

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.

**RESPONSE TO MOTION TO COMPEL  
RESPONSE TO INTERROGATORIES O&R IR SET 1**

**Introduction**

On August 24, 2018, Ms. Deborah Kopald filed a Motion to Compel Response to Interrogatories O&R Set 1 (“Motion”). By her Motion, Ms. Kopald requests that the Public Service Commission (“Commission”)<sup>1</sup> compel Orange and Rockland Utilities, Inc. (“Orange and Rockland” or the “Company”) to respond to various interrogatories contained in the First Set of Interrogatories that she served on the Company. Orange and Rockland objected to these interrogatories, primarily on the grounds that they are irrelevant to the matters at issue in these base rate proceedings. For the reasons set forth below, the ALJs should dismiss the Motion in its entirety.

**Background**

In its last electric base rate case,<sup>2</sup> the Company sought the Commission’s authorization to implement an Advanced Metering Infrastructure (“AMI”) Program throughout its service territory. In support of its AMI Program proposal, the Company submitted extensive testimony and supporting exhibits, and responded to numerous discovery requests. In its rate order in that

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<sup>1</sup> As a procedural matter, the Motion should be addressed initially by the Administrative Law Judges (“ALJs”) in these proceedings (16 NYCRR §3.6).

<sup>2</sup> Case 14-E-0493, *Proceeding on Motion of the Commission as to the Rates Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service*.

proceeding,<sup>3</sup> the Commission approved Phase One of the Company's AMI Program, in order "to facilitate the Commission's grid modernization policies and goals, reduce operating costs, and assist in more timely identification of customer outages." In addition, the 2015 Rate Order required the Company to collaborate with Department of Public Service Staff ("Staff") and interested parties to develop an AMI Business Plan, which would include a benefit cost analysis ("BCA"), customer engagement plan, and several other AMI related issues.

Orange and Rockland revised its plans for AMI and filed on June 30, 2016, as part of its Initial Distributed System Implementation Plan ("DSIP"), a new AMI Business Plan. In July 2016, the Company submitted a BCA matrix and BCA Benefit Summary, which outlined a full-service territory AMI deployment.<sup>4</sup> The BCA incorporated the use of the societal cost test and found the net-present value ("NPV") of the benefits exceeded the NPV of the costs by \$15.6 million. The total capital expenditure for a complete service territory AMI deployment, with expanded technological scope and functionality, was estimated to cost approximately \$98.5 million.

On July 29, 2016, Orange and Rockland and its affiliate, Consolidated Edison Company of New York, Inc. ("Con Edison"), submitted an Advanced Metering Infrastructure Customer Engagement Plan as a component to their AMI deployment initiatives.<sup>5</sup>

On February 13, 2017, Orange and Rockland filed a petition which, among other things, sought Commission authorization to implement its AMI Program throughout its entire service

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<sup>3</sup> Case 14-E-0493, Order Adopting Terms of Joint Proposal and Establishing Rate Plan (issued October 16, 2015) ("2015 Rate Order")(p. 2)

<sup>4</sup> Case 14-E-0493 and Case 14-M-0101, *Reforming the Energy Vision*, Initial Distributed System Implementation Plan, Orange and Rockland Utilities, Inc. Advanced Metering Infrastructure Benefit Cost Analysis Benefit Summary and Advanced Metering Infrastructure Benefit Cost Analysis Matrix (filed July 29, 2016).

<sup>5</sup> Case 14-M-0101, AMI Customer Engagement Plan (filed July 29, 2016).

territory.<sup>6</sup> In the petition, Orange and Rockland requested the Commission’s authorization to continue AMI deployment in Rockland County, enhance the technological scope and functionality of the AMI system beyond that which was recognized in the 2015 Rate Order, and expand AMI deployment into the remainder of its service territory (*i.e.*, Orange and Sullivan Counties). 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.

