecht explained:

> . . . some small businesses have very little ability to shift load from peak to off- peak periods, because the nature of their business requires them to be in operation during certain hours. For example, it is difficult to imagine a restaurant turning down its air conditioning on a hot summer evening when the restaurant is full and shifting that load to the middle of the night in order to take advantage of lower electricity prices. Under Mr. Hornby's 'customer benefit' standard, such a customer should be assigned little or no SMIP costs, because it does not receive the benefit of the program.[19]

Nevertheless, the OCA's allocation proposal would charge SMIP costs to that restaurant in proportion to its peak demand and total consumption, based on the unwarranted assumption that the restaurant actually can shift its load.

Third, the OCA assumes that the principal reason for mandating the deployment of smart meters is to save ratepayers money.[20] However, the OCA acknowledged that "Act 129 is also explicitly trying to achieve important public policy goals of reducing annual energy use, *reducing air emissions associated with that annual energy use*, and reducing peak load."[21] Nonetheless, despite the OCA's recognition that Act 129 is intended to produce environmental benefits, its allocation proposal for common costs is based upon a 50/50 weighting of energy and

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[18] ID at 52, citing OSBA Main Brief at 4-5; see also 66 Pa. C.S. § 2807(f)(2).

[19] OSBA Main Brief at 14-15; OSBA Reply Brief at 15, citing OSBA Statement No. 1 at 4-5.

[20] OCA Statement No. 1-S at 5. See also ID at 52, citing OSBA Main Brief at 4-5.

[21] ID at 52, citing OSBA Main Brief at 4-5; see OCA Statement No. 1-S at 5.

demand and takes no account of the reduced air emissions expected to benefit all citizens, regardless of how much electricity they use and regardless of whether their electric bills go down—or go up—as a result of smart meters.

Consequently, the ALJ was correct in rejecting the OCA's approach to common cost allocation. As noted by ALJ Colwell, "by proposing that the Companies allocate their SMIP costs on the basis of energy usage and demand, the OCA is ignoring long-standing principles of cost causation. As the Companies point out, these costs 'are akin to traditional metering and meter-related costs because they will be incurred to determine the best way for the Companies to comply with the metering requirements mandated by Section 2807(f) of the Public Utility Code and the Commission's Implementation Order.'"[22]

However, even if the Commission were to reject the ALJ's reasoning, the OCA has failed to prove that the "benefits" from SMIP will accrue to customers on the basis of how much, and when, customers use electricity. Therefore, the Commission must reject the OCA's cost allocation approach.

5.   *Lloyd v. Pennsylvania Public Utility Commission*

On page 14 of its Exceptions, at footnote 7, the OCA asserts that the decision in *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010 (Pa. Cmwlth. 2006), supports the implementation of the OCA's proposed cost allocation, and that the ALJ erred in accepting the Industrials' argument that *Lloyd* requires rejection of the OCA's proposal. In the ID, ALJ Colwell quoted with approval the Industrials' Main Brief, wherein the Industrials argued that the *Lloyd* decision shows that the "Commonwealth Court and the Commission have clearly held that

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[22] ID at 55.

a utility's cost of providing service must be the guiding principle – or 'polestar' – in utility ratemaking."[23]

According to the OCA, the decision in *Lloyd* does not support the Industrials' argument that allocating common costs on the basis of "benefits" would violate cost of service principles.[24] The OCA states that "another section of the Lloyd decision upholds the allocation of Sustainable Energy Fund (SEF) costs to all classes of distribution customers on the basis that all ratepayers benefit from the Fund's activities."[25] (citations omitted) The OCA goes on to state the following about the *Lloyd* decision:

> In the face of an argument by industrial customers that the SEF provides no demonstrable benefits to ratepayers, the Court stated: 'What the core of that argument ignores is that the General Assembly has specifically authorized the public service programs such as SEF be funded.' The Court noted that the purpose of SEF is 'to promote the development and use of renewable energy and clean energy technologies, energy conservation and efficiency which promote clean energy.' Act 129, which established the smart metering program, likewise seeks to further the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account the benefits of price stability over time and the impact on the environment.[26] (citations omitted)

However, regardless of whether or not *Lloyd* supports the Industrials' argument in the instant proceeding, *Lloyd* does not support the OCA's common cost allocation proposal.

Significantly, the issue in *Lloyd* dealt with whether all customers should have to pay SEF costs and not with the allocation of those costs among the customer classes. Specifically, the Court in *Lloyd* simply rejected an argument that SEF funding should come through generation

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[23] ID at 53-54, quoting Industrials Main Brief at 7-8.

[24] OCA Exceptions at 14, fn. 7.

[25] OCA Exceptions at 14, fn. 7.

[26] *Id.*

rates and not through distribution rates. It did not address (indeed, did not have before it) the question of allocation of SEF costs among the rate classes.[27]

Here, by contrast, no one challenges whether all customers should pay SMIP common costs. Rather, the challenge is over how those costs should be allocated among the classes, an issue which was not before the Court in *Lloyd*. Therefore, OCA's reliance on *Lloyd* is misplaced.

