STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 18-E-0067 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service.

CASE 18-G-0068 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Gas Service.

MOTION TO COMPEL RESPONSE TO INTERROGATORIES DPS IR Set 1 (from D. Kopald to DPS)

I. The DPS did not answer some of the questions in the first set of interrogatories served that I assert they should have responded to. The DPS should be made to answer the interrogatories appended to this motion and discussed herein because Advanced Metering Infrastructure ("AMI"), aka the so-called smart meter program is subject to further review in this base rate proceeding and the questions posed pertain to costs.

Order 17-M-0178 contemplated a review of not some, not the ones that O&R or some staff at the DPS don't mind being reviewed, but <u>all</u> of the AMI costs in this proceeding, including, but not limited to those not properly accounted for, explained, and made on the basis of statements accepted without critical examination and on information and belief, without any proof whatsoever. These should be understood, as well, to include costs to the ratepayer as well as the company. The November 16, 2017 order in 17-M-0178 signed by Secretary Burgess states:

> Further, to ensure that the benefits of AMI deployment materialize, we are implementing a cap on the capital expenditures associated with the AMI project. The capital expenditures will be capped at the Company's estimated AMI project cost of $98.5 million. *In addition, **<u>all costs</u>** associated with this project are subject to further review in O&R's next base rate proceeding.*
>
> (Emphasis Added)

Costs include but are not limited to accounting costs, economic externalities (which include public health) which are not accounted for on an accounting statement and unrealized benefits.

In response to my motion to compel a response to O&R IR Set 1, O&R argues:

> In her Motion, Ms. Kopald misinterprets the Commission's cost review directive. In her view, a proper review would not be limited to accounting costs, but also would encompass "economic externalities (which include public health)," as well as unrealized

> benefits.[19] In Ms. Kopald's view these health costs include the costs of exposure to electromagnetic radiation, allegedly emanating from smart meters.[20] Ms. Kopald's expansive reading of the Commission's cost review language in the May 2018 Order is inconsistent with Commission practice. Essentially, she would have the Commission conduct a wholesale reappraisal of the health and safety aspects of the Company's AMI Program. Ms. Kopald has provided no credible basis or legitimate justification for conducting such a re-examination.
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> [19] Motion, p.1.
> [20] Id., p. 3.

When O&R claims I have "provided no credible basis or legitimate justification for conducting such a re-examination", they are merely deflecting from their failure to respond specifically to the arguments I made in my motion to admit new testimony that there are new facts which shed light on costs of AMI, which are to be reviewed in this proceeding; they also deflect from the fact that they have provided no legal authority for a definition of costs, while I have. If such a cost review demonstrates extreme discrepancies that should result in changes to the rate base and even a declaration regarding AMI not being in the public interest, so be it. O&R's (and by extension the DPS', see footnote 1 on page 4) argument seems to be, even though the Commission contemplated a review of costs, "we don't want to have one if it would result in questions about this program that would impact it going forward". Put another way, their collective position, is "please do not ask to shine a light on something we prefer to be left un-examined."

O&R assumes that by merely repeating their claim in response to subsequent motions that the new testimony was invalid, concomitant with a typical response made to convince a judge to overlook a non-lawyer pro se party's argument by describing the filer as extreme (see below excerpt from footnote 1, page 3 of O&R's response to Pace's motion)…..

> Ms. Deborah Kopald, took it upon herself to file a 23 page Motion to Admit the Testimony of Dr. Timothy Schoechle and Dr. David O. Carpenter and Other Exhibits. This testimony and exhibits exceeded **700 pages** in length.

…….that they could avoid dealing with the fact that a major paper was published in July 2018 which provides further international consensus that (1) there are is a statistically significant portion of the population that is severely overtly affected by electromagnetic radiation; that (2) there is now an accepted empirical basis to support these claims; that (3) electromagnetic radiation creates a serious public health risk and (4) that smart meters are part of that risk; and that the dosimetry previously documented is in line with negative health consequences documented in that paper from both devices and infrastructure. In other words, rather than dealing with the substance of my motion (or most interrogatory request), O&R unilaterally declares them to be "not relevant". O&R is similarly trying to avoid dealing with testimony regarding new information that suggests there is a serious data privacy risk and that the AMI program does not provide the benefits claimed to the ratepayer, which is the *sine qua non* for putting AMI costs in rate base. Unrealized benefits/ benefits that are claimed to exist that do not in fact and will not in fact come to fruition because of the nature of the AMI program are an obvious cost and are subject to review.

