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.

PROTECT ORANGE COUNTY'S RESPONSE IN SUPPORT OF THE MOTION TO COMPEL O&R TO RESPOND TO INTERROGATORY SET 1 SERVED BY DEBORAH KOPALD

Point I

Costs are costs and the Commission's order contemplated a review of costs in these proceedings; O&R has yet to provide even full accounting costs and the interrogatories served have to do with costs of the program and other issues that could be impediments to settlement.

Protect Orange County supports the motion to compel O&R to respond to interrogatory set 1 served by Deborah Kopald. O&R has not provided full accounting costs to review the AMI program, but even if they had, it would be hard to review the amounts being spent on the various items without reviewing the functionality and other costs of these items including legal risk. The questions asked have direct bearing upon the items the ratepayers are being asked to pay for and should affect settlement and the Commission's ultimate order from our organization's point of view. Obviously, we are not discussing in the motion what has gone on in settlement; it is public knowledge that Protect Orange County opposes the opt-out fee (which was removed in a recent Central Hudson proceeding) and the junking of analog meters. The first set of questions have to do with O&R's awareness about its peer utilities offering analogs. Inasmuch as more information has come to light about people not being able to tolerate meters other than analogs and having doctors' notes supporting the use of analogs, O&R is creating a needless cost in the form of a lawsuit risk by not offering them. IR Set 1-5, 1-6, 1-7, 1-8, 1-9, 1-10. 1-12, 1-19 have to do with these issues. 1-11 is an important interrogatory, because even though this

Commission has (falsely) claimed that the analog emits more than a digital meter in response to a proceeding governing Central Hudson, this issue was the subject of a petition for rehearing and one for reconsideration, which show facts that contradict this claim. The petitioners debunked this claim, and O&R should acknowledge whether it believes the misrepresentations about digital meters. People aren't paying for line pollution and if O&R has tested the digital meter with an oscilloscope which would help lay this controversy to rest, they should say so. 1-12 should be addressed because the evidence of people being sickened by electromagnetic radiation and smart meters in particular has been escalating since the last order.

All questions pertaining to the use of analogs and removal of the opt-out fee are critical. Certainly the charging of a fee is problematic and contrary to the Americans with Disabilities Act for those who have a doctors' note saying they must opt-out, so the question of charging a fee for the opt-out is a problem. Protect Orange County believes that anyone with any type of doctors' note should not have to pay for an opt-out meter. The charging of a fee also runs counter to the Energy Policy Act which directed utilities to offer AMI meters upon customer request. The people who don't request it should not have to pay.

The technical questions about meter functionality in Exhibit 4 to the motion should be answered. There are questions about the effects of the Switch Mode Power Supply ("SMPS") that have come up and not been addressed; any risks should be disclosed especially when credible evidence exists that an employee in the engineering department has expressed this opinion. The questions of whether O&R has proof of customer savings from the pilot program and proof of the claimed ability of meters to facilitate supply/demand balancing, then those should be disclosed; otherwise, it would be prudent for the Commission to assume that none exist since O&R has never substantiated these claims, and on information and belief, other utilities have not shown convincing evidence of this either. If these benefits are not there, the

question of whether certain assets (from AMI) should be in the rate base at all need to be addressed at this proceeding, since a rate hike is mathematically related to the rate base. Questions about meter emissions are directly related to both privacy and health; certainly if the emissions from these meters are in excess of published studies showing problems at which people get sick (and certainly if the meter emissions are higher than FCC limits[1]), then that further reinforces the issue of the need to rescind the opt-out fee due to the ADA. O&R also keeps ignoring the fact that evidence exists that a current transformer, which is the equipment in the meter, will not result in overbilling. Since we are supposed to be reviewing AMI costs, O&R should be made to answer the question so we can compare what they claim to know now when customers complain of overbilling later.

Protect Orange County also fails to understand why O&R did not answer the questions in Exhibit 7. If the smart meters interfere with other items with FCC licenses, then there is a legal problem. So either O&R believes they interfere or don't interfere. Not answering the questions is like saying, well maybe they interfere, but we were permissioned to do this by the Commission, so that is the Commission's problem. With the questions in Exhibit 8, O&R has failed to explain how customer data is protected. Since the Department of Homeland Security is now going to hold four hearings because utilities have been hacked, O&R should be giving more detail about how it is actually going to protect customer data. If the system cannot do this properly based upon what is now known, accounting adjustments can and should be made in this proceeding regarding what is in rate base, what is sought to be collected in costs and what should be budgeted for lawsuit risk.

