

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 O&R IR Set 1
(from D. Kopald to O&R)**

- I. O&R did not answer all the questions in the first set of interrogatories served and some of the answers were to questions not asked. They should be made to answer the following questions:*

Order 17-M-0178 contemplated a review of AMI costs in this proceeding. The original 11/16/2017 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, all costs associated with this project are subject to further review in O&R's next base rate proceeding.*

(Emphasis Added)

O&R has not broken down all of these costs for review and resists doing so. 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. *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. Likewise *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 company¹ would deem them accounting costs). Exhibit 1 constitutes IR Set 1; O&R’s reproduction of the questions was not always accurate (see esp. O&R IR Set 1-6) and this document should be referred to for the original questions. Note also there are multiple questions per exhibit (the questions in each roman numeral section are in the same exhibit; they are numbered sequentially within the exhibit; however, they are not always referred to sequentially below).

II. Smart Meter Opt Out, Health and Legal Questions Related to Health

One of the costs I have identified regarding the smart meter program are health costs of exposure to the radiation. This issue was raised in my testimony and in the new testimony I have sought to be admitted by Dr. David O. Carpenter, former head of Wadsworth Laboratories for the State of New York and Member of the President’s Cancer Panel (Bush, Obama and Trump). Exhibit 2 includes O&R IR set 1-4 and the non-response. O&R was merely asked if it was aware that its neighbor NYSEG offers analog meters on demand as well as Vermont and

¹ 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 enormous.

California. It is not a difficult question; either they are aware or they are not aware and should answer.

Likewise O&R IR set 1-5 (also Exhibit 2) asks if O&R is aware of how many utilities offer analog meters upon request. Both of these question sets bear on the question of whether O&R is aware that its peers deem analogs necessary for medical reasons. Either they are aware of what their peers are doing or aren't. They should be made to answer the question as it bears on their awareness of the legal risk (which does not appear to have been budgeted for) that they are putting the company under (and by extension the ratepayers and the investors) as well as the risk that they are putting the people in the service territory under and harm they are creating for those who are most sensitive to this radiation.

O&R IR set 1-6 (also Exhibit 2) is a similar question asking O&R if they are aware of the former California Public Utilities Commission ("CPUC") President's observation to a Pacific Gas and Electric executive ("PG&E") that some people are sickened by electromagnetic radiation and suggestion that these people be allowed to keep their existing meters (which were analog). O&R should be made to answer this question. They were either aware or they were not.

O&R IR set 1-7 (also Exhibit 2) asks if O&R is aware that Vermont has a no-fee opt-out. This question is in the same vein as the aforementioned. Either O&R is aware or is not; it is understood that people asking for opt-outs are general concerned about their health; many have a doctor's note saying they need an analog meter (others are concerned about privacy and some are concerned about both—privacy is also a cost of doing business and factors into other questions O&R will not answer).

Regarding O&R IR set 1-8, (also Exhibit 2) either O&R understands that people are disabled by electromagnetic radiation or they don't, which speaks to their lack of appreciation

for legal and other risk. Surely the company must have a view about the exposure to electromagnetic radiation and the Americans with Disabilities Act (“ADA”); if they were to acknowledge this, surely they would understand that an opt-out fee cannot be charged to accommodate a person’s disability; this affects people who must access a location with a smart meter and affects people who have a digital meter who are affected by the high frequency transients. Contrary to the misleading diagram in the DPS order in CenHud in 14-M-0196, digital meters do not produce less radiation than analog meters; also the former produce mid-range radiofrequency (“RF”) radiation on the lines in the home and the latter produces Extra-Low Frequency (“ELF”) radiation that is localized and extends only an extremely short distance. O&R is asked in O&R IR set 1-11 (also Exhibit 2) what its understanding of the radiation emitted onto the wiring of a house by a digital meter is; O&R should have sophisticated equipment, i.e. an oscilloscope, to answer this question; inasmuch as they refuse to provide an analog opt-out like some of its peer utilities (on information and belief, NYSEG has written a letter to those asking about this issue responding that they will always have an analog meter to accommodate medical needs), O&R must have some kind of view as to what radiation is or is not being put onto the wiring by a digital meter. (According to Wisconsin-based Stetzer Electric², a wired digital meter puts a large amount of 50 KHz line pollution put on the wiring as opposed to an analog which puts no line pollution onto the wiring.)

O&R IR set 1-9 (also exhibit 2) similarly asks about the Fair Housing Act (“FHA”) which applies to apartment buildings; either O&R has a view about how smart meters affect people’s housing rights or they do not, O&R IR set 1-10 (also exhibit 2) specifically asks about O&R’s understanding of these laws when there is a bank of meters, which create multiples of the

² Stetzer Electric, <http://www.stetzerelectric.com/> is an internationally recognized company with an expertise in dirty electricity.

radiation exposure of one meter. O&R has a copy of the documentary Take Back Your Power; surely they saw this issue discussed therein by those sickened by this radiation.