6.   Alternative Cost-Based Allocation Approach

The OSBA agrees that First Energy's proposal to allocate the common costs on a per customer basis is "within the range of normal cost allocation practice for these costs."[28] However, in recognition that the Commission might agree with the OCA that common costs should not be allocated solely on the basis of customer count, the OSBA also proposed Mr. Knecht's cost-based alternative to First Energy's approach, *i.e.*, allocate the common costs in proportion to the allocation of the meters costs.[29] This alternative could be implemented by estimating the meters costs (which would not be incurred during the Assessment Period) and reconciling those estimates when the actual costs are known.[30]

This alternative would provide some relief to the Residential rate class group without causing the dramatic shift in costs to the Commercial and Industrial rate class groups which would be effectuated by the OCA's proposal.[31] The ID did not address this alternative.

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[27] *Lloyd*, 904 A.2d at 1027.

[28] OSBA Main Brief at 16, citing OSBA Statement at 1 at 6.

[29] *Id.*, citing OSBA Statement No. 1 at 6.

[30] *Id.*, citing OSBA Statement No. 1 at 6.

[31] OSBA Main Brief at 16.

However, if the Commission rejects First Energy's common cost allocation approach (*which the Commission should not do*), then the Commission should adopt the OSBA's alternative.

7. Cost Recovery within Rate Class Groups

Once the Commission determines how meters costs and common costs will be allocated among the three rate class groups, it will be necessary for the Commission to determine how those costs will be recovered within each rate class group. As noted in the OSBA's Main Brief and Reply Brief, *there is a dispute over how the costs should be recovered within the Commercial rate class group only if the Commission adopts the OCA's cost allocation proposal.*[32]

First Energy has proposed to recover both meters and common costs via a customer charge, *i.e.*, each customer within a rate class group would pay exactly the same amount regardless of consumption.[33] The OSBA supports this approach, as do the Industrials.[34]

As noted in the OSBA's Main Brief, because the OSBA supports First Energy's proposal to allocate common costs among the rate class groups on a per customer basis, the OSBA also supports the Companies' proposal to recover both the meters costs and the common costs within the Commercial rate class group via a customer charge.[35]

However, if the Commission approves the OCA's recommendation to allocate the common costs on the basis of energy consumption (*which the Commission should not do*), then the OSBA respectfully requests that the meters costs be recovered within the Commercial rate

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[32] OSBA Main Brief at 18; OSBA Reply Brief at 19.

[33] Met-Ed/Penelec/Penn Power Main Brief at 22.

[34] OSBA Main Brief at 19; Industrials Main Brief at 17.

[35] OSBA Main Brief at 19.

class group via a customer charge and that the common costs be recovered within the Commercial rate class group via a per kWh charge.[36]

As illustrated by Table One (reproduced above), the OCA's cost allocation proposal would increase the Commercial rate class group's share of the common costs dramatically, resulting in an unreasonably high customer charge.

The OCA's position is that customers who use more energy should be assigned a higher cost responsibility (and, therefore, should pay higher SMIP charges) than customers who use less energy.[37] If the Commission agrees with the OCA's position (*which the Commission should not do*), then consistency dictates that customers within the Commercial rate class group who use more energy should pay higher SMIP charges than customers within the Commercial rate class group who use less energy.

In the OSBA's view, cost recovery should flow from cost allocation.[38] Therefore, if the Commission determines (*incorrectly*) that some smart meter costs should be allocated on the basis of peak demand and energy, then the recovery method within the rate class groups for those costs should reflect that determination. With such an allocation, it would be inappropriate and inequitable to require the smallest Commercial customer to pay exactly the same monthly charge as the largest Commercial customer.
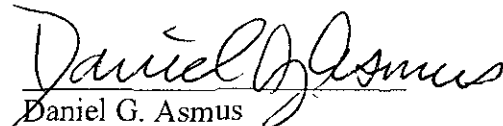
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[36] OSBA Main Brief at 19-20.

[37] OSBA Main Brief at 20; OCA Main Brief at 24.

[38] The Companies appear to agree with the OSBA regarding the linkage between cost allocation and cost recovery methodologies. *See* Met-Ed/Penelec/Penn Power Main Brief at 14-15.

III.   CONCLUSION

For the reasons set forth herein, the OSBA respectfully requests that the Commission

deny OCA's Exception No. 2, thereby rejecting the OCA's common cost allocation proposal.

Respectfully submitted,

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Smart Meter Technology Procurement and   :
Installation Plan   :

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Reply Exceptions, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise noted), upon the persons addressed below:

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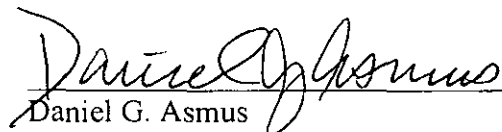vkarandrikas@mwn.com
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