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Environmental Education
52 Main Street • Port Washington • New York 11050 • T 516.883.0887 • www.GrassrootsInfo.org

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 OF PATRICIA WOOD IN SUPPORT OF THE MOTION TO ADMIT THE TESTIMONY OF DR. TIMOTHY SCHOECHLE AND DR. DAVID O. CARPENTER AND OTHER EXHIBITS

Point I

The New Testimony Provides Information about AMI costs, for which the Commission Contemplated Review in This Rate Hearing

Grassroots Environmental Education, Inc. ("Grassroots") wholeheartedly supports the instant motion. The movant clearly articulated that the past order of the Commission contemplated a review of costs. O&R has not provided full cost information of the AMI program to date, thereby depriving the intervenors of a proper cost review of the AMI program in this proceeding. Yet, they are asking the intervenors to approve a rate hike that pays for this program. The formula for a rate increase involves the rate increase and other revenues less certain expenses divided by the rate base (a/k/a net regulatory assets) to which AMI programs have been clearly added. The new testimony sought to be admitted absolutely sheds light on *costs* of the AMI program in various ways.

First, the Carpenter testimony offers new evidence about the public health costs to the ratepayers and other people in the service territory including wider consensus about empirical

data that supports the contention of harm in those who are known to be overtly sickened by radiation emitted by smart meters as well as wider consensus on the extent of the health risks of exposure for the population at large. This newly released scientific paper provides scientific backing to the claims from people all over New York State who have called Grassroots claiming to suffer severe adverse effects from wireless meters including those of the types whose emissions, on information and belief, are fewer and less intense than those emitted by two-way smart meters in the AMI program. In addition, the Carpenter testimony provides backing for the concept that certain populations, including and especially children, are adversely affected by wireless radiation emissions, the pulse-modulated microwave radiofrequency ("PM MW RF") emissions as defined in the testimony. The AMI program represents a continuous and cumulative exposure of the type linked to many conditions in this scientific review, and the government has an interest and an obligation to review evidence of health effects of government programs; public health problems represent costs, regardless of whether the costs come due in the short term or the medium term and such public interest concerns are the DPS' responsibility.

The Schoechle testimony and evidence suggests that the AMI program creates costs that have not been accounted for by O&R, documents further evidence that AMI programs do not create the financial benefits stated, do not result in the claimed reduction in the use of electricity and do not meaningfully save people money, which was the stated reason for its existence. The evidence also raises questions about the data security risk which O&R refused to provide information about, which is triggering four hearings by the Department of Homeland Security. This raises new questions about the inherent costs of the AMI program, and they must be vetted and addressed now in this rate hearing.

This testimony and an examination of the witnesses may demonstrate that the AMI program is contrary to the public interest; this is relevant to this proceeding and must be

considered at this time. At a minimum, however, this troublesome new evidence raises issues which must be considered at this proceeding to address the appropriateness of putting the AMI program into the rate base or the investor side of the business, since evidence has emerged that suggests the AMI program does not benefit the ratepayers and/or does not benefit them financially anywhere near the extent claimed.

Point II

Benefits to the Ratepayer Must be Demonstrated for Cost Recovery from the Ratepayers and the Legal Definition of Costs, which is based on what words imply to persons of common understanding, encompasses any obvious costs to the ratepayers of the AMI program, such as misstated benefits

To recover from the ratepayers, a utility must always show the benefits. This appears to be true in all states. For example, *Narragansett Elec. Co. v. Rhode Island Public Utilities Com'n*, 35 A.3d 925 (Supreme Court of Rhode Island, 2012) states,

> *The commission determined that this expense was unreasonable and excessive because there was insufficient evidence of a direct benefit to ratepayers*. In its request, the company asked to increase the test-year expenses by approximately $2.4 million to provide for incentive compensation for certain of its employees.

Id. 35 A.3d 925 at 937, Emphasis added.

Again, here, O&R has not provided full information on costs to the intervenors, and when one compares their AMI business plan provided in case 14-M-0101 with their current testimony, the estimated costs of the AMI program have in fact changed over time. In the testimony in its AMI Capital White Paper O&R now says

> Assuming a three-year project life, one-time project costs are estimated at $37.3M for the AMI implementation with cumulative recurring O&M expenses of $11M for the 20-year period. Net depreciation costs are estimated at $29M for the 20-year period which includes the depreciation of the AMI program capital costs, the amortization of outmoded meter assets, and an offset of depreciation savings from deferred capital expenses.

