COMMONWEALTH OF PENNSYLVANIA

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December 2, 2013

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

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

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Exceptions to the Recommended Decision in the above-referenced proceeding.

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

Sincerely yours,

Candis A. Tunilo

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Assistant Consumer Advocate
PA Attorney I.D. # 89891

Enclosures
cc: Honorable Elizabeth H. Barnes
Certificate of Service
*169701

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

EXCEPTION OF THE OFFICE OF CONSUMER ADVOCATE

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Dated: December 2, 2013

I. INTRODUCTION

On November 8, 2013, the Office of Administrative Law Judge issued the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes (ALJ) regarding the Smart Meter Deployment Plan (Plan) of Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company (West Penn) (collectively, FirstEnergy Companies or Companies). In her Recommended Decision, ALJ Barnes found that several of the Office of Consumer Advocate's (OCA) recommendations should be adopted. Specifically, with regard to Plan costs, the ALJ recommended that the Companies be directed to conduct a proper cost benchmarking analysis within 120 days of the Commission's order and submit the results with an amended Plan, if necessary. R.D. at 26. The ALJ also recommended that the Companies be directed to provide a report with their next SMT-C rider filing that identifies expenditures on all Plan components that have the potential to benefit their sister utilities if and when the sister utilities begin deploying smart meters and allocate any system upgrades that their sister utilities are currently utilizing immediately. R.D. at 28. Additionally, the ALJ recommended that the Companies be directed to allocate joint Plan costs based on the annual average number of meters per Company as of June 30th. R.D. at 30.

With regard to Plan savings, the ALJ recommended adoption of the OCA's position that the Companies hire an independent consultant to conduct a comprehensive investigation into potential categories of savings from smart meter deployment and prepare and submit a report of the findings to the Commission within 90 days of the Commission's order, and submit a amended Plan within 30 days thereafter. R.D. at 32. The ALJ also recommended the adoption of the OCA's positions regarding broadening the scope of the Companies' customer education planning specifically to further address customer privacy in their Communications Plan and to provide safety-related education materials to customers at the same time as the Companies' public website announcement of the areas where smart meters will be deployed. R.D. at 39, 41, 43. Further, the ALJ recommended adoption of the OCA's positions regarding voluntary and involuntary remote disconnection. R.D. at 46, 47. The ALJ also recommended denial of the Companies' request to recover $5.1 million for expenditures related to West Penn's abandoned CIS system. R.D. at 51. Finally, the ALJ recommended that the OCA's position regarding legacy meter costs, wherein the incremental cost of removal would be charged to a regulatory asset containing the cost of the retired legacy meters and would be amortized over the remaining depreciable lives of the metering assets along with the remaining costs of those retired meters and the cost of would later be reflected in each Company's next base rate case, be adopted. R.D. at 54.

The OCA submits that the ALJ's Recommended Decision is soundly based. The OCA, however, files this single Exception to the ALJ's Recommended Decision. Specifically, the OCA excepts to the ALJ's recommended adoption of the Companies' proposed December 31, 2013 baseline for measuring savings to flow through their SMT-C riders. Section 2807(f)(7) permits the Companies to recover their smart meter costs on a full and current basis through riders, but such costs must be offset by the savings achieved from smart meter deployment. See 66 Pa. C.S. § 2807(f)(7). The OCA submits that to establish this baseline, one must look to the expenses that formed the basis of the current rates charged to customers. This will ensure that savings in expenses that form the basis of current rates are properly matched to the costs being collected through the rider mechanism. As such, the baseline levels for savings must be determined using the amounts embedded in the Companies' current rates.

