

**BEFORE THE NEW YORK STATE
PUBLIC SERVICE COMMISSION**

**Proceeding on Motion of the Commission
as to the Rates, Charges, Rules and Regulations
of Orange and Rockland Utilities, Inc.
for Electric Service**

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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 Gas Service**

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Case 18-G-0068

**SUPPLEMENTAL DIRECT TESTIMONY OF KARL R. RÁBAGO
ON BEHALF OF PACE ENERGY AND CLIMATE CENTER**

July 31, 2018

1 I. INTRODUCTION AND QUALIFICATIONS

2 Q. Please state your name and business address.

3 A. My name is Karl R. Rábago. My business address is 78 North Broadway, White Plains,
4 New York 10603.

5 Q. What is your occupation?

6 A. I am the Executive Director of the Pace Energy and Climate Center (“Pace”) at the
7 Elisabeth Haub School of Law.

8 Q. Are you the same Karl R. Rábago who previously submitted direct testimony in
9 these proceedings on behalf of Pace?

10 A. Yes.

11 Q. What is the purpose of this testimony?

12 A. The purpose of this testimony is to provide supplemental testimony on revenue recovery
13 of costs by Orange and Rockland Utilities, Inc. (“Company”) related to payment of
14 association dues to the Edison Electric Institute (“EEI”) and the American Gas
15 Association (“AGA”). This supplemental testimony addresses new information supplied
16 by the Company in supplemental responses to interrogatories filed by Pace.¹ This
17 testimony also provides supplemental information relating to a final order by the Public
18 Utilities Commission of Colorado on an interim decision cited in my pre-filed direct
19 testimony relating to the minimum system method used in cost of service studies.

20 Q. What issues do you address in this supplemental direct testimony?

¹ See Company Supplemental responses to Pace 5-10 through 5-15, 5-18 through 5-21; see also Company responses to Pace 6-1 through 6-3.

1 A. In this testimony, I cite the Company's supplemental discovery responses on the issue of
2 rate payer recovery of payments for association dues to EEI and AGA as evidence that
3 the Company's request for cost recovery of these dues is wholly unsupported. As a result,
4 the rates proposed by the Company that request recovery of costs relating to EEI and
5 AGA dues are unsubstantiated, unjust, and unreasonable. My testimony regarding the
6 Colorado Public Utilities Commission ("PUC") decision provides supplemental
7 information about the minimum system method.

8 RATE RECOVERY OF EEI AND AGA DUES

9 **Q. Did you address the issue of rate recovery of costs associated with EEI and AGA**
10 **dues in your direct testimony?**

11 A. Yes.²

12 **Q. What burden does the Company face in seeking rate recovery for its expenses?**

13 A. Under New York law, when a utility seeks to recover costs from ratepayers, the
14 Commission must determine if the charges and rates are just and reasonable.³ The utility
15 bears the burden of demonstrating that its proposed charges and rates are just and
16 reasonable,⁴ and the Commission's decision to approve the recovery of costs must be
17 rational and supported by substantial evidence.⁵

² See Direct Testimony of Karl R. Rábago on behalf of Pace Energy and Climate Center, at 52-65 (May 25, 2018) ("Rábago Direct Testimony").

³ N.Y. Pub. Serv. Law § 72; see also *Niagara Mohawk Power Corp. v. Pub. Serv. Comm'n of State of N.Y.*, 507 N.E.2d 287, 289, 291 (1987); *Abrams v. Pub. Serv. Comm'n*, 492 N.E.2d 1193, 1195-96 (1986).

⁴ N.Y. Pub. Serv. Law § 66(12)(i); see also *Nat'l Fuel Gas Distribution Corp. v. Pub. Serv. Comm'n*, 16 N.Y.3d 360, 369 (2011); *St. Lawrence Gas Co. v. Pub. Serv. Comm'n*, 368 N.E.2d 1234, 1235 (1977).

⁵ N.Y. C.P.L.R. § 7803; see also *Rochester Gas & Elec. Corp. v. Pub. Serv. Comm'n of State of N.Y.*, 449 N.Y.S.2d 77, 79-80 (1982).