By Order issued November 16, 2017, the Commission approved Orange and Rockland’s request to continue AMI deployment in Rockland County, expand the technological scope and functionality of the AMI system beyond that which was recognized in the 2015 Rate Order, and expand AMI deployment into Orange and Sullivan Counties.<sup>7</sup> In addition, the Commission approved the Company’s proposed Customer Engagement Plan. In the November 2017 Order,<sup>8</sup> the Commission found:

that the implementation of the enhanced and expanded AMI Project proposed in O&R’s petition will enable improved customer service and engagement, increased operational efficiency and performance, provide a foundation for future technological advancements, cost reductions, and reduce greenhouse gas emissions for O&R’s entire service territory. In addition, O&R customers will be able to actively participate in energy markets, control energy use, participate in energy efficiency and demand response programs, and take control of their monthly bill. With the appropriate data systems and web functionality in place, customers will have the opportunity to leverage the interval meter data made available by AMI to evaluate their energy consumption and make informed energy decisions. The integration of back-office applications with the AMI communication network and meters will provide improved outage detection and restoration, and enhance system engineering and planning.

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<sup>6</sup> Case 17-M-0178, *Petition of Orange and Rockland Utilities, Inc. for Authorization of a Program Advancement Proposal*.

<sup>7</sup> Case 17-M-0178, Order Granting Petition in Part (issued November 16, 2017) (“November 2017 Order”).

<sup>8</sup> *Id.*, pp. 16-17.

In addition, “to ensure that the benefits of AMI deployment materialize,” the Commission implemented a cap on the capital expenditures associated with the AMI project.<sup>9</sup> The capital expenditures will be capped at the Company’s estimated AMI project cost of \$98.5 million. Finally, the Commission ruled that “all costs associated with this project are subject to further review in O&R’s next base rate proceeding.”<sup>10</sup>

On December 18, 2017, Ms. Kopald filed a Petition for Rehearing,<sup>11</sup> alleging factual and legal errors in the November 2017 Order, related to the need for a hearing in the case, and the rate effect of AMI deployment. In May 2018, the Commission issued an Order rejecting the Kopald Petition in its entirety.<sup>12</sup> Specifically, the Commission rejected Ms. Kopald’s argument that the November 2017 Order should be treated as a “major change” and a hearing held.<sup>13</sup> The Commission rejected Ms. Kopald’s argument that the AMI meter opt-out provision constituted a new charge.<sup>14</sup> The Commission rejected Ms. Kopald’s argument that the alleged effects of AMI should trigger a review under the State Environmental Quality Review Act (“SEQRA”), because the presence of smart meters might prevent ratepayers from accessing their homes and other buildings.<sup>15</sup> The Commission rejected Ms. Kopald’s argument that smart meters’ radio transmitters might violate Federal Communication Commission regulations, the Americans with Disabilities Act (“ADA”), and the Fair Housing Act, and are potentially dangerous to other electronic devices and individuals with electrosensitivity.<sup>16</sup> Finally, the Commission noted that

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<sup>9</sup> *Id.*, p. 19.

<sup>10</sup> *Id.*, p. 19.

<sup>11</sup> Case 17-M-0178, *Petition of Orange and Rockland Utilities, Inc. for Authorization of a Program Advancement Proposal*, Petition for Rehearing (filed December 18, 2018)(“Kopald Petition”)

<sup>12</sup> Case 17-M-0178, *Petition of Orange and Rockland Utilities, Inc. for Authorization of a Program Advancement Proposal*, Order Denying Petition (issued May 21, 2018)(“May 2018 Order”).

<sup>13</sup> *Id.*, p. 10.

<sup>14</sup> *Id.*, p. 11.

<sup>15</sup> *Id.*, p. 12.

<sup>16</sup> *Id.*, p. 13.

the Kopald Petition contained passages critical of the November 2017 Order that do not qualify as grounds for rehearing, including a critique of a Commission press release, and statements regarding the organization of the DMM system on the Commission's website.<sup>17</sup>

On January 26, 2018, the Company made its base rate case filings that are the subject of these proceedings. In these filings, the Company did not seek to modify the provisions, schedule or funding levels of the AMI Program approved by the 2015 Rate Order, as modified by the November 2017 Order.

