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**VIA ELECTRONIC MAIL**

Honorable Kathleen H. Burgess  
Secretary  
State of New York  
Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350

Re: Cases 18-E-0067 and 18-G-0068  
Orange and Rockland Electric and Gas Rate Cases

Dear Secretary Burgess:

By this letter, Orange and Rockland Utilities, Inc. (“Orange and Rockland” or the “Company”) responds to Motion No. 2 for Interlocutory Review (“Motion”) filed on October 10, 2018, by Ms. Deborah Kopald in the above-referenced proceedings. The Motion follows on the heels of Ms. Kopald’s Motion for Interlocutory Review (“Initial Motion”) filed on September 25, 2018. The Motion suffers from the same deficiencies as the Initial Motion.<sup>1</sup> Accordingly, the Commission should dismiss the Motion in its entirety.

As noted in the Orange and Rockland Response to the Initial Motion (p. 2), the Commission’s regulations, *i.e.*, 16 NYCRR 4.7, allow an interlocutory appeal from an Administrative Law Judge’s (“ALJs”) ruling “only in extraordinary circumstances” which an appellant must specify pursuant to Rule 4.7(c) (2). In the Motion, Ms. Kopald once again has failed to demonstrate the “exceptional circumstances” necessary to warrant the interlocutory review she requests of the Commission. In the Motion (p. 1), Ms. Kopald contends that the testimony of Dr. Schoechle and of Dr. Carpenter, which discuss “the fact that smart meters do not bring the stated economic benefits and have other economic costs and the latter emphasizing the health costs of smart meters,” constitute an extraordinary circumstance.

Ms. Kopald’s reiteration of the health-related contentions advanced by Dr. Schoechle and Dr. Carpenter, which have been held by both the Commission and ALJs Maureen F. Leary and Dakin D. Lecakes to fall far outside the scope of

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<sup>1</sup> The Company outlined these deficiencies in its Response of Orange and Rockland Utilities, Inc. to Motion for Interlocutory Review (“Orange and Rockland Response”) filed October 3, 2018 in the above referenced proceedings.

these rate proceedings, plainly fail to qualify as an extraordinary circumstance. As with the interrogatories that ALJs Leary and Lecakes excluded in their recent Ruling in these proceedings,<sup>2</sup> this testimony improperly seeks to revisit the Commission’s initial policy decision to deploy AMI in the 2015 Rate Order,<sup>3</sup> and its rejection of health, safety, privacy, and functionality issues in the AMI Expansion Order<sup>4</sup> and Rehearing Order.<sup>5</sup> This testimony is directed squarely at policy arguments regarding the wisdom of the Commission’s approval of Orange and Rockland’s AMI program.

In the Motion (p. 2), Ms. Kopald also argues that “the Carpenter testimony is necessary for consideration herein, because it specifically addresses the issue of a statistically significant number of people disabled by microwave radiation; these people are likely to need an opt-out and should not legally be charged due to their disability.” The Company would note that Ms. Kopald’s assertion that a statistically significant number of the Company’s customers (indeed if any) will be disabled and therefore likely to need an opt-out is unsubstantiated and inherently speculative.<sup>6</sup> More important, this area of inquiry is wholly outside the AMI related issues identified by the ALJs as being appropriate for consideration in these proceedings, *i.e.*, O&R’s capital costs and expenses related to the AMI program and the design of the proposed rates,<sup>7</sup> including AMI costs and opt-out fees.<sup>8</sup>

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<sup>2</sup> Cases 18-E-0067 and 18-G-0068, Ruling Granting in Part and Denying in Part Kopald Motion to Compel O&R and DPS Staff Responses to Information Requests (issued October 11, 2018) (“Ruling”) (p. 15).

<sup>3</sup> Cases 14-E-0493 and 14-G-0494, Orange and Rockland Utilities – Gas and Electric – Rates, Order Adopting Terms of Joint Proposal and Establishing Rate Plan (issued October 16, 2015) (“2015 Rate Order”).

<sup>4</sup> Case 17-M-0178 - *Petition of Orange and Rockland Utilities, Inc. for Authorization of a Program Advancement Proposal*, Order Granting Petition in Part (issued November 16, 2017) (“AMI Expansion Order”).

<sup>5</sup> Case 17-M-0178, Order Denying Petition (issued May 21, 2018) (“Rehearing Order”).

<sup>6</sup> Ms. Kopald’s contention (Motion, p.3) that Dr. Carpenter’s testimony does not constitute a collateral attack on a prior Commission order is simply untrue. His testimony is nothing less than a frontal assault on the Commission’s basic policy decisions relating to its approval of the Company’s AMI Program.

<sup>7</sup> Contrary to Ms. Kopald’s contention, the testimony of Dr. Schoechle and Dr. Carpenter have nothing to do with rate design. Rate design is concerned with the structuring of energy prices based on customer classification and sub-classification and the costs associated with these classifications. In fact, Ms. Kopald employs their testimony in her effort to justify an opt-out fee exception for an amorphous group of allegedly highly sensitive customers.

<sup>8</sup> Ruling, p. 14.

For all these reasons, the Commission should dismiss the Motion in its entirety.

Please contact me if you have any questions regarding this matter.

Very truly yours,

/s/ John L. Carley

John L. Carley  
Assistant General Counsel

c. All Active Parties (via electronic mail)