1 In this case, the Company has the burden of producing substantial evidence
2 sufficient to allow the Commission to determine that the costs the Company seeks to
3 recover, including for EEI and AGA dues, support just and reasonable rates and do not
4 include expenses related to legislative lobbying.⁶ The bare assertions of trade associations
5 are insufficient evidence upon which to base a claim of recovery for costs.⁷

6 The Company does not identify what portion of the fees ultimately sought from
7 customers contribute to EEI and AGA activities that might benefit rate payers and are
8 therefore reasonably shouldered by rate payers.⁸ In addition, the Company has failed to
9 meet its burden of demonstrating that the EEI and AGA dues for which it seeks recovery
10 do not include expenses related to legislative lobbying, as it has made no showing of the
11 accuracy of the lobbying expenses reported to it by EEI and AGA in invoices.⁹ The
12 invoices by themselves, absent a demonstration of the independent verification of the
13 underlying assertions, are not a sufficient basis for cost recovery. The Company's failure
14 is significant in light of the evidence of lobbying and advocacy activities undertaken by
15 EEI and AGA in my direct testimony; in the absence of a showing of a reasonable

⁶ N.Y. Pub. Serv. Law §114-a (“In determining rates to be charged to customers, the commission shall not include the cost of legislative lobbying on behalf of any public utility as part of any such utility’s operational costs.”)

⁷ Even where a utility has submitted an invoice from a trade association, the Commission has found that to be insufficient evidence upon which to base cost recovery. *See Orange and Rockland Utilities, Inc.*, Case Nos. 29046 and 29047, 1986 WL 289251, at *15 (N.Y.P.S.C. Feb. 11, 1986) (Opinion and Order Determining Revenue Requirement and Rate Design) (finding that “the information relied on by O&R had been furnished by EEI and had not been independently analyzed by the company”). In these cases, the Commission found that the Company had not met its burden of proof that the portion of EEI dues it sought to recover from ratepayers did not include lobbying expenses and allowed recovery of only 50 percent of the Company’s EEI dues.

⁸ *See Niagara Mohawk Power Corp.*, 507 N.E.2d at 289-90.

⁹ In response to DPS 1-48, the Company reported that the amounts it requested for cost recovery were obtained from invoices provided by EEI and AGA. The Company provided copies of the underlying invoices in response to Pace 6-1, 6-2, and 6-3.

1 apportionment of the dues payments, the only remedy that ensures that customers are not
2 forced to pay for improper association activities is denial of recovery of any portion of
3 the dues payments.

4 **Q. What were your findings, conclusions, and recommendations relating to rate**
5 **recovery of costs associated with EEI and AGA dues in your direct testimony?**

6 A. The Company requested approval of rate recovery of more than \$233,000 per year for
7 dues paid to EEI and AGA. Based on the lack of evidence to support the reasonableness
8 of recovery of this expense, and the fact that it cannot be determined whether the
9 Company is requesting that customers pay for lobbying and other advocacy by EEI and
10 AGA that is counter to the interest of the customers, I recommend disallowance of the
11 entire requested amount. As I stated in my direct testimony:

12 “The Company must provide sufficiently detailed information regarding the
13 membership dues cost allocation as an incident to its burden of producing
14 sufficient evidence that its requested rates are just and reasonable. This evidence
15 must demonstrate that above-the-line dues to EEI and AGA: (1) directly benefit
16 ratepayers and (2) do not work contrary to ratepayer interests. Due to the conflict
17 of interest between those organizations and New York ratepayers, and in the
18 absence of a third-party audit in the record, it is not reasonable to rely merely
19 upon the assertions of EEI and AGA themselves. The data submitted by the
20 Company therefore is inadequate to carry the Company’s burden of demonstrating
21 that its rates are just and reasonable or to confirm that ratepayers are not being
22 asked to pay for lobbying or political advocacy activities carried out by the EEI or
23 AGA Because the Company has not provided sufficient and competent

1 evidence to support a finding that the dues it is asking ratepayers to pay are a just
2 and reasonable expense, I recommend that the total amount of requested revenue
3 requirement related to membership dues in EEI and AGA be disallowed.”¹⁰

4 **Q. Have your findings, conclusions, and recommendations changed as a result of the**
5 **supplemental responses provided by the Company relating to EEI and AGA dues?**

6 A. No. On the contrary, the information provided by the Company in its supplemental
7 responses establishes that the Company has provided no evidence upon which to
8 conclude that rate recovery of any amounts paid to EEI and AGA from customers is just
9 and reasonable.

