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 No. 2 FOR INTERLOCUTORY REVIEW

I. The Supplementary Testimony of both Drs. Schoechle and Dr. Carpenter that was denied in the September 21, 2018 ruling should be let in; another motion for interlocutory review has been filed that addresses the issue of the underlying issues regarding what is an appropriate subject for review (namely, the definition of fees) which would enable this testimony to be let in; even if that motion is not successful, the September 10, 2018 order still allows for rate design related to disability; as such, Dr. Carpenter's testimony specifically addresses the issue of disability and if it isn't considered, it undercuts the September 10, 2018 order which states that the ADA "can be addressed by parties in briefing as they deem necessary or appropriate". Dr. Schoechle also discusses the safety of AMI in relation to radiation emissions, so his testimony should be admitted as well.

The ruling in September 21, 2018 that states, on page 6, "Subsequent rate proceedings cannot be used to collaterally attack prior Commission orders". The issue about the definition of costs, which was *not* addressed in a previous Commission order (prior to this rate hearing) is the subject of another motion for interlocutory review. A positive finding that costs are not legally limited to accounting costs would mean that both the Testimony of Drs. Schoechle and Carpenter should be let in, with the former discussing 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 should be let in and would thus constitute an extraordinary circumstance necessitating interlocutory review of this order as well. (See my first motion for interlocutory review in these proceedings; I had explained that that the extraordinary circumstance necessitating filing of that motion had to do with the fact that without a proper understanding of

the definition of costs, all other motions, such as the one that was the subject of the instant order of September 21, 2018 for which I am all seeking interlocutory review), would be affected by this foundational, pivotal issue as well as consideration of issues that have great effects, financial and otherwise in this rate proceeding.)

However, even if I were to lose the other motion for interlocutory review, 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. In fact, the September 21, 2018 order specifically states:

Opt-Out Fees

> The Kopald testimony challenges the fees charged to disabled customers who opt out of smart meter installation, claiming that the Americans with Disabilities Act (ADA) prohibits charging such opt-out fees for those "who need accommodation for their disability."[114] She argues that the fee is therefore discriminatory. As discussed above, the scope of this case is limited to the establishment of rates that will compensate O&R for implementation of an AMI program that has been pre-approved in terms of scope and budget. Notwithstanding that the 2015 Rate Order included opt-out fees approved by the Commission, in our view the design of rates is squarely within the scope of any rate case. Therefore the rate design of opt-out fees is appropriately raised by Ms. Kopald, and we reject O&R's contention that the issue is irrelevant here. We make no determination regarding the applicability or relevance of the ADA to the design of the opt-out fee. As a legal issue, it can be addressed by parties in briefing as they deem necessary or appropriate.
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> [114] Kopald testimony, p. 29. CASES 18-E-0067
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> Page 26, ¶2 2-3 September 10, 2018; Ruling Denying O&R's Motion to Strike Testimony

The September 21, 2018 order states the following:

> The issues in these rate proceedings are limited to the ratemaking mechanics of incorporating the AMI expenditures into rates, with the opportunity to review the expenditures for their reasonable conformance with the prior Commission approval in the AMI Expansion Order. As Ms. Kopald's submissions are exclusively directed at issues beyond that scope, her motion is denied.

In some ways, this statement can be seen as contradicting the earlier statement in the October 21, 2018 order. It is clear from my testimony, which was not rejected, that the disability I am talking about is sensitivity to microwave radiation of the type emitted by smart meters, as documented in Dr. Carpenter's paper. The paper does not merely sum up other existing papers, but presents consensus among well-regarded international experts.[1] Hearing from Dr. Carpenter about the double-digit percentage of people rendered ill and/or disabled by microwave radiation and how many qualify for the ADA is absolutely relevant to rate design pursuant to the September 10, 2018 order. Furthermore, raising this issue does not constitute necessarily a collateral attack on a prior Commission order. In regard to this issue, the prior Commission order in 17-M-0178 references the Central Hudson Order stating:

> The Central Hudson Order, addressing the question of EHS, noted the finding of the World Health Organization that there is no scientific basis to link EHS symptoms to [RF] exposure. Further, EHS is not a medical diagnosis, nor is it clear that it represents a single medical problem… Treatment of affected individuals should focus on the health symptoms and the clinical picture, and not on the person's perceived need for reducing or eliminating [RF] in the workplace or home.[19]
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> [19] Central Hudson Order, pp. 37-38, citing "Electromagnetic Fields and Public Health" Available at http://www.who.int/pehemf/publications/facts/fs296/en/.
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> Page 15, Order Denying Petition, May 21, 2018 (17-M-0178)

Firstly, it should be pointed out that the order does not state that because there is a statement on

[1] Dr. Carpenter was head of Wadsworth Laboratories for the State of New York, the Executive Secretary of the New York Power Lines Project, founding dean of the School of Public Health at the University at Albany and a member of the Presidential Cancer Panel. Dr. Hardell, another co-author, is widely considered the world's leading authority on the health effects of wireless devices and his work was the basis for the Group 2b carcinogenicity determination by WHO in 2011 regarding wireless radiation, and his work has been used by a European Court to link cell and cordless phone to brain tumors. In addition to being a practicing oncologist as well as researcher, he is Partner in EU research project: Occupational risk factors for rare cancer of unknown etiology; aMember of Collegium Ramazzini (2003); a recipient of the *European Journal of Cancer Prevention* Research Prize (2005) as well as the *Acta Oncologica* Lecture Prize (2006) and Swedish Cooperation Prize (Änglamark) (2007; and Vice President of European Society of Environmental Health (2006-).

the World Health Organization's website, it ipso facto follows that something is not a disability.

First it should be noted that the World Health Organization has also stated the following:

> General population exposure from man-made sources of microwave and RF radiation now exceeds that from natural sources by many orders of magnitude. The rapid proliferation of such sources and the substantial increase in radiation levels is likely to produce "electromagnetic pollution". Man-made sources include: radar…broadcasting and TV networks and telecommunication equipment…it had been observed in some countries that occupational microwave exposure led to the appearance of autonomic and central nervous system disturbances, asthenic syndromes, and other chronic effects (Gordon, 1966; Marha et al., 1971; Dumanski et al., 1975; Serdjuk, 1977)….Similar syndromes were reported in France by Deroche (1971) and in Israel by Moscovici et al. (1974).[2]

Most critically, nowhere does the PSC state that just because it presumably believes that a World Health Organization (WHO) statement (that contradicts an earlier statement it made) suggest that no evidence could manifest since the revised statement that documents the WHO's earlier statement. There is furthermore, nothing in the PSC order that indicates that such a statement should contradict a doctor's note and/or evidence provided by a doctor. Presumably a doctor's note is superior to a WHO statement, which is legally construed as hearsay pursuant to *Bonds v Fowler,* 2017 WL 4102482 (U.S. District Court, Kentucky Bowling Green Division) and *Bartlett v MutualPharmaceutical Co., Inc.*, 2010 WL 3092649, (U.S. District Court, New Hampshire) which states the following:

> Mutual seeks to exclude evidence of adverse drug event reports received by the Food & Drug Administration ("FDA") or the World Health Organization ("WHO"), arguing that such reports are hearsay and that Bartlett has not demonstrated that the underlying cases involved sufficiently similar circumstances. This motion is granted in part. The reports are indeed hearsay "if offered to prove the truth of the matter[s] asserted" in them, i.e., that Sulindac caused SJS/TEN in a particular case. Fed.R.Evid. 801(c). Bartlett has not argued that they fall within any hearsay exception. Thus, the reports may not be offered for that purpose.