I am asking to look at costs on the basis of new information as well as on the basis of information that the DPS may have and has not disclosed. That is the purpose of *this* motion. The cost benefit analysis for which information has not been provided is thus relevant, especially before the newly approved subsequent rollout of AMI in the service territory which O&R itself **admits** was mostly not pre-approved in a prior rate hearing, but was largely approved as a result of their petition in 17-M-0178, which provided no tangible evidence or any documented updates to back up wishful assertions they had made in a previous rate hearing about the so-called benefits (See page 3, ¶1 of O&R's response to my motion to compel responses from the first IR set):

> In aggregate, the Company estimated the incremental capital investments associated with the AMI implementation to be *$74.3 million above what was approved by the Commission in the 2015 Rate Order*, resulting in an overall capital investment of $98.5 million. The Company also requested approval of its AMI Customer Engagement Plan.
>
> (Emphasis Added)

O&R has adduced no legal argument whatsoever that costs encompass things other than accounting costs[1].

So-Lo Oil Co., Inc. v. Total Petroleum, Inc, 832 P.2d 14 (Supreme Court of Oklahoma, 1992), stands for the proposition that absent a concrete definition, one cannot imagine that the term "costs" refers to a specific accounting procedure:

> *We agree that general accounting methods may be appropriate to interpret a statutory cost definition, but this jurisprudence does not teach that accounting rules may be fashioned to supply the definition where legislative silence prevails.*

An unrealized benefit that is claimed from a boondoggle is similarly a cost. The reason why it is a cost is that the DPS ordered the smart meter program to continue to be rolled out on the basis of statements made by O&R that do not demonstrate any cost savings and were accepted uncritically. The ratepayer will thus be left paying for something without getting a benefit; things that are passed onto the ratepayer are supposed to occur if the ratepayer is benefitting. If not, the

[1] I am bringing up O&R's objections to a motion to compel information to pre-empt a similar argument from the DPS inasmuch as I have oft- stated and it seems obvious that O&R and the DPS work very closely together. When I have asked the DPS for information, they tell me to go to O&R, and tried to first tell me that the information couldn't be obtained. Then O&R produced some of what had already been produced to another party and then a little more last Friday near close of business day after I had complained that both the DPS and O&R are thwarting a proper review of costs.

Most note-ably, both the DPS and O&R appear to take the position that they do not have to fully answer questions about the AMI program (a position which I assert contravenes the DPS' order in 17-M-0178); full accounting costs have not been provided, nor has any accounting of claimed benefits been made. This is especially important when there is new evidence that the claimed benefits do not exist and other evidence of enormous hidden costs.

I have been consistent in my public statements that preceded this hearing that the DPS acts like an arm of O&R and does not independently regulate it. In any event, it should not be in dispute that O&R and the DPS's positions are almost if not actually identical that they do not want a full cost review of AMI in this proceeding, even though the Commission's order allows it.

ratepayer is then left bearing extra costs (the unrealized benefit plus the rate increase). If the DPS went *ex parte* with O&R or had any communications at all (whether they are considered public or private) during the 17-M-0178 proceeding without having a public hearing and potential for an evidentiary hearing, this information should be examined as part of a review of costs. If the DPS took their own internal notes without communicating with O&R and had a rationale for accepting that these benefits exist when evidence (including the new testimony I have sought to be admitted) suggests they do not, then this information should be produced and scrutinized in a review of "all costs" referred to in the Commission's order in 17-M-0178. If they have adduced any information *since* 17-M-0178's order related to these questions, they should disclose it. Most note-ably, if there are not cost savings and the smart meter program either does not create benefits in the form of monies saved or other benefits to the ratepayer, including but not limited to a reduction in electricity use and greenhouse gasses, then some or all of the net regulatory assets that are part of the AMI program should not be put in rate base at all and the costs should not be passed along to the ratepayer. Neither should AMI costs sought to be recovered be paid for by the ratepayers.

The DPS appears to think that since they approved the further rollout of smart meters (in a proceeding that was not a rate hearing and had no evidentiary hearing), that a review of costs (which again, include all costs, *including all costs to the ratepayer*) either does not need to occur or can be given a lick and a promise as a rubber stamp exercise. It appears that the DPS thinks that since they approved a further rollout, $98.5 million must go through and/or it must be charged to the ratepayer no matter what evidence has materialized since that demonstrates that claims they may have relied upon from O&R are false and that AMI hurts the ratepayer. Surely a massive miscalculation could be the basis for not modifying the financing for, if not change the actual program that would involve $98.5 million in costs over 20 years to be borne by the

ratepayers and could be the basis for a claim that the program is contrary to the public interest. Certainly any misrepresentations by O&R to the DPS regarding any costs, health risk, accounting costs, or falsely stated benefits to the ratepayer should be the subject of a review in these proceedings. Costs are not merely accounting costs and without specificity on this point by the Commission's order, the DPS cannot legitimately claim that this review should merely be limited to accounting costs.

