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Three Empire State Plaza, Albany, NY 12223-1350
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October 18, 2018

VIA ELECTRONIC MAIL

Honorable Kathleen Burgess
Secretary
State of New York Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 18-E-0067 and 18-G-0068 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric and Gas Service.

Dear Secretary Burgess:

By this letter, Department of Public Service Staff (Department Staff) responds to Motion No. 2 for Interlocutory Review filed by Deborah Kopald on October 10, 2018 (“Motion”), in the above-captioned proceedings. Ms. Kopald seeks an interlocutory review of the Ruling Denying Motions to Submit Supplemental Testimony issued September 21, 2018, by Administrative Law Judges (“ALJs”) Dakin Lecakes and Maureen Leary (“Ruling”).¹ This Motion follows Ms. Kopald’s September 25, 2018 Motion for Interlocutory Review (First Motion), which sought Commission review of the ALJs’ September 10, 2018 Ruling Denying O&R’s Motion to Strike Testimony in the same proceedings. For the reasons that follow, the Motion should be denied.

As explained in Department Staff’s October 3, 2018 response to Ms. Kopald’s First Motion, the Commission’s regulations allow for an interlocutory review of a presiding officer’s ruling only in “extraordinary circumstances” (16 NYCRR §4.7[a]). The party seeking interlocutory review of a ruling is required to allege and identify in the motion the extraordinary circumstances warranting such a review (16 NYCRR §4.7[c]). Ms. Kopald fails to identify any

¹ The Ruling also denied a motion by Pace to file supplemental testimony in these proceedings.

legitimate extraordinary circumstances that would warrant Commission review of the Ruling and, thus, her Motion should be denied.²

In the Motion, Ms. Kopald makes an effort to allege extraordinary circumstances; however, she attempts to do so by relying on a speculative favorable outcome with respect to the First Motion. In other words, Ms. Kopald does not allege that extraordinary circumstances currently exist, but rather that they will exist if the Commission ultimately grants the First Motion and finds that all costs related to Orange and Rockland Utilities Inc.'s ("O&R") Advanced Metering Infrastructure (AMI) program are at issue in these rate proceedings.

Ms. Kopald further argues that, if the Commission were to reject the First Motion, the testimony of Dr. Carpenter should be included in the record in these proceedings "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" (Motion, p. 2 [emphasis added]). On multiple occasions, the ALJs have identified the issues properly within the scope of the instant rate proceedings, *i.e.* O&R's capital costs and expenses related to the AMI program and the design of the proposed rates, including AMI costs and opt-out fees. Although Ms. Kopald claims that Dr. Carpenter's testimony is "absolutely relevant to rate design," this argument is simply untrue. Dr. Carpenter's testimony, addresses the alleged health effects of low level electromagnetic fields and low intensity non-ionizing radiation.³ Whether certain customers should be charged an opt-out fee is not, as Ms. Kopald argues, relevant to rate design; rather, the applicability or relevance of the Americans with Disabilities Act to the opt-out fee is a legal issue that can be addressed by the parties in briefing, a fact noted by the ALJs in the September 21, 2018 Ruling Denying O&R's Motion to Strike Testimony. The fact that Ms. Kopald will have an opportunity to address this issue in briefing further undermines her claim of extraordinary circumstances in support of the Motion.

For all the reasons stated herein, Department Staff respectfully requests that the Commission deny the Motion in its entirety.

Respectfully Submitted,

/s/ Lindsey N. Overton Orietas

Lindsey N. Overton Orietas
Staff Counsel

² Ms. Kopald's First Motion failed to comply with the Commission's regulations insofar as it failed to specifically allege or identify any extraordinary circumstances warranting interlocutory review, a defect Ms. Kopald attempts to cure in the instant Motion (pp. 1-2). This untimely and improper attempt by Ms. Kopald to allege extraordinary circumstances in an effort to cure the defects of her First Motion should be denied.

³ Dr. Schoechle's testimony also fails to address rate design, but rather focuses on the ability of smart meter technology to provide customers with the ability to control costs and produce economic benefits.

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