

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.

RULING MEMORIALIZING SEPTEMBER 20, 2018 CONFERENCE
TO RESOLVE DISCOVERY DISPUTES

(Issued September 28, 2018)

MAUREEN F. LEARY AND DAKIN D. LECAKES,
Administrative Law Judges:

Introduction

Between late August and mid-September 2018, pro se intervenor Deborah Kopald filed five discovery motions to compel responses to numerous information requests (IRs), three of which were directed to Orange and Rockland Utilities, Inc. (O&R) and two were directed to Trial Staff of the Department of Public Service (DPS Staff). The IRs relate almost exclusively to O&R's Advanced Metering Infrastructure (AMI) program and the digital "smart meters" that will be deployed in the company's service territory. On September 20, 2018, we conducted a telephonic conference with Ms. Kopald, O&R and DPS Staff in an effort to resolve the motions.¹ This ruling summarizes the results of

¹ All parties were provided an opportunity to listen to the telephonic conference. Those that appeared in addition to O&R, DPS Staff and Ms. Kopald were Environmental Defense Fund, Public Utilities Law Project, and the Utility Intervention Unit of the Department of State.

discussions during the conference and represents a partial resolution of certain motions insofar as O&R is to answer the IRs specified below. A more formal ruling on Ms. Kopald's motions will follow.

DISCUSSION

Discovery is governed by the Commission's procedural regulations in 16 NYCRR Part 5. Parties shall fully disclose all information relevant and material to the proceeding in which they are participating as well as any information likely to lead to relevant and material information.² The scope of discovery is defined by the type of proceeding in which discovery requests are made and such requests should be "tailored to the particular proceeding and commensurate with the importance of the issues to which they relate."³

In terms of Ms. Kopald's IRs about the AMI program and smart meters, O&R's capital costs and expenses related to the AMI program are at issue here, as is the design of the proposed rates that include AMI costs. This necessarily includes the design of O&R's proposed opt-out fee, as we made clear both in our Ruling Denying O&R's Motion to Strike Ms. Kopald's testimony and in the September 20 conference.⁴

Kopald Motions 1 and 4: O&R Responses to IRs 4-7 and 85-86

Kopald IRs 4 to 7 at issue in Motion 1 ask whether O&R is aware of other New York utilities' policies regarding opting out of smart meters or is aware of other state laws concerning opting out of an AMI program. The issue of O&R's awareness of

² 16 NYCRR § 5.1.

³ 16 NYCRR § 5.8(a).

⁴ Ruling Denying O&R's Motion to Strike Testimony, p. 27.

these issues may not clearly serve an evidentiary purpose but, as we discussed during the conference, the factors O&R considered in setting the opt out fees may be relevant. O&R should advise Ms. Kopald whether it considered the laws and policies of other States or the actions of other New York utilities in setting the opt-out fees here. And if those factors were considered, how those laws, policies, and actions influenced its decisions with respect to the opt-out fees.

As discussed during the September 20 conference with respect to the IRs at issue in Motion 4, O&R also should provide responses to IRs 85 and 86 regarding the factors and information considered in structuring the opt-out fees, including the components of costs and savings considered when setting the fees and seeking recovery in its proposed rates. IR 85 asks for current spreadsheets showing the projections for savings as a result of the AMI program and the basis of those projections. O&R should identify the savings the company has realized or will realize as a result of the AMI program and the extent to which those savings have been imputed in rates or revenue requirements, including but not limited to any quantifiable savings associated with meter readers. To the extent that O&R anticipates any additional cost savings that may be unquantifiable now, the company should provide information about savings that may be realized and quantified in the future due to the AMI program.

IR 86 asks for data on meter failure rates over time. To the extent that meter failures have factored into O&R's analysis of AMI costs it seeks to recover or to the opt-out fees, this information should be provided to Ms. Kopald as well.

Kopald Motion 3: O&R Responses to IRs 58-69 and 72(a) and (b)

Motion 3 contains two sets of IRs (Set 2 - IRs 45-57; and Set 3 - IRs 58-75) posing most of the same questions. We will treat Sets 2 and 3 as one set to the extent that the questions are duplicated. O&R should answer the following questions in Set 3: IRs 58 to 69 and 72(a) and (b). These IRs ask about AMI-related net assets, costs/expenses, cost-sharing, blanket covering installation assets and expenses, related programs' assets and expenses, employee time spent on the AMI program, and retrofitting capacity. These IRs go to the heart of the rate design and cost issues associated with AMI and are relevant to these proceedings. AMI and other related costs are a fundamental part of O&R's revenue requirement and are clearly within the scope of these proceedings.

As discussed during our conference, O&R should disregard the prefatory language to these IRs that places the questions in the context of O&R's "third settlement offer" and should provide responses instead with respect to the originally proposed costs and expenditures in O&R's tariff filings and the company's initial, amended/updated, and rebuttal testimony and exhibits. These IRs also request that the AMI costs be broken down between those incurred in O&R's initial rollout under the 2015 Rate Order and those incurred under its expansion under the 2017 AMI Expansion Order. O&R is not required to break down those costs unless such a breakdown is already available.

As we noted in the conference, we reject O&R's contention that these IRs ask for information that is more granular than customary in a rate proceeding. O&R should document the AMI line item included in its filing for AMI program costs, both incurred and projected. As we further noted in the conference, the AMI line item proffered by O&R must have been based on and supported by additional, more detailed

information in the company's possession. As such, O&R's responses should be provided in the greatest detail available. If O&R lacks the kind of granular details requested, it should explain the reason why, but otherwise should provide the most detailed information available.

CONCLUSION

Within 10 days of the date of this ruling, O&R should serve answers to the foregoing IRs on Ms. Kopald, the Administrative Law Judges, and any other party requesting the IR responses. Nothing in this ruling is intended to require O&R to prepare any additional analysis or to create any new documentation in responding.

(SIGNED)

MAUREEN F. LEARY

(SIGNED)

DAKIN D. LECAKES