II. BACKGROUND AND PROCEDURAL HISTORY

On August 14, 2009, pursuant to Act 129 of 2008 (Act 129) and the Pennsylvania Public Utility Commission's Smart Meter Procurement and Installation Order, Met-Ed, Penelec and Penn Power filed their Joint Smart Meter Implementation Plan (2009 SMIP). 66 Pa.C.S. § 2807(f); see gen'ly Re: Smart Meter Procurement and Installation, Docket No. M-2009-2092655, Implementation Order (June 24, 2009) (Implementation Order). By Order entered June 9, 2010, the Commission approved the 2009 SMIP. As part of the Commission's approval of the 2009 SMIP, the Commission noted that the Companies expected to file their full Deployment Plan by April 2012.[1] Also on August 14, 2009, West Penn separately filed its Smart Meter Implementation Plan (WPP SMIP). On June 30, 2011, the Commission approved the Joint Petition for Settlement of All Issues (WPP Settlement) regarding the WPP SMIP. In the WPP SMIP, West Penn agreed to file its full Deployment Plan as part of its revised WPP SMIP with the Commission no sooner than June 2012.[2] Subsequently, FirstEnergy and West Penn's corporate parent, Allegheny Energy, Inc. merged, and West Penn is now an operating company of FirstEnergy.

The Implementation Order also required that each Electric Distribution Company (EDC) file a Smart Meter Deployment Plan for Commission approval in 2012. Implementation Order at 14. On May 25, 2012, the FirstEnergy Companies jointly filed a request with the Commission to extend the deadline for filing their Smart Meter Deployment Plan until the end of 2012. The Commission granted this request by Secretarial Letter dated June 28, 2012.

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[1] See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan, Docket Nos. M-2009-2123950 *et al.*, Order at 10 (June 9, 2010).

[2] See Petition of West Penn Power Company for Expedited Approval of its Smart Meter Technology Procurement and Installation Plan, Docket No. M-2009-2123951, Settlement at ¶ 15 (March 9, 2011).

On December 31, 2012, the FirstEnergy Companies filed their Joint Petition and Smart Meter Deployment Plan (Plan) with the Commission for approval. Notice of the Plan filing was published in the *Pennsylvania Bulletin* on January 19, 2013. See 43 Pa. B. 419-20. Pursuant to the Notice in the *Pennsylvania Bulletin*, the OCA filed its Comments and Answer to the Companies' Joint Petition and Plan on February 8, 2013. The matter was assigned to the Office of Administrative Law Judge and further assigned to ALJ Barnes for investigation.

On February 19, 2013, a prehearing conference was held, wherein a litigation schedule was adopted, and the Companies' Motion to Consolidate was granted. The following parties participated in the prehearing conference: the FirstEnergy Companies; the OCA; the Office of Small Business Advocate (OSBA); Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group and West Penn Power Industrial Intervenors (collectively the Industrials); and Direct Energy Services, LLC (Direct Energy). Pursuant to the litigation schedule, the OCA submitted the Direct and Surrebuttal Testimonies of J. Richard Hornby,[3] Nancy Brockway,[4] and David J. Effron.[5] Hearings were held on May 8, 2013, in Harrisburg.

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3 Mr. Hornby is a Senior Consultant at Synapse Energy Economics, Inc., specializing in planning, market structure, ratemaking, and gas supply/fuel procurement in the electric and gas industries for more than 20 years. Mr. Hornby has extensive experience in smart meter deployment plans. He has presented expert testimony on various utility-related topics and provided litigation support in approximately 100 proceedings in over 30 jurisdictions on behalf of state energy offices, consumer advocate offices, marketers and staff of public utility commissions. Mr. Hornby is a former Assistant Deputy Minister of Energy for the Province of Nova Scotia. He has a Master of Science in Energy Technology and Policy from the Massachusetts Institute of Technology (MIT) and a Bachelor of Industrial Engineering from the Technical University of Nova Scotia, now merged with Dalhousie University. Mr. Hornby's curriculum vitae is attached to his Direct Testimony as Exhibit JRH-1.

4 Ms. Brockway heads her own consulting firm specializing in the energy and utility industries, with particular attention on the role of regulation in the protection of consumers and the environment. She has over 25 years of experience and is a former Commissioner of the New Hampshire Utilities Commission. She was also formerly a hearing officer and advisor to the Maine Public Utilities Commission and General Counsel of the Massachusetts Department of Public Utilities. Ms. Brockway earned a Juris Doctor degree from Yale Law School and a Bachelor of Arts degree from Smith College. Ms. Brockway's curriculum vitae is attached to her Direct Testimony as Exhibit NB-1.