This contrasts with the initial business plan says that O&M expenses were to be $26 million (See page 299 of the Initial Distributed System Implementation Plan, Appendix B Advanced Metering

Infrastructure Business Plan) in Case 14-M-0101. In any case, the full current costs have not been disclosed and itemized by O&R so that they can be reviewed. Costs may be reviewed in this rate hearing pursuant to the DPS' own order, and they have not been, and certainly, if new evidence has emerged that they do not produce the benefit to the ratepayer stated, a closer look must be paid to the claimed costs. If the costs have changed since they were approved, the estimation of benefits (which O&R has never properly documented) logically will have changed as well. The Schoechle testimony suggests that the claim of stated benefits are not adhesive to reality. This issue should be reviewed to see if the ratepayers are benefitting before they should be saddled with any rate increase related to the AMI program. For example, on page 303 of its business plan, O&R refers to $59 million in "customer and societal benefits" without explaining how these are calculated. Certainly at a minimum, the DPS could order O&R to prove certain claims before being allowed to collect monies from a rate increase.

Going back to the DPS order that contemplates a review of costs herein, the legal definition of costs is not the accounting definition of costs; as previously indicated, Grassroots contends there is evidence of societal harm from smart meters and Carpenter's testimony provides further scientific basis for this contention. Again there is evidence of a lack of economic benefits claimed to justify these costs. Grassroots would like to refer the commission to *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)

> 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

In other words, costs are costs as implied to persons of common understanding and do not just refer to accounting. Because a rate hearing presumes impacts upon ratepayers, the costs of the

AMI program, which are to be reviewed in this proceeding encompass costs to health, costs to the ratepayer directly in the form of their bill and costs in the form of benefits that do not/ will not materialize.

Point III

Administrative Case Law in New York Stresses the Importance of Data and Metrics in Decision-Making

Administrative utility rulings in New York demonstrate the importance of making decisions based on data: in *Re Central Hudson Gas and Elec. Corp.,et al,* 1993 WL 259592 (N.Y.P.S.C.), 142 P.U.R.4th 305, the utilities themselves claimed the Demand Side Management program was not working and should not continue while the Commission responded by telling them to continue to study and document:

> As utilities have gained experience with DSM, some programs have proven more successful than others… Some programs did not remain cost effective… Staff finds RG&E's decision premature, and we recommend that before RG&E begins phasing out residential programs, the company should undertake a market study to identify the maximum economic potential for various DSM measures for residential customers in RG&E's territory.

This case is on point, even though it has a different fact pattern (the utility concluding the program is ineffective), because it suggests that new evidence about the efficacy of a program necessitates further study before action is taken. Here, notwithstanding the fact that the AMI program was approved for further rollout, critical evidence has emerged that the statements made by O&R to the DPS to justify the rollout are not warranted and that the program does not perform as advertised; therefore, before approving recouping costs from rolling it out, new testimony should be heard because the DPS may want to consider whether another metric of efficacy of study should be put in place so O&R's claims can be reviewed periodically such that the rate hike be made conditional, and/or that the program be subject to further review well

before the end of its 20 year life or whether the rollout should not be recouped by the ratepayers until claims have been proven in the location of the initial rollout in 2016.

In *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of The Brooklyn Union Gas Co. for Gas Service*, 1992 WL 675291 (N.Y.P.S.C) Case 90-G-0258, Opinion No. 91-17(A), one of the intervenors called for a program to be discontinued because the costs have been understated and the ratepayers would benefit from the elimination of a program. The judge ultimately found that the intervenor had not proffered evidence that the program was not beneficial to the ratepayers, (the union had only put in evidence about how its members would be disadvantaged by competition of having a government entity offer the same service), however the Commission did put in an order directing rates based on the costs of service (presumably to eliminate the anti-competitive problem of providing the service at below market rates). This case is relevant in that the evidence provided about the anti-competitive aspects of the program was considered in the ruling of the Commission. Here, evidence that the program does not benefit the ratepayer should be considered by the Commission both for the public interest and because the Commission may ultimately choose to fashion an economic-based solution that will incentive O&R to document actual benefits of the program or face consequences going forward.

For all the aforementioned reasons, the motion to admit new testimony and exhibits should be granted.

Yours Sincerely,

/s/ Patricia Wood,
Executive Director
Grassroots Environmental Education
52 Main Street
Port Washington, NY 11050

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Port Washington, NY

To:
Commission Secretary Kathleen H. Burgess
secretary@dps.ny.gov

Judge Maureen F. Leary
Maureen.Leary@dps.ny.gov
Judge Dakin Lecakes
Dakin.Lecakes@dps.ny.gov

Active Parties