On May 29, 2018, Ms. Kopald submitted direct testimony in these proceedings. On June 15, 2018, the Company filed a Motion to Strike the direct testimony of Ms. Kopald. The Company argued that Ms. Kopald's direct testimony was wholly improper as it failed to address issues that are relevant to the Company's electric and gas base rate filings. Rather, she seeks to relitigate certain AMI related issues that were definitively decided by the Commission in the November 2017 Order. The ALJs have not ruled on the Company's Motion to Strike.

On August 7, 2018, Ms. Kopald filed a Motion to Admit the Testimony of Dr. Timothy Schoechle and Dr. David O. Carpenter and Other Exhibits ("Kopald Motion"). On September 10, 2018, the Company filed a response opposing the Kopald Motion.<sup>18</sup> The Company noted that this supplemental testimony and exhibits (which together exceeded 700 pages) continued Ms. Kopald's effort to introduce patently irrelevant material into the record of these proceedings, as well as to re-litigate matters previously decided by the Commission. Accordingly, for the reasons set forth in the Company's Motion to Strike Ms. Kopald's direct testimony in these proceedings

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<sup>17</sup> *Id.*, p. 15.

<sup>18</sup> Case 18-E-0067, Orange and Rockland Utilities, Inc.'s Response to Pace Energy and Climate Center's Motion to File Supplemental Direct Testimony (filed August 10, 2018)(see, page 3, fn. 1).

(which apply equally to her supplemental testimony and exhibits), the Company argued that the Kopald Motion should be denied. The ALJs have not ruled on the Kopald Motion.

### **Discussion**

#### **1. A Review of AMI Costs Does Not Involve a Reappraisal of the Company's AMI Program**

As noted above, the November 2017 Order determined that all costs associated with the Company's AMI Program are subject to further review in the Company's next base rate proceeding (*i.e.*, these proceedings). Such review is similar to the continuing review that Staff performs on any extended utility capital project. In fact, Staff performed just such a review of the Company's AMI Program and summarized its findings in the direct testimony (pp. 17-19) of the Staff Electric Infrastructure and Operations Panel ("Staff EIOP") submitted in these proceedings. The Staff EIOP concluded (p. 19):

In the November 2017 Order, the Commission approved a total of \$98.5M for the full implementation of AMI across O&R's service territory, which includes meters and communication equipment as well as necessary software. Based on our review, the budget proposed in this case is consistent with the amount approved in the November 2017 Order.

The Staff EIOP's conclusion was based in part on the Company's response to discovery requests. Included as Exhibit A to this Response is the Company's updated response to Staff interrogatory DPS-41-636, which sets forth the capital expenditures and depreciation relating to the Company's AMI Program for 2019, 2020 and 2021. Also included in Exhibit A is an email to Ms. Kopald setting forth the Operation and Maintenance expenses relating to the Company's AMI Program for 2019, 2020 and 2021.

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.<sup>19</sup> In Ms. Kopald’s view these health costs include the costs of exposure to electromagnetic radiation, allegedly emanating from smart meters.<sup>20</sup> 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. Given the Commission’s lengthy and detailed examination of the Company’s AMI Program, detailed above, such a re-examination would be needlessly duplicative and a pointless waste of scarce administrative resources (not to mention ratepayer funds).

## **2. Ms. Kopald’s Interrogatories Involve Matters Irrelevant to These Base Rate Proceedings.**

The Commission’s regulations provide that discovery requests should be tailored to the particular proceeding and commensurate with the importance of the issues to which they relate.<sup>21</sup> As succinctly stated in a pertinent Ruling Denying Motion to Compel,<sup>22</sup> “a party is entitled to discovery of the documents requested if they are themselves relevant and material to an issue to be decided by the Commission in this case, or if they are likely to lead to other information that is relevant and material to such an issue.”

