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June 15, 2009

VIA HAND DELIVERY AND E-MAIL

Hon. Jaclyn A. Brilling
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 09-M-0074 – In the Matter of Advanced Metering Infrastructure

Dear Secretary Brilling:

In accordance with 16 NYCRR§ 3.5, enclosed for filing please find an original and five (5) copies of the Comments filed by Multiple Intervenors regarding the Department of Public Service Staff's "Proposed Framework for the Benefit-Cost Analysis of Advanced Metering Infrastructure" issued on April 14, 2009 in the above-referenced proceeding. Please date stamp the extra copy of this filing and return it to our messenger. If you have any questions regarding this filing, please do not hesitate to contact me directly.

Respectfully submitted,

COUCH WHITE, LLP

William J. McCarthy, Jr.

William J. McCarthy, Jr.

WJM/dp
Enclosure
cc: Active Party List (Active Party List as of April 29, 2009 via E-Mail)
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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of Advanced Metering Infrastructure | Case 09-M-0074

COMMENTS
OF
MULTIPLE INTERVENORS

Dated: June 15, 2009

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PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 50 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits these comments in response to the Notice Seeking Comments issued April 14, 2009 in this proceeding ("April 14 Notice").[1] Specifically, the April 14 Notice requests comments in response to the Department of Pubic Service Staff's ("DPS Staff") proposed framework for conducting benefit-cost analysis ("Proposed Framework") of advanced metering infrastructure ("AMI") deployment in New York.

For the reasons set forth herein, the New York State Public Service Commission ("Commission") should not pursue large-scale AMI deployments at this time, given the substantial economic burden such deployment would place on the State's energy consumers. If, *arguendo*, the Commission decides that any AMI deployment is appropriate, immediately, the extent of such deployment should be limited to reasonable pilot programs. Such pilot programs will provide the Commission with the necessary data to assess the cost-effectiveness of AMI, while minimizing the financial impacts on consumers.

Furthermore, DPS Staff's Proposed Framework is excessively broad. The April 14 Notice states that the Proposed Framework "is designed to yield a methodology for benefit-cost analysis that is robust, is consistent across New York utilities and reflects the

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[1] This proceeding supersedes the following previous proceedings: Case 00-E-0165, *In the Matter of Competitive Metering*, Case 02-M-0514, *Proceeding on Motion of the Commission to Investigate Competitive Metering for Gas Service*, and Case 94-E-0952, *In the Matter of Competitive Opportunities Regarding Electric Service*.

input of interested parties."[2] However, DPS Staff's Proposed Framework, if adopted, will not achieve this goal because it fails to properly quantify costs and benefits. Accordingly, the Commission should direct DPS Staff to modify their Proposed Framework to rely only on quantifiable data, which is critical in assessing the cost-effectiveness of AMI deployment in New York.

The importance of a proper benefit-cost analysis methodology cannot be overstated. The results of the utilities' benefit-cost analyses will be the driving factor in determining whether the Commission authorizes the utilities to embark on full-scale deployment of AMI. Accordingly, the Commission should modify DPS Staff's Proposed Framework, as more fully described herein, to ensure that such analysis provides the Commission with the necessary information to properly assess the cost-effectiveness of AMI deployment in New York.

BACKGROUND

On August 1, 2006, the Commission "endorse[d] electric and gas utility investment in [AMI], **where feasible and cost effective**, and **encourage[d] pilot programs** to test a variety of proposals for development of advanced metering systems."[3] Moreover, the Commission directed the electric and gas utilities to file plans for the development and

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[2] Proposed Framework at 2.

