

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 O&R to RESPOND TO INTERROGATORIES IR Sets 4-6 (from  
D. Kopald to O&R)**

- I. O&R did not answer the questions in the interrogatories (sets 4-6) that I served; they should be made to answer them all.*

O&R's response to the interrogatories I served in sets 4-6 were exactly the same:

Response

The Company objects to this interrogatory on the grounds that it seeks information that is irrelevant or not reasonably calculated to lead to the discovery of admissible evidence, is overbroad, unduly burdensome, harassing, expensive, oppressive or exceeds the scope of this proceeding.

I disagree, and request that all my questions be responded to. I will address the content of the questions, but start by pointing out what I have oft-said in previous motions (the first two Motions to Compel O&R to respond to interrogatories, etc., and My Motion to Admit New Testimony and my Motion to Compel DPS to respond to interrogatories: if something is proven not to do what it is claimed it was doing, and we have information about that now, that information should be produced so that the items in question are put into the investor side of the business and not put into rate base so that the ratepayers aren't paying for something that doesn't do what is claimed. It doesn't matter whether the item was pre-approved for use by the Commission; if it isn't benefitting the ratepayers as stated and/or isn't doing the task it is claimed to be doing, then the ratepayers should not be made to pay for it and the item should not be put into the net regulatory assets in the rate base and should not be counted as expenses in the formula that determines the revenue requirement (i.e. the rate increase passed along to the

ratepayers). The formula is Net Operating Profit after Tax (which includes the rate increase to ratepayers in revenues and AMI expenses) divided by Net regulatory assets (which include AMI assets) equals the Rate of Return. The Commission should not allow O&R to cover up certain information claiming it isn't part of this proceeding, when it matters what costs are passed along to ratepayers.

In IR Set 4 (Exhibits 1 and 2), O&R made a number of claims in its business plan<sup>1</sup> that I believe have not been substantiated and are known to be false. Answers should be provided, so the Commission can properly determine whether the items that claim to have certain capabilities are actually doing them and benefiting the ratepayers. If they are not benefitting the ratepayers or not creating the functionality anywhere near claimed, there should be a credit to the ratepayers for lack of functionality of AMI assets such that they are taken out of the rate base and not expensed to the ratepayers. Questions 76-85 and 87-91 and 93-98 speak for themselves in this regard. Question 86 about meter failure rates is critical because it suggests the depreciation schedule should be changed. In her response to my motion to compel the DPS to answer interrogatories from set 1 I had served them, on behalf of herself and the Orange County Energy Coalition, Ms. Debra Slattery's Exhibit 1 (reproduced herein as Exhibit 7 in this motion) documented the recent rejection by the Kentucky Public Service Commission of a smart meter rollout reported on August 31, 2018 in the article "As Kentucky regulators reject smart meter plans, troubling trend continues for AMI". Quoting from the Kentucky order<sup>2</sup>:

The Companies' only evidence to support a 20-year service life of the Landis+Gyr meters is a two-word email from a sales representative that indicates a service life of "20 years."

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<sup>1</sup> See: Appendix B of the ORU June 30, 2016 DSIP filing in Case 14-M-0101: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={B64DECD2-7866-49CD-8FF5-03BE7699345D}>

<sup>2</sup> August 30, 2018 Order of the Kentucky Public Service Commission: Case 2018-00005, Electronic Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for Full Deployment of Advanced Metering Systems

...In this proceeding, the Companies failed to provide any documentation in the evidentiary record to support the assertion raised in their post-hearing brief that their existing meters are no longer being manufactured.

.... In this proceeding, as discussed in detail below, the Commission is not persuaded by the evidentiary record that the AMS proposed by the Companies is the reasonable, least-cost alternative.

....The Companies also argued that the proposed AMS would "provide additional benefits to and options for their customers." However, the Commission has concerns regarding the claimed benefits and options for customers. The Companies claimed that AMS would provide customers more control over their consumption by providing them timely usage data, but acknowledged that the data customers would receive would be 24 to 48 hours old.

Moreover, the Companies operate a limited opt-in AMS pilot program that has yet to reach full capacity, and many of the pilot program customers do not regularly check usage data, which is 24 to 48 hours old. **The lack of robust utilization of the usage data in the pilot program reflects on customers' desire for the type of data that would be offered by AMS.** Thus, based on the evidentiary record, the Commission is not convinced that customers will benefit substantially from the usage data as proposed by the Companies or that the failure to provide that data to all customers would result in inadequate service.

**The Companies also claimed that AMS would benefit customers by allowing the Companies to restore power more quickly during outages because AMS would allow them to know when a customer does not have service. The Companies currently rely on customer complaints and visual inspections to identify outages.** However, there was no evidence presented in the record that would justify finding that the Companies' current method for identifying outages results in a substantial inadequacy in service to customers.

Rather, the evidence in the record indicated that the Companies were generally providing adequate service with their existing meters and that they would continue to do so.

For the reasons set forth above, the Commission finds that the Companies have not presented sufficient evidence on the record that established a substantial inadequacy of service at this time and, therefore, the Companies have not established a need for the proposed AMS.

**The Companies similarly failed to present sufficient evidence to demonstrate that the AMS proposal would not result in wasteful duplication.** As mentioned above, the remaining service lives of LG&E's and KU's electric meters are 17.4 years and 15.4 years, respectively. This accounts for \$16.7 million and \$36.2 million in undepreciated book value for LG&E and KU, respectively. Moreover, the Companies have offered no evidence into the record that indicates their current metering systems are failing to provide adequate service. Rather, the evidence indicates that the Companies are able to provide adequate service with their existing meters.