Board of County Com'rs of Leavenworth County v. McGraw Fertilizer Service, Inc., 261 Kan. 901, 933 P.2d 598 (Supreme Court of Kansas, 1997) speaks to the issue of lack of a legislative definition of the term costs:

> In the absence of evidence of legislative intent regarding the meaning of "retail cost when new," the court construes the words based upon what the words imply to persons of common understanding, not upon an accounting procedure.

Id 261 Kan. 901 at 913

Health costs are costs to persons of common understanding, because anyone whose health has been impacted by an environmental toxin, anyone with a family member whose health has been impacted by an environmental toxin and any insurance company insuring any such people is well aware of these costs (and in fact, an insurance company[2] would deem them accounting costs).

Furthermore, unrealized benefits that will not occur are costs of the program; any ratepayer, a person of common understanding, can clearly see that having their rates raised both because the AMI boondoggle is in rate base and because certain costs are sought to be recovered directly from them when all the so-called benefits of the AMI program do not materialize, that is obviously *a cost to them*. So too, is a program that is a serious health risk (regarding which new evidence has been presented that is sought to be admitted); besides the fact that I assert that new

[2] It is worth noting that Lloyd's of London declines to re-insure Electromagnetic field risk (including smart meters, Wi-Fi, cell phones, Bluetooth etc.) which suggests they may have a view that the costs of their use are un-insurable because they are too great.

evidence exists that shows that the AMI program is not going to save ratepayers money, the needless exposure to radiofrequency (RF) radiation, a neurotoxin and Group 2b carcinogen which the Access Board and the National Institute of Building Sciences recommended in 2005 be avoided in buildings[3] may literally be injury added to insult (paying for a program that will not save any money, not meaningfully save money or may cost the ratepayers more money via overbilling).

II. The interrogatories asked about DPS' assumption in the AMI program, and the DPS refusal to answer these interrogatories provides no justifiable reason why they should be ignored.

Point I explains why the DPS should answer questions about AMI costs; an assessment of AMI functionality and benefits must be made in order to assess those costs as well. In regard to DPS IR Set 1-14 (Exhibit 1), the DPS should explain its understanding of the claim made in O&R's testimony that smart meter data works to evaluate the impact of electric vehicles. There is a question as to whether smart meter data can actually do what is claimed but it appears that this statement has not been critically examined. This assumption is presumably used as justification for the benefit of smart meters. One is left to guess how this would work. Perhaps if the smart meter can give a load signature in the future to tell when someone is re-charging their car at their house, the utility may be able to track when people are charging their cars and how many miles those people are putting on. It does not give a total picture for those charging at stations, or those who charge while at work or when they are out of town. The marginal utility of knowing how often some people are "filling up their tank" with electricity so to speak and how many miles they drive per year may not be much greater than by estimating and looking at the number of electric vehicles registered with the DMV in the State of New York and taking a

[3] United States Access Board/National Institute of Building Sciences Indoor Environmental Quality Report, 2005 http://web.archive.org/web/20060714175343/ieq.nibs.org/ieq_project.pdf, pages 8, 87-88.

known composite of commuting patterns. The DPS should explain its understanding of the claim so that in a review of AMI costs, the intervenors can understand what AMI is doing to "evaluate the impact of electric vehicles" that cannot be achieved by existing means.

Similarly in regard to DPS IR Set 1-15 (Exhibit 2), O&R claimed in its testimony that AMI reduces electric and gas system losses. This is a vague statement and it appears to be false from the testimony I have sought to be admitted and from what is known from other utilities; on information and belief, infrastructure that predates AMI relays information to the substation and to the utility *faster than AMI does* regarding outages, and electric system losses. The DPS appears to have accepted this claim and it should explain why it believes that AMI provides this benefit, what evidence there is for this claim when no one has substantiated that AMI is responsible for electric and gas system losses any more than the pre-existing technology.

In regard to DPS IR Set 1-16(c) (Exhibit 3), the DPS should be able to answer the "c" part of the question. The only so-called evidence provided by O&R of any "success" from smart meters is scant and unsubstantiated. The claims that Sacramento Municipal Utility District's "smart home" time-of-use rates . . .helped reduce customer bills by 10-13%" and that in "Oklahoma Gas & Electric's demand response program . . . 99% of participating customers saved an average of $150 annually" need to be investigated. I disagree with the DPS's contention that the posing of this question is unreasonably duplicative even though it was posed of O&R. These constitute major claims of AMI benefits by O&R and the only ones attesting to actual specific benefits supposedly documented anywhere. There is a serious question as to whether the DPS took these claims at face value and investigated it themselves; hence the question of whether they have any evidence backing up these claims. (The issue of whether the benefits seen are in fact *because of* AMI or because of another program that occurs in the absence of AMI needs to be addressed as well as whether SMUD had special rates during its

pilot project). The evidence in support of these claims could be evidence that the DPS sourced themselves and did not get from O&R (so they should not keep directing me to O&R when they may have their own analysis or data about these other utilities in other states). O&R may have made the claim based on something they heard at a conference and not followed up. Also, this is not necessarily "O&R's information" as claimed by the DPS, but in fact could be SMUD and OG&E's or possibly these utilities are no longer making these particular claims, if they in fact did to begin with in the manner claimed by O&R. Again, since a lack of proof of positive effects of AMI in other jurisdictions is generally lacking and more proof is coming to the fore that AMI does not perform as promised, the DPS should be prepared to provide any and all documentation it has about the claims regarding SMUD and OG&E.