[3] Case 02-M-0514 *et al.*, *Proceeding on the Motion of the Commission to Investigate Competitive Metering for Natural Gas Service*, Order Relating to Electric and Gas Metering Services (issued August 1, 2006) at 2 (emphasis added).

deployment of electric and gas advanced metering systems and provide an analysis of the costs and benefits related thereto.[4]

On February 13, 2009, the Commission, without ruling on the plans filed by the utilities, adopted minimum functional requirements for AMI systems to be incorporated by the utilities into future revised AMI deployment plans.[5] The Commission also directed DPS Staff to develop a generic benefit-cost analysis methodology for evaluating AMI.[6] On April 14, 2009, the Commission issued the April 14 Notice with the Proposed Framework. Multiple Intervenors previously submitted comments in this proceeding, which are incorporated herein by reference.[7]

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[4] *Id.* at 37.

[5] Case 09-M-0074, *In the Matter of Advanced Metering Infrastructure*, Order Adopting Minimum Functional Requirements For Advanced Metering Infrastructure Systems and Initiating an Inquiry Into Benefit-Cost Methodologies (issued February 13, 2009).

[6] *Id.* at 21.

[7] Multiple Intervenors has filed Comments on, *inter alia*, January 19, 1999; July 16, 1999; January 7, 2000; July 8, 2002; February 3, 2005; October 24, 2005; August 31, 2006; march 9, 2007; July 11, 2007; and December 10, 2007.

ARGUMENT

POINT I

THE COMMISSION SHOULD NOT PURSUE AMI, AT THIS TIME, BECAUSE OF THE ENORMOUS FINANCIAL STRAIN IT WOULD PLACE ON STATE'S RESIDENTS AND BUSINESSES

Full AMI deployment in New York is likely to cost billions of dollars – a cost the utilities will seek to recover, in full, from consumers. Given the combination of the current economic downturn and the strain already placed on the State's consumers by current high energy prices, the State's consumers can ill-afford the certain, substantial cost increases that would result from large-scale AMI deployment. In recognition of the dire straits facing the State's energy consumers, the Commission recently mandated that utilities eliminate discretionary spending in order to minimize costs to consumers.[8] Thus, large-scale AMI deployment would contravene the Commission's recent austerity policy and should not be pursued at this time.

New York consumers currently pay some of the highest electricity prices in the entire country. In fact, the State's electricity consumers pay, on average, approximately 70 percent more than the national average for electricity.[9] This price disparity places an undue burden on all State consumers. Moreover, the price of electricity places New York

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[8] Case 09-M-0435, Proceeding on Motion of the Commission Regarding the Development of Utility Austerity Programs, Notice Requiring the Filing of Utility Austerity Plans (issued May 15, 2009) at 1 (hereinafter, "Austerity Plan Notice").

[9] Energy Information Administration ("EIA"), *Average Retail Price of Electricity to Ultimate Customers by End-Use Sector, by State*, available at http://www.eia.doe.gov/cneaf/electricity/epm/epmxlfile5_6_a.xls.

businesses at a significant competitive disadvantage with respect to businesses in other regions and nations. This price disadvantage is especially impactful on manufacturers and other energy-intensive businesses, many of which are struggling to maintain operations in the State when lower-cost alternative locations are readily available in this country and others.

The manufacturing industry represents a critical component of the State's economy. Nearly 500,000 individuals in New York are directly employed in manufacturing, representing nearly 10 percent of all private sector jobs in the State.[10] Moreover, in 2007, manufacturing contributed more than $66 billion to the total gross domestic product for New York State.[11] Governor Paterson has recognized the importance of manufacturing to the State, and has announced policies to encourage the further growth of the manufacturing sector in New York. Specifically, the Governor has stated that "New York State is committed to supporting the needs of manufacturers. . .that want to invest and grow in Upstate. At a time when our State's economy has tightened dramatically, [manufacturing] investment is critical for New York's economic development."[12]

However, despite its importance to the State's economic well-being, the manufacturing industry in the State has declined sharply in recent history. In fact, between

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[10] The Public Policy Institute of New York State, Inc., *Monthly Economic Update – Latest Job Statistics for New York* (March 2008), available at http://www.ppinys.org/nyecon/stats.pdf (hereinafter, "New York Jobs Report").