According to the evidence in the testimony of Dr. Carpenter that I sought to have admitted, 10%

[2] "Radiofrequency and Microwaves" Environmental Health Criteria 16: Published under the joint sponsorship of the United Nations Environment Programme, the World Health Organization, and the International Radiation Protection Association, World Health Organization, Geneva: 1981: 11, 80.
http://apps.who.int/iris/bitstream/10665/39107/1/9241540761_eng.pdf

of people may be disabled by electromagnetic radiation, specifically, pulse modulated microwave radiofrequency radiation of the type emitted by AMI meters. There is nothing in the Central Hudson order that should obviate people from being able to provide a doctor's note demonstrating that they are disabled by this radiation and thus should be exempted from fees pursuant to the ADA. Otherwise, what good is the September 10, 2018 order which allows the issue of ADA compliance in regard to rate design? It would be functionally meaningless. The disability being alleged that requires the opt-out should not be subject to a charge because the disability itself is both caused by and manifests in locations with AMI meters.

According to the September 21, 2018 ruling, the Administrative Law Judges seem to think that because the PSC cited to a quote on the WHO website which was cited in support of the idea that analog meters were not necessary in Central Hudson's service territory and that AMI could not possibly be dangerous enough not to roll out, that consideration for an opt-out fee rescission for individuals whose doctors assert they are disabled by the radiation emitted from AMI meters should not be considered (even though they said in the September 10, 2018 ruling that the issue could be briefed in response to the joint proposal. AMI has clearly since been documented as being particularly dangerous for certain individuals and this is the gravamen of the Carpenter testimony that should be let in. (It is worth reiterating again that Michael Peevey, Chairman of the California Public Utilities Commission ("CPUC") wrote to Pacific Gas and Electric (PG&E) executive Brian Cherry in 2010 what is understood by many members of the scientific and medical communities: "<u>There really are people who feel pain, etc., related to EMF, etc,……..</u>" Peevey goes on to indicate they should be accommodated (by not forcing a wireless electric meter on their homes) if they can produce a doctor's letter saying they suffer "<u>from EMF and/or related electronic-related illnesses</u>**"** or "<u>expressing concern about likelihood of suffering</u>

same."[3] But again, to reiterate, the point is clearly that the Administrative Law Judges have not articulated why a statement made in the Central Hudson Order citing to a statement by the WHO (that contradicts their previous statement that was published in a journal article with references- see again footnote 2) should be superior to any doctor's note or scientific study, including the one in the Carpenter testimony that was published in July 2018 and secondly constitutes *diktat* such that AMI is automatically declared not to be disabling anyone for the next 20 years the rollout is contemplated for (and beyond). It is tantamount to saying, the earth is flat and any evidence that contradicts it shall be ignored going forward; everyone needs to accept the notion that the earth is flat no matter what evidence that comes up afterwards that shows it is round. The order, most importantly doesn't say that WHO statements should preclude doctors' notes and scientific testimony and it does not state why hearsay statements should trump same.

For all the aforementioned reasons, if my other motion for interlocutory review on the issue of fees is rejected, the Carpenter testimony should be considered by the Commission. This is truly an extraordinary circumstance as those disabled by EMF radiation and rendered severely ill by AMI meters will be subject to insult on top of injury; namely, having to pay to have their disability accommodated, or as those asserting they have this problem oft-state, "paying the mob for protection". This is fundamentally a civil rights violation and any ruling from this proceeding that charges people disabled by this radiation to not be irradiated should be subject to strict scrutiny; thus the order denying the testimony of Dr. Carpenter should be revisited. The order denying the testimony of Dr. Schoechle should be revisited, because his paper discussed the safety of wired networks (an alternative to AMI) and how it is not disabling to certain people.

[3] Michael R. Peevey, Chairman of the California Public Utilities Commission (CPUC) 2010 email to Brian K. Cherry, Pacific, Gas and Electric (PG&E): ftp://ftp2.cpuc.ca.gov/PG&E20150130ResponseToA1312012Ruling/2010/09/SB_GT&S_0000529.pdf

This testimony would inform the final briefings on the issue of having the opt-out fee rescinded for those who need their disability accommodated under the ADA by not having an AMI meter.

Respectfully Submitted,

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