5 Mr. Effron has been a utility regulation consultant for over thirty years, during which he has analyzed numerous electric, gas, telephone and water filings in various jurisdictions. He is a Certified Public Accountant and

On May 24, 2013, the OCA and the FirstEnergy Companies filed Main Briefs, and Reply Briefs were filed by OCA and the FirstEnergy Companies on June 3, 2013.

On November 8, 2013, the Office of Administrative Law Judge issued the Recommended Decision of ALJ Barnes (R.D.). The OCA files this single Exception to the ALJ's Recommended Decision.

III. EXCEPTION

OCA Exception: The Recommended Decision Erred In Accepting The Companies' Proposed Savings Baselines. (R.D. at 33-36; OCA M.B. at 20-22; OCA R.B. at 11-15).

In her Recommended Decision, the ALJ accepted the OCA's assertion that the Companies must properly identify categories of savings from the deployment of smart meters. R.D. at 32. The ALJ, however, rejected the OCA's assertion that the Companies must properly identify the expenses embedded in their current rates in order to properly reflect all offsetting savings per category in the SMT-C riders pursuant to Act 129. R.D. at 36. The ALJ reasoned that the Companies' savings should be based on current expense information just as costs reflected in the rider are the most current expected costs for the effective year of the rider. R.D. at 35. The OCA respectfully disagrees with the ALJ's recommendation to accept the Companies' baseline levels for measuring savings from the deployment of smart meters as of December 31, 2013. The OCA submits that the ALJ focused on the expenses currently incurred by the Companies but should have, instead, focused on the expenses currently embedded in rates. The fact that smart meter costs are new or current is irrelevant to this savings determination.

As discussed in the OCA's Main and Reply Briefs, the Companies chose to collect their smart meter costs through a rider mechanism as permitted by Act 129, rather than use the base

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has a Bachelor degree in Economics (with distinction) from Dartmouth College and a Masters in Business Administration from Columbia University. Mr. Effron's resume is attached to his Direct Testimony as Appendix A.

rate deferral mechanism also provided in Act 129.[6] See 66 Pa. C.S. § 2807(f)(7). As such, the Companies must offset these costs collected with the savings achieved from the deployment of smart meters. Id. The OCA submits that in order to properly reflect all offsetting savings in the rider mechanism, the Companies must properly identify the categories where savings will occur and properly identify what the Companies' current rates are based on. This will ensure that savings in expenses that form the basis of current rates are properly matched to the costs being collected through the rider mechanism. If the costs and savings are not properly matched, rates may not be just and reasonable.

As OCA witness Hornby testified:

> The Companies' actual costs as of December 31, 2013 are not the revenue requirements upon which their currently effective rates are based. Instead, the test year revenue requirements underlying the current rates of Met-Ed and Penelec date back to 2006 []. The test year revenue requirements underlying the current rates of Penn Power and West Penn date back even further, to 1996, []. Thus, it is not at all clear or obvious that the Companies' actual costs as of December 31, 2013 will provide appropriate baseline amounts for the calculation of savings and the establishment of just and reasonable rates.

OCA St. 1 at 22. (Citations omitted). The expense amounts embedded in the Companies' current rates were established in each Company's last base rate case. The base rates paid by customers do not change (absent another base rate case) regardless of the expenses actually incurred by the Companies.

