

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  
ORANGE AND ROCKLAND UTILITIES, INC.  
TO MOTION FOR  
INTERLOCUTORY REVIEW**

**PRELIMINARY STATEMENT**

Orange and Rockland Utilities, Inc. (“O&R” or the “Company”) respectfully submits this response to the Motion for Interlocutory Review (“Kopald Motion”) submitted on September 25, 2018, by Debra Kopald, an intervener in the above referenced case, of the Ruling Denying O&R’s Motion to Strike Testimony (“Ruling”) issued September 10, 2018 in the above-referenced proceedings by Administrative Law Judges Maureen F. Leary and Dakin D. Lecakes, (the “ALJs”). In the Ruling (p. 27), the ALJs concluded that:

As discussed, we find that the only issue raised in the Kopald testimony that is properly within the scope of these proceedings is the design of the opt-out rate, including whether it is discriminatory or violative of the ADA. Although the other issues presented in the Kopald testimony are not within the scope of these rate proceedings, we nevertheless exercise our discretion to decline to strike the testimony from the record. Rather, we will afford it only the weight that is consistent with this ruling.

Specifically, the Kopald Motion (p. 1) seeks “an interlocutory review on the portion of the [Ruling] on O&R’s motion to strike defining costs.”

O&R submits that the Ruling was correct and that the Kopald Motion fails to assert or demonstrate extraordinary circumstances that warrant an interlocutory review. Accordingly, the Public Service Commission (“Commission”) should dismiss the Kopald Motion in its entirety.

## STATEMENT OF FACTS

Pursuant to a Ruling Modifying Procedural Schedule issued May 9, 2018 in the above-referenced proceedings, direct testimony from Department of Public Service Staff and intervenors was due to be filed with the Secretary of the Commission on May 25, 2018. Ms. Kopald filed direct testimony (“Kopald Direct”) with the Secretary on May 26, 2018. On June 15, 2018, O&R moved to strike the Kopald Direct (“Motion to Strike”) in its entirety. In the Motion to Strike, O&R asserted that the Kopald Direct failed to address issues relevant to these rate proceedings. Rather, the Kopald Direct sought to relitigate issues the Commission already decided in the AMI Expansion Order<sup>1</sup> and the Rehearing Order.<sup>2</sup> On July 6, 2018, Ms. Kopald filed a response (“Kopald Response”) which asserted that the Kopald Direct discusses AMI costs, which may be challenged in these proceedings. Ms. Kopald argued that the other issues appropriate for consideration in these rate proceedings include whether the Commission erred in approving AMI in light of the performance of smart meters, the health, safety, fire and explosion risks posed by smart meters, and whether the Commission’s decision to allow AMI expansion is exempt from the New York State Environmental Quality and Review Act.

## ARGUMENT

The Commission’s regulations, *i.e.*, 16 NYCRR 4.7, allow an interlocutory appeal from an ALJ’s ruling “only in extraordinary circumstances” which an appellant must specify pursuant to Rule 4.7(c) (2). The purpose of this requirement is to allow prompt resolution of issues that, for extraordinary reasons, cannot await the Commission’s determination of all other pending

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<sup>1</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 and Effective November 16, 2017) (“AMI Expansion Order”).

<sup>2</sup> Case 17-M-0178 - Petition of Orange and Rockland Utilities, Inc. for Authorization of a Program Advancement Proposal, *Order Denying Petition* (Issued and Effective May 21, 2018) (“Rehearing Order”).

issues at the end of the proceeding. The Kopald Motion fails to identify, let alone demonstrate, the “exceptional circumstances” necessary to warrant the interlocutory review Ms. Kopald requests of the Commission. Ms. Kopald has advanced no justifiable reason to disturb the Ruling. Rather, the Kopald Motion merely reasserts arguments that the Commission has previously considered and rejected.<sup>3</sup> The Kopald Motion should be denied as it is without merit and will serve only to disrupt the ALJs consideration of relevant matters in these proceedings.

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<sup>3</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)

## CONCLUSION

For the foregoing reasons, the Company respectfully requests that the Commission dismiss the Kopald Motion in its entirety.

Respectfully submitted,

*/s/ John L. Carley*

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