A cursory review of Ms. Kopald’s first set of interrogatories, which are set forth in Exhibit 1 to her Motion, reveals that they plainly fail to meet this “relevant and material”

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<sup>19</sup> Motion, p.1.

<sup>20</sup> *Id.*, p. 3.

<sup>21</sup> 16 NYCRR §5.8(a).

<sup>22</sup> Case 08-E-0077, *Petition of Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point, LLC, Entergy Nuclear Operations, Inc, NewCo and Entergy Corporation for a Declaratory Ruling Regarding a Corporate Reorganization or, in the Alternative, an Order Approving the Transaction and an Order Approving Debt Financings*, Ruling Denying Motion to Compel (issued October 26, 2009)(p. 1).

standard. Instead of focusing on issues raised by the Company's base rate filings, these 43 interrogatories focus on extraneous - primarily AMI related - issues.<sup>23</sup> Many of these issues have been fully examined and decided previously by the Commission in the 2015 Rate Order, the November 2017 Order, and/or the May 2018 Order. These issues include the electricity usage of AMI meters (Questions 32, 35), the reliability of AMI meters (Questions 15-18), alleged privacy (Questions 42-44) and health concerns (Questions 2, 8, 12-14) relating to AMI meters, smart meters alleged violations of other statutes and regulations (Questions 9-11, 19, 37-39<sup>24</sup>) and the functionality of analog meters (Questions 17, 41). Similarly irrelevant are interrogatories addressing the practices of other utilities (Questions 3-7, 22). Ms. Koplak's interrogatories are wholly improper as they fail to address issues that are relevant and material to the Company's electric and gas base rate filings.

Finally, the Company would note that it has shown no reluctance to responding to interrogatories addressing relevant aspects of its rate filings. To date, it has promptly responded to over 1,100 (often multi-part) interrogatories in these proceedings.

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<sup>23</sup> The one interrogatory that is arguably remotely related to these proceedings, Question 33, is addressed by the material the Company provided to Ms. Koplak which is included in Exhibit A to this response.

<sup>24</sup> In addition to being irrelevant to these proceedings, the Company would note that the provisions of the Telecommunications Act of 1996, Code of Federal Regulations, and U.S. criminal code, all speak for themselves.



CONCLUSION

For the reasons stated above, Orange and Rockland respectfully requests that the ALJs dismiss the Motion in its entirety.

Respectfully submitted,

*/s/ John L. Carley*

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Counsel for Orange and  
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Dated: August 27, 2018

# **EXHIBIT A**

**Orange & Rockland Utilities, Inc.  
Revenue Requirement Summary**

|                               | <u>Electric AMI</u> |                |                | <u>Gas AMI</u> |              |               |
|-------------------------------|---------------------|----------------|----------------|----------------|--------------|---------------|
|                               | <u>2019</u>         | <u>2020</u>    | <u>2021</u>    | <u>2019</u>    | <u>2020</u>  | <u>2021</u>   |
| Average Incremental Rate Base | \$ 35,396           | \$ 7,157       | \$ (1,352)     | \$ 11,913      | \$ 2,638     | \$ (722)      |
| Pre-Tax Rate of Return        | 8.50%               | 8.49%          | 8.49%          | 8.49%          | 8.49%        | 8.49%         |
| Required Return               | <hr/> 3,009         | <hr/> 608      | <hr/> (115)    | <hr/> 1,011    | <hr/> 224    | <hr/> (61)    |
| Deprecation                   | 2,372               | 473            | 0              | 827            | 151          | -             |
| Revenue Requirement           | <hr/> \$ 5,381      | <hr/> \$ 1,080 | <hr/> \$ (115) | <hr/> \$ 1,838 | <hr/> \$ 375 | <hr/> \$ (61) |