**Last, it appears that the Companies applied an expanded service life in order to create a cost-benefit scenario favorable to their proposal. Even assuming all of the Companies' other calculations and assumptions are accurate, the AMS proposal**

**results in a net cost to customers if the meter service life is less than 20 years.**

Emphasis Added

*August 30, 2018 Order of the Kentucky Public Service Commission: Case 2018-00005, Electronic Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for Full Deployment of Advanced Metering Systems*

The order makes many of the same claims that Dr. Schoechle asserts which is why my interrogatories that have to do with asking O&R to substantiate claims that AMI allows power to be restored more quickly in outages (see question 88 and 95), that there isn't duplication (AMI providing benefits that are already provided by other technologies (see last motion to Compel O&R No.2 regarding tracking of electric vehicles) and what the claimed service life of the meters actually is (Question 86) are critical. Regulatory bodies in Kentucky and New Mexico and Massachusetts dispute these claims as well apparently. See: again, Exhibit 1 of Ms. Slattery's response to my Motion to Compel the DPS to respond to Set 1. Her Exhibit 1 is Exhibit 7 to the instant motion.

Question 91, which is about future applications is important because Dr. Schoechle, whose testimony is sought to be admitted states that the current technology cannot support these future functions even with a software retrofit. O&R needs to be made to substantiate claims that AMI will deliver these benefits, because if as Dr. Schoechle indicates, they don't, then the depreciation schedule must be adjusted, since the meters will not last 20 years.

Please explain technically how the future applications can technically work with the AMI meters being installed.

Question 92 is note-able because it makes claims without substantiation. They are the only claims in O&R's business plan regarding supposed proof of efficacy of AMI elsewhere. Please provide data supporting the below claims from page 308:

Some notable examples of AMI-enabled customer programs include Sacramento Municipal Utility District's "smart home" time-of-use rate, which helped reduce customer bills by 10-13%, and, Oklahoma Gas & Electric's 309 demand response program, in which 99% of participating customers saved an average of \$150 annually.

O&R should first explain whether the demand response program of OG&E is in fact not operating independently of AMI (and if AMI is now operating the demand response program if that functionality is duplicative of other functionality that existed that was running it) and whether SMUD's "smart home" time of use rate actually helped reduced customer bills by 10-13% or if the rate was artificially depressed for the pilot rollout. This interrogatory is important because it is part of a pattern of claims that I assert cannot be substantiated. Also, anything that is duplicative should NOT be charges to the ratepayer twice; if something else is performing that function, the AMI asset and/or expense should not be passed along to the ratepayer in this proceeding.

Exhibit 3 and 4 contain IR-Set 5. Question 100 has never fully been documented. Mr. Carley told me he didn't need to provide an affidavit to assert that the company wasn't charging homeowners on their bills directly for the electricity used to operate the meters. He provided a schematic diagram in O&R's response to my Petition for Rehearing which does not substantiate this claim. Whether this cost is indirectly passed along via an overall rate-hike is another question that should be answered within the context of my question: either the electricity to run the meter is billed directly to the homeowner or no, and if not, then is it billed to them indirectly by being considered an expense or a net regulatory asset in the rate hike? This is a valid cost question to be reviewed in this proceeding.

Inasmuch as the Commission's prior order in 14-M-0196 regarding analog meters is under review, with the petitioners for rehearing and reconsideration having provided information that shows that the analog is the only true non-EMF polluting meter (it does not put line

pollution onto the house and only has a small field that emanates an inch or so from the device, while the digital meter puts continual 50 Khz line pollution onto a home's wiring), it is valid to ask about the claimed non-existence of analog meters in Question 99 and claims that refurbished meters, which on information and belief were regularly approved by this Commission are not available at this time. This question is further valid inasmuch as an enquiry into opt-out fee removal for people with disabilities has been deemed a legitimate question for review in the ruling in response to O&R's motion to strike my testimony. Dr. David O. Carpenter's testimony, which is sought to be admitted, is that the digital meters create a problem for people sensitive to EMF radiation (which supports the issues being re-reviewed in 14-M-0196): therefore there is an added financial burden on disabled people to purchase filtering equipment to mitigate the 50 Khz signal from the digital meter. This expense could be obviated by the availability of an analog meter and O&R should be made to answer this question about their availability or supposed lack thereof. If they are truly not available, then the cost to filter the digital meter should be considered by the Commission when it considers the necessity of getting rid of the opt-out fee for disabled people who need mitigation and people who would like it for preventative health reasons.

IR Set-6, Question 101 (Exhibits 5 and 6) is a necessary question for a proper cost review. The frequency with which the meters communicate (and sub-question d,e,f,g,h generally) are relevant to a recent 7<sup>th</sup> circuit case which I previously mentioned, (*Naperville Smart Meter Awareness v. City of Naperville*, 7<sup>th</sup> Cir. August 16, 2018), which states that the frequency of the collection would have convinced the court to consider the collection of electricity use-age and load data an unreasonable search. Therefore this is relevant to an argument I would make in my closing briefs about whether a system that may be in breach of the Constitution and/or state and federal laws should be in rate base and imposing a burden upon

ratepayers or not. The frequency of the transmissions also are part of a cost analysis, because it is possible that they don't need to emit as much RFR to accomplish the task they are doing; some of the emissions, on information and belief) have to do with notifying the utility whether the meter has been tampered with or not. The question about how the information is transmitted and stored (sub-questions a,b,c, generally) is completely relevant because it is relevant to a cost analysis of the sub-components of the AMI system and whether it could be run more cost-efficiently. If certain costs are not justified, they shouldn't be incurred (and/or should not be in the rate base or expenses). Knowing what the actual sub-components are is necessary for a cost analysis which could also occur during the evidentiary hearing.

For all the aforementioned reasons, O&R should be made to respond to Kopald IR Sets 4,5 and 6.

Respectfully Submitted,

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