In regard to DPS IR Set 1-17 (Exhibit 4), the DPS was asked "how smart meter data collected is safe from any hacking intrusion as disclosed by the Department of Homeland Security ("DPS"). The interrogatory was served with a copy of the July 23, 2018 Wall Street Journal article, "Russian Hackers Reach Utility Control Rooms, Homeland Security Officials Stay" (also in Exhibit 4), which indicated that the problem is so serious, it is the subject of four upcoming DPS hearings. A failure to safe-keep the data, which includes load signatures which may be able to telegraph what any appliances are being used in any individual household at any given time, would entail a major cost for ratepayers. If the utilities cannot keep this data safe, this is a cost of the AMI program. In light of the DPS announcement, the DPS must surely have a view as to how secure the data is especially as O&R is aggregating data that can be used by law enforcement in ways not accessible before and that a search could be conducted without needing a subpoena if this information were to leak.

In regard to DPS IR Set 1-18 (Exhibit 5), I asked the DPS for evidence it has that AMI systems of the type used by O&R have reduced consumer's bills. I have alleged that they have

not been shown to meaningfully reduce customer bills (they often go up) and have sought to have new testimony admitted from yet another jurisdiction (the UK) that there was only a marginal reduction that did not justify the cost of the program. The DPS has been asserting that this program has all kinds of consumer benefits including savings to their bill. O&R has now been using AMI in Rockland County for a while. By now the DPS should have looked for evidence somewhere from any jurisdiction, including, but not limited to other utilities in New York State for evidence of reduced consumer's bills. I do not think they possess any such proof, but if they have it contrary to evidence in other places that smart meters do not reduce bills, they should provide it to justify the cost savings for putting this program, and *keeping this program in the rate base*. This is relevant to this proceeding because an increase in the amount the ratepayer is being asked to pay is in fact related to the rate base, which is related to the AMI program. If the DPS has no evidence that the program will save money or has evidence that it won't this is important information for the intervenors to know and if this information is being concealed, the requested rate increase should not be granted in this proceeding.

In regard to DPS IR Set 1-19 (Exhibit 6), it similarly poses the question of whether AMI has resulted in decreased electricity use-age, which is the cost savings to the utility that is oft-touted, but not yet proven. The testimony I have sought to have admitted suggests that yet another major jurisdiction has proven that the AMI systems do not result in behavioral changes which result in less electricity being used because it is ultimately just a dashboard of information and there is no automated method to turn off all electricity-using equipment in the house (and none that can run with the smart meter). People inherently know to shut things off when they leave, but do not engage in more complex calculations of when they will use appliances because of price differences and will not manually intervene in response to changing prices. The reduced use of electricity (and especially at certain times when pricing is higher) is supposed to then

result in peak-loaders being turned off, thereby saving even more money for the company. DPS IR Set 1-20 (Exhibit 7) then asks the follow-on questions about getting peak-loaders shut off, which is supposed to be the major driver of reduced costs for both the utility and the consumer. The evidence for both claims of benefit is lacking; if the DPS has evidence that shows that this statement is accurate, they should provide it; otherwise it should be assumed (correctly, I assert) that the AMI program does not result in massive savings of cost and electricity production by getting peak-loaders shut off or even significantly decreased electricity use-age (or any decrease) and hence does not save costs it was advertised as saving. If the AMI program is, as I assert, only saving the costs of meter readers, it is not providing anywhere near the cost savings justified and if it is not providing tangible benefits (or if it is merely providing marginal benefits to the ratepayer), it should not continue to be put in rate base.

What I have continued to assert is that AMI is a billing scheme that needlessly irradiates the public (and to the point where it results in public health risk and civil and human rights violations). While it saves money by eliminating meter readers, it creates serious unacknowledged costs in so doing and of primary concern to most, fails to achieve the major touted financial benefits (other cost savings to the ratepayer) and environmental benefits of reduced greenhouse gas emissions by curtailing production of electricity. The DPS keeps insisting otherwise; let them show proof of their spurious claims. If the disparity between what is claimed and what has been proven is as great as I assert, the question of whether AMI is in the public interest at this juncture in time must be examined.

For all the aforementioned reasons, the DPS should be made to answer the unanswered interrogatories discussed herein.

Respectfully Submitted,

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