O&R IR set 1-12 (also exhibit 2) asks O&R what its response is to parent company ConEd's customer Michele Hertz' declaration (exhibit 3) regarding the sickening of people in Hastings-on-Hudson by digital meters as well as AMR meters. This is a valid question, because either the company believes Ms. Hertz and is ignoring her, disbelieves her, believes her but suspects her allegations cannot be proven or perhaps something else. These allegations are very serious and speak to what O&R knows about the relationship between the meter installation and illness.

O&R IR set 1-19 (also exhibit 2) refers to Housing and Urban Development ("HUD") complaints about smart meters. Either O&R has been the subject of a HUD complaint by someone in its service territory or hasn't. They should not have a problem admitting or denying whether they have reviewed any HUD complaint (or from the State Human Rights Commission).

III. Other Technical Questions (Some relating to health, some relating to general safety and effects on medical equipment)

O&R IR set 1-13 (exhibit 4) regard questions about an allegation by Michelle Hertz that is documented in Take Back Your Power in which she claims a ConEd engineer told her there was a known problem with the Switch Mode Power Supply ("SMPS") in the meters. This speaks to whether critical information about the AMI system was deliberately withheld by O&R to the DPS when it approved further rollout; this information has a bearing on costs, including but not limited to depreciation of the existing meter base.

Likewise O&R IR set 1-14 (also exhibit 4) also asks O&R whether the SMPS has an adverse effect on certain critical medical devices which some portion of the population depend upon to function and/or live. Either they believe it does or it doesn't and should be made to

answer this question too.

Likewise O&R IR set 1-15 (also exhibit 4) asks whether the SMPS can cause a voltage of a certain surge, which can trigger a fire. O&R surely must have a view as to this. If they know this and withheld information about it to the DPS, this is relevant and certainly relevant to a proper accounting of costs of the AMI system. This question should especially be answered, because in response to the next question posed (1-16) as to whether O&R believe the meters posed a fire or explosion risk, they said no. If there is no risk, than certainly, O&R should have been able to say that the SMPS, a component of the meter, does not cause a fire risk. In December, 2017, there were several articles in the press (*The Journal News* and *The Patch*) about O&R smart meters in Rockland County catching fire that were blamed by O&R on its installers (with, on information and belief, no proof provided to the reporters); if O&R is so certain that the cause was not a component within the AMI meter, they should be able to say so, so the intervenors can properly assess risk.

In regard to O&R IR set 1-22 (also exhibit 4), inasmuch as ConEd's counsel appears in this proceeding and identify themselves as working for ConEd, O&R/ConEd should be made to answer this interrogatory: the DPS specifically authorized O&R to use the *same* meters used by ConEd. The company is not being forthright; the reasons for the selection of this meter for the further rollout of AMI in O&R's service territory should be documented, inasmuch as they have been in use in Westchester for some time.

In regard to O&R IR set 1-23 (also exhibit 4), O&R flat-out did not answer the question and answered a question that was not posed. O&R should be made to answer the question posed. I specifically asked for evidence that O&R has that the provision of granular electricity use-age data leads to lowered electricity use-age by customers (pursuant to the testimony of Dr. Schoechle I have sought to be admitted, the latest evidence documents that there is not much

lowered use-age triggered by the production of this data. I asked O&R for data backing up this claim. Instead they point to a statement by the DPS that appears to claim that this will occur in the future. I asked for proof that it does occur. If O&R has none, this bears on whether they mislead the DPS and are now misleading intervenors about the costs of the program; the program's costs will be larger than assumed if the stated benefits don't materialize and if we know now that the stated benefits are unlikely to materialize, or unlikely to materialize in any great manner, that has bearing on what is approved for recovery in this rate hearing. It should be noted that in its response to O&R IR set 1-24 (also exhibit 4), O&R has **NOT** been able to identify costs savings from the AMI pilot that led to this body approving a further rollout. Indeed the testimony of Dr. Schoechle, which I seek to have admitted provides evidence that there are no major cost savings of the type advertised that have been documented from any AMI rollouts.

O&R failed to answer IR set 1-28 (also exhibit 4) (they referred to 1-40, which did not answer the question as to how many pulses the meters are emitting per day; merely claiming the meters had been tested by the DPS (which on information and belief, does not have a lab to test for FCC Class B Certification); they were asked in 1-28 how many pulses a day there are and how many peak pulses there are; this is relevant to understanding radiation emissions which relate to health, and also relate to how often the meters are collecting data. A 7th Circuit case decided last week indicated that the Court would have found a potential illegal search if the meters transmitted information about peoples' personal use-age a certain amount of the time (*Naperville Smart Meter Awareness v. City of Naperville*, 7th Cir. August 16, 2018)

In regard to O&R IR set 1-29 (also exhibit 4), the Company failed to answer the question of why the meters are pulsing continuously; if they are only transmitting every 15 minutes, the question of why they are continuously pulsing RF when they do not need to be doing so needs to be asked in the context of questions about known health consequences.

In regard to O&R IR set 1-31 (also exhibit 4), the Company refuses to answer the question as to why there is not an opt-in program as opposed to a roll-out with an “opt-out” when the Energy Policy Act of 2005 specifically states that utilities shall “offer” AMI to customers “upon customer request”.