[1] The Department of the Interior wrote in 2014 to the National Telecommunications and Information Administration that FCC limits are 30 years out of date and are based upon inapplicable criterion:

> *The electromagnetic radiation standards used by the Federal Communications Commission (FCC) continue to be based on thermal heating, a criterion now 30 years out of date and inapplicable today.*

http://www.ntia.doc.gov/files/ntia/us_doi_comments.pdf

Point II

If a review of AMI costs leads to a review of the AMI program and it turns out O&R grossly misrepresented facts to the Commission, then it is wholly proper within the context of this proceeding to file a motion to have the AMI program reviewed or limited over public interest concerns before the Commission approves a rate hike that has AMI assets in rate base and in the cost structure; meanwhile, O&R is trying to stymie any true review of costs by trying to limit a review of aspects of the AMI program in this proceeding in a draconian manner. Since this information cannot be obtained by the our organization in any other type of proceeding, O&R is effectively trying to prevent any party from ever filling any new proceeding regarding the AMI program so that information justifying O&R's claims can be produced.

The information that has come out about AMI including but not limited to information in the new testimony sought to be admitted is of extreme concern to Protect Orange County. It also appears that O&R grossly mislead the DPS and the Commission regarding facts about AMI's capabilities and its downsides, which include health. So there is a chicken and egg problem. Protect Orange County is of the opinion that claims about the AMI program's benefits has never been demonstrated/ been predicated upon gross misrepresentations but in the absence of evidence regarding information about a program that was pushed through to all parts of the rate territory *without* an evidentiary hearing, we are left with answers to questions now that amount to "we don't have to answer because it isn't relevant" (even though we were precluded from demanding such information in the last proceeding, 17-M-0178, which had no evidentiary hearing). Inasmuch as AMI *is* in the rate base (as well as in costs) and the rate hike is predicated on its existence there due to the formula of net operating expenses (which include the rate hike in the revenues portion) divided by net regulatory assets equaling the rate of return, the question as to whether items in the net regulatory assets have *hidden costs* that have not been properly vetted must be addressed *now*, in this proceeding.

The issues that the interrogatories address were not previously addressed in rate orders; none of the supposed benefits have ever been justified with demonstrable facts and as time has gone by since previous orders, more information suggesting O&R's claims are faulty have come

to light. Indeed on information and belief, one of O&R's reasons for not providing full accounting information about AMI is because O&R says some of it is hard to determine. Again, the 2015 order has nothing to do with the further rollout in the territory which was *not permissioned* at *that* time. To reiterate, he electricity use-age of AMI meters is pertinent due to the fact that if it is being charged to the consumer, that is a hidden charge that was never approved by the Commission, the reliability of the meters and evidence showing they are not is critical to a review of costs, because if they are unreliable, the meters should not continue to be rolled out and if O&R insists on doing so, that should be moved to the investor side of the business (where the investors may choose to hold O&R accountable) as opposed to the ratepayer side of the business, especially when evidence of this would suggest another depreciation or amortization charge is forthcoming. The health questions have bearing on the opt-out fee and whether it is even legal to pass this along to people who are disabled by the radiation from the new meters. Other utilities' practices are relevant to this issue, because it would appear they have decided to forgo the risk of litigation on this topic. Other legal issues relate to EMF interference with other licensed devices, and O&R had best express a view on this issue as well, since the potentially offending equipment is in rate base, is the basis for a rate hike and may result in further costs to the ratepayers. If AMI were on the investor side of the business, the investors would be clamoring for answers to this information and the free market and access to capital would dictate that O&R would feel compelled to provide it. Even though the ratepayers are a kind of captive audience, the intervenors representing their interests should be entitled to no less than the investors would demand.

For all the aforementioned reasons, the motion to compel O&R to respond to the first Interrogatory Set sent by Deborah Kopald should be granted.

Respectfully submitted,

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/s/ Pramilla Malick
Chair
Protect Orange County

Dated: September 4, 2018
Minisink, NY

To:
Commission Secretary Kathleen H. Burgess
secretary@dps.ny.gov

Judge Maureen F. Leary
Maureen.Leary@dps.ny.gov
Judge Dakin Lecakes
Dakin.Lecakes@dps.ny.gov

Active Parties