The OCA submits that this issue is unique to the FirstEnergy Companies because the other Electric Distribution Companies (EDCs) deploying smart meters have recently concluded

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[6] As discussed in the OCA's Reply Brief, the OCA's position on this issue does not violate prohibitions on single-issue ratemaking or retroactive ratemaking because Act 129 specifically permits the categories of costs incurred from smart meter deployment, netted of savings, be collected on a full and current basis through a rider. See OCA R.B. at 11-15. The Companies chose a reconcilable rider mechanism, and by doing so, the Companies have, in effect, chosen to carve the costs and savings categories out of base rates in order to collect these specific categories of costs on a full and current basis through their SMT-C riders.

base rate cases.[7] See e.g. Pa. PUC v. Duquesne Light Co., Docket No. R-2010-2179522, Final Order (Feb. 24, 2011); Pa. PUC v. PECO Energy Company – Electric Division, Docket No. R-2010-2161575, Final Order (Dec. 21, 2010); Pa. PUC v. PPL Electric Utilities Corp., Docket No. R-2010-2161694, Final Order (Dec. 21, 2010), as amended by Final Order (June 21, 2012). The FirstEnergy Companies chose to utilize a § 1307 rider to collect costs on a full and current basis rather than in a later base rate case, where all of the Companies' costs and revenues would be trued up. Ratemaking principles require that the expense savings flowed through a rider be based on the current level that ratepayers are paying in their rates for that expense.

The OCA submits that its position is not intended to create inefficiency in determining savings to flow through the SMT-C riders. While it may be more difficult to ascertain the baseline levels for savings in these circumstances, the OCA submits that failing to do so could allow the FirstEnergy Companies to improperly retain savings in current rates from their smart meter deployment. For instance, Companies witness Fitzpatrick noted in his Rebuttal Testimony that Met-Ed, Penelec and West Penn currently read meters bi-monthly, which culminates in $164 million less in savings[8] to flow through the SMT-C riders to offset Plan costs than if the Companies read meters monthly. See FE Companies St. 4-R at 17. The OCA submits, however, that Met-Ed, Penelec and West Penn ratepayers are currently paying rates that include expenses for monthly meter reading. In Mr. Fitzpatrick's scenario, in which the ALJ recommended be

[7] As explained in the OCA's Reply Brief, in its 2009 SMIP Order, the Commission directed the Companies to include in their SMT-C riders language from PECO's smart meter rider that explicitly states that any reduction in operating expenses or avoided capital expenditures would be deducted from the incremental costs of the Plan to determine net recoverable costs through the riders. See OCA R.B. at 11-15. See also Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan, Docket Nos. M-2009-2123950 *et al.*, Order at 42 (June 9, 2010) (2009 SMIP Order). The OCA submits that permitting the Companies to use a random baseline for measurement of savings would not apply the rider language as other EDCs have in passing through savings from smart meter deployment. Other EDCs reflect in their smart meter riders the savings based on current baseline levels from base rate cases concluded near the time that the riders were implemented.

[8] $570 million (total Plan savings if assume that meters are read monthly) - $406 million (total Plan savings if assume that meters are read every other month) = $164 million. FE Companies St. 4-R at 17.

adopted, the Companies are keeping the $164 million for their own use (assuming they do not file a base rate case) because the Companies' current rates reflect monthly meter reading expense. Yet, the Companies will receive dollar-for-dollar recovery of smart meter costs because they elected to use the rider mechanism.

The OCA submits that permitting EDCs to select a random date to set baseline levels for measuring savings does not carry forward the intent of Act 129. In order to avoid circumventing the requirements of Act 129, the OCA submits that the Commission should direct the FirstEnergy Companies to establish their baselines for measuring savings from smart meter deployment as the test year revenue requirements upon which their currently effective distribution rates are based. The Companies should be directed to provide this baseline level information with their next annual SMT-C filing.

IV. CONCLUSION

For the reasons set forth above, and for the reasons set forth in the OCA's Main Brief and Reply Brief, the OCA respectfully submits that the ALJ erred in approving the FirstEnergy Companies' proposed baseline methodology for the calculation of savings. Accordingly, the OCA respectfully requests that this determination in the ALJ's R.D. should not be adopted and that the Commission should accept the OCA's position on this issue.

Respectfully Submitted,

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DATE: December 2, 2013
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CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing, the Office of Consumer Advocate's Exceptions to the Recommended Decision, 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 2nd day of December 2013.

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