SEC. 1252. SMART METERING. (a) IN GENERAL.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following: “(14) TIME-BASED METERING AND COMMUNICATIONS.— (A) Not later than 18 months after the date of enactment of this paragraph, each electric utility *shall offer each of its customer classes, and provide individual customers upon customer request*, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility’s costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

(Emphasis Added)

If the AMI meters are performing as advertised, the Company would have no problem getting affirmative acceptance from the ratepayers to use them; O&R should answer this question. It also bears on whether the current policy violates the Energy Policy Act, which bears on public interest issues, which are the purview of the Commission.

O&R failed to answer O&R IR set 1-34 (also exhibit 4). This is another case of O&R failing to answer the question but choosing to answer a different question other than what was asked; they should be made to answer the question, which specifically was to cite evidence that the use of smart meters has resulted in supply/demand balancing, such that it has resulted in peak-load facilities being disconnected, that otherwise would not have occurred. O&R doesn’t answer the question (again, the testimony I have sought to have admitted based on new developments suggests there is no evidence for this in yet another jurisdiction). Instead, O&R deflects and says, if customers are enrolled in demand response, the utility can call for demand reduction. On information and belief, demand response is not currently operating via AMI.

In regard to O&R IR set 1-35 (also exhibit 4), I asked O&R to explain how the meters

they have selected, which have a current transformer, (Leferink F, Keyer C, Melentjev A. Static energy meter errors caused by conducted electromagnetic interference. *IEEE Electromagnetic Compatibility*. 2016; 5(4): 59-55) which has been documented in a study (Se Exhibit 5) to increase bills in homes with dimmer switches (which, on information and belief) are in over 50% of homes in the U.S.), will not increase bills in the service territory. O&R relies upon the meter manufacturer, which has a conflict of interest and is not an independent, neutral arbiter of how accurate this study is. O&R never addresses these claims, instead mounting an argument that effectively lays the onus on the meter manufacturer. If bills are being misrepresented 10%, (see again: Leferink F, Keyer C, Melentjev A. Static energy meter errors caused by conducted electromagnetic interference. *IEEE Electromagnetic Compatibility*. 2016; 5(4): 59-55), that is a cost and one that has not been properly accounted for. Besides the false claims that have been made by O&R about analog meters' accuracy (the parts do not wear out and they can be recalibrated as they have been for close to a century), empirical evidence (even the Electric Power Research Institute's ("EPRI") May 2010 report), "Accuracy of Digital Electricity Meters" indicated that it isn't accuracy or durability that has phased out these meters (but rather a claimed desire for more functionality, which I have been arguing does not lead to measurable money, electricity and greenhouse gasses saved) and suggests there are problems with the new "advanced" metering infrastructure in terms of accuracy and failure rates.) See: Exhibit 6. Certainly if analog meters are more durable and more reliable, that is another reason not to phase them out, in addition to the fact that they are medically necessary for people who need them for a medical opt-out.

IV. Other Technical Questions (Some relating to health, some relating to general safety and effects on medical equipment)

In regard to O&R IR set 1-36 (Exhibit 7), the ham radio network and the smart meter

network run on the same frequency and devices on the same frequency interfere with each other. Either O&R believes engineering facts that smart metering interferes with ham radio or it doesn't. Since this creates a legal risk and a likely cost for settlement with any ham radio network operators, O&R should be made to answer this question. Likewise in regard to O&R IR set 1-37 and 1-38 and 1-39, (Exhibit 7) either O&R believes that interference that occurs from its network running on the same system is in compliance with the sections of the Telecom Act including Section 333 which prohibits willful interference with certain other radio communications or it doesn't. These are simple questions which bear on the legality of the smart meter program. O&R either believes the AMI program is in compliance with the code or isn't. Inasmuch as this proceeding includes a review of costs, either O&R believes that it is in compliance or it isn't.

V. Privacy

O&R IR set 1-42 (Exhibit 8) asks O&R to document privacy risks. O&R does not answer. Especially in light of the Wall Street Journal's reporting on hacking of utility central operations leading to upcoming Department of Homeland Security ("DHS") hearings (Exhibit 9), O&R needs to disclose the privacy risks of the AMI program; if O&R does not believe these risks exist or are substantial, then they should have no problem saying so. Similarly O&R IR set 1-43 (Exhibit 8) asks about preventing hackers from being able to determine a home's electric use-age. In light of the July 23, 2018 Wall Street Journal article ("Russian Hackers Reach U.S. Utility Control Rooms, Homeland Security Officials Say"), which is an Exhibit in Dr. Schoechle's testimony which I have sought to be admitted in a new motion. (Exhibit 8 herein) This hacking could also involve getting the information from the utility and O&R should answer what it is doing about this risk. The rest of the answer is too generic, merely saying the capabilities are strong. O&R should explain what kind of tests it is performing and explain what

it is doing to keep data secure once it is stored in the central office.

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

Respectfully Submitted,

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