10 **Q. Please explain.**

11 A. The Company’s supplemental discovery responses contain information that was not made
12 available at the time that my direct testimony was filed in these proceedings. In the
13 supplemental discovery responses, the Company cannot identify any specific amounts of
14 EEI or AGA dues, assessments or contributions funded by ratepayers.¹¹ The Company
15 “does not track or participate in each and every EEI [or AGA] activity,” and therefore
16 cannot identify the allocation of dues payments to general EEI and AGA activities, or to
17 EEI and AGA lobbying, or for any other purpose.¹² The Company’s electric and gas rate
18 plans do not “explicitly fund activities such as the payment of dues to EEI [or AGA].”¹³
19 These responses conclusively establish that the Company has provided no evidence
20 whatsoever to demonstrate that the amounts paid to EEI and AGA in dues that it seeks to

¹⁰ Rábago Direct Testimony at 63.

¹¹ Company responses to Pace 5-10 Supplement, Pace 5-11 Supplement.

¹² Company responses to Pace 5-14 Supplement, Pace 5-15 Supplement.

¹³ Company responses to Pace 5-12 Supplement, Pace 5-13 Supplement.

1 recover from rate payers are a reasonable cost related to the provision of electric or gas
2 service.

3 **UPDATE ON COLORADO PUC CASE PROCEEDING NO. 17-AL-0477E**

4 **Q. What was your direct testimony relating to Colorado PUC proceeding No. 17-AL-**
5 **0477E?**

6 A. In my direct testimony, I reported that in that proceeding, the Public Utilities
7 Commission of Colorado recently issued an interim decision in a base rates case for
8 Black Hill/Colorado Electric Utility LP to reverse a long-standing practice of using a
9 minimum system method. The Commission approved the recommended decision of the
10 administrative law judge, which included the finding that use of the minimum system
11 method “results in customer charges continuing not to be based upon cost of service and
12 [] not just and reasonable without substantial offsetting mitigation.”¹⁴

13 **Q. What update do you provide regarding that proceeding in Colorado?**

14 A. In its final order in Proceeding No. 17-AL-0477E,¹⁵ the Colorado PUC affirmed its
15 interim decision rejecting further use of the minimum system method used by the utility,
16 Black Hills/Colorado Electric Utility LP. In that decision, the Commission held:

17 49. The Commission upholds the ALJ’s rejection of the minimum intercept
18 method and adopts without modification the findings and conclusions in the
19 Recommended Decision that are directed at the minimum intercept method.

¹⁴ *In the Matter of Advice Letter No. 742 Filed by Black Hills/Colorado Elec. Util. LP to Update Base Rates As Required by Comm’n Decision No. C16-1140 to Become Effective Aug. 11, 2017*, Proceeding 17AL-0477E, 2018 WL 582562, at *15 (Colo. P.U.C. Jan. 23, 2018) (Recommended Decision), *adopted in* 2018 WL 1255012 (Colo. P.U.C. Mar. 6, 2018) (Interim Decision).

¹⁵ *In the Matter of Advice Letter No. 742 Filed by Black Hills/Colorado Elec. Util. LP to Update Base Rates As Required by Comm’n Decision No. C16-1140 Effective Aug. 11, 2017*, Proceeding 17AL-0477E, 2018 WL 3091045 (Colo. P.U.C. June 15, 2018).

1 50. The positions advocated . . . in opposition to the minimum intercept method
2 are persuasive. The Commission agrees that Black Hills’ use of the minimum
3 intercept method is an anomaly among rate-regulated utilities in Colorado and
4 that an increased customer fixed charge has not been shown to outweigh the
5 public interest of allowing customers to control their utility bills and energy
6 efficiency. The Commission further agrees with the ALJ that public policy
7 considerations regarding low-income customers and energy conservation require
8 consideration of the reasonableness of level of fixed charges.¹⁶

9 **Q. Does this conclude your supplemental testimony?**

10 **A. Yes.**

¹⁶ *Id.* at *9.