**From:** [Carley, John L. - Regulatory](#)  
**To:** "[Deborah Kopald](#)"  
**Cc:** "[Overton, Lindsey \(DPS\)](#)"; "[Jesmer, Graham \(DPS\)](#) <[Graham.Jesmer@dps.ny.gov](mailto:Graham.Jesmer@dps.ny.gov)> ([Graham.Jesmer@dps.ny.gov](mailto:Graham.Jesmer@dps.ny.gov))"; [Acevedo, Enver - Regulatory](#); [Wang, Wenqi](#); "[Manz, Allison \(DPS\)](#)"; [Carley, John L. - Regulatory](#); "[Darmetko, Paul \(DPS\)](#)"  
**Subject:** RE: where is the data? <External Sender>  
**Date:** Friday, August 24, 2018 4:47:00 PM

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As a follow-up to the response below, I set forth the **updated total** O&M budget forecasted for the AMI Effort for the three rate years.

| <b>Orange and Rockland AMI O&amp;M</b>       | <b>Rate Year 1</b>  | <b>Rate Year 2</b>  | <b>Rate Year 3</b>  |
|----------------------------------------------|---------------------|---------------------|---------------------|
|                                              | <b>2019</b>         | <b>2020</b>         | <b>2021</b>         |
| Education & Outreach                         | \$ 283,157          | \$ 158,966          | \$ 220,889          |
| Labor                                        | 64,340              | 158,148             | 188,365             |
| Office Supplies / Other                      | 4,964               | 4,964               | 4,964               |
| AMI Shared Services - AMI System Maintenance | 975,774             | 1,483,863           | 1,530,179           |
| Shared Services - Telecom                    | 67,801              | 68,377              | 68,912              |
| Shared Services - Facilities                 | 58,164              | 59,592              | 60,623              |
|                                              |                     |                     |                     |
| <b>Total</b>                                 | <b>\$ 1,454,199</b> | <b>\$ 1,933,910</b> | <b>\$ 2,073,932</b> |

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**From:** Carley, John L. - Regulatory  
**Sent:** Tuesday, August 21, 2018 7:21 AM  
**To:** Deborah Kopald  
**Cc:** Overton, Lindsey (DPS); Jesmer, Graham (DPS) <[Graham.Jesmer@dps.ny.gov](mailto:Graham.Jesmer@dps.ny.gov)> ([Graham.Jesmer@dps.ny.gov](mailto:Graham.Jesmer@dps.ny.gov)); Acevedo, Enver - Regulatory; Wang, Wenqi; Manz, Allison (DPS)  
**Subject:** RE: where is the data? <External Sender>

As requested, I attach the revenue requirement information relating to the Company's AMI program for 2019, 2020 and 2021. I apologize for the delay in providing you this information. Our accountants were somewhat preoccupied with preparing the Company's counteroffer which will be circulated later today.

I received your voicemail. Please be advised that the Company will not be responding to the various interrogatories of yours to which it has previously objected. As we have stated, in our view they are outside of the scope of these rate proceedings.

John L. Carley  
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**From:** Carley, John L. - Regulatory  
**Sent:** Friday, August 17, 2018 6:57 AM  
**To:** 'Deborah Kopald'; Overton, Lindsey (DPS)  
**Subject:** RE: where is the data? <External Sender>

We are working on it and expect to get it to you today.

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**From:** Deborah Kopald [[mailto:deborah\\_kopald@ymail.com](mailto:deborah_kopald@ymail.com)]  
**Sent:** Thursday, August 16, 2018 7:54 PM  
**To:** Carley, John L. - Regulatory; Overton, Lindsey (DPS)  
**Subject:** where is the data? <External Sender>

**EXTERNAL SENDER. Do not click on links if sender is unknown and never provide user ID or password.**

Jack,

You indicated I would have the AMI data by COB today.  
I don't see it in sharepoint

<https://consolidatededison.sharepoint.com/orratefiling2018/SitePages/Home.aspx#InplviewHashd5a3b532-cc38-45c5-b5fa-b5dbf6a8ffc6>

Are you going to get it to me on Friday or no?

thank you,  
Deborah