[11] Bureau of Economic Analysis, *Gross Domestic Product by State*, available at http://www.bea.gov/regional/gsp/.

[12] *Governor Paterson Announces Major Economic Development for New York's Southern Tier* (August 6, 2008), available at http://www.state.ny.us/governor/press/press_0806082_print.html.

1997 and 2007, job growth in the manufacturing sector in New York ranked third worst in the country.[13] During this period, New York lost more than 169,000 jobs from the manufacturing sector.[14] This trend has continued recently, as the State lost an additional 37,000 manufacturing jobs between March 2008 and March 2009.[15] High energy prices are a significant contributor to this mass exodus of jobs from the State. As explained by The Dow Chemical Company's Chairman and Chief Executive, Andrew Liveris, "even more than high labor costs, runaway energy prices are pushing manufacturing jobs overseas."[16] The implementation of AMI and the substantial costs associated therewith will further exacerbate the toll that high energy costs have on the State's consumers.

Full-scale deployment of AMI in New York is likely to cost consumers billions of dollars. For example, New York State Electric & Gas Corporation ("NYSEG") and Rochester Gas and Electric Corporation ("RG&E") have estimated that the capital costs alone for full-scale AMI deployment in their respective service territories will be, at least, $360 million.[17] Moreover, Consolidated Edison Company of New York, Inc. ("Con

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[13] The Public Policy Institute of New York State, Inc., *Manufacturing Employment Growth, 1997-2007*, available at http://www.ppinys.org/reports/jtf/manufacturingemployment.html.

[14] *Id.*

[15] New York Jobs Report.

[16] Associated Press, *Dow CEO Blames Energy Costs for Job Losses* (October 30, 2006), available at http://www.secureourenergy.com/natural-gas-news/Dow-CEO-Blames-Energy-Costs-for-Job-Loss.

[17] Case 09-E-0310, *In the Matter of the American Recovery and Reinvestment Act of 2009 – Utility Filings for New York Economic Stimulus*, NYSEG and RG&E Response to DPS Staff's April 2, 2009 Letter (April 17, 2009).

Edison") and Orange & Rockland Utilities, Inc. ("O&R") initially estimated the costs of full-scale AMI deployment in their service territories to exceed $700 million.[18] Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") also estimated the cost of full-scale AMI deployment in its service territory to be approximately $650 million.[19]

As demonstrated above, full-scale AMI deployment in New York would likely result in billions of dollars of additional consumer costs, at a time when consumers can least afford increased expenses. Accordingly, the Commission should refrain from further advancement of AMI in New York, at this time.

Moreover, pursuing AMI at this time is wholly inconsistent with the Commission's recent mandate requiring all New York utilities to file austerity plans.[20] As the Commissions recognized, due to the current economic recession, "many households and businesses are implementing a range of measures to curtail discretionary spending".[21] Implementing such drastic measures causes the State's residents and businesses to "look to their utility service providers to demonstrate the same frugality as the customers themselves experience daily so that the ultimate costs that customers must bear are minimized."[22]

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[18] Case -2-M-0514 *et al.*, *supra*, Plan for Development and Deployment of Advanced Electric and Gas Metering Infrastructure by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (March 28, 2007) at 25.

[19] Case 02-M-0514 *et al.*, *supra*, Compliance Filing of National Grid Relating to Electric and Gas Metering Services (January 31, 2007) at 8 (hereinafter, "National Grid AMI Plan").

[20] Austerity Plan Notice at 2.

[21] *Id.* at 1.

[22] *Id.* at 2.

Accordingly, the Commission determined that "utilities, like other New York businesses, should be implementing austerity measures aimed at eliminating or deferring spending whenever such actions can be taken without compromising the provision of safe and reliable service."[23] The Commission further directed each utility "to closely examine its capital expenditures, operation and maintenance expenses and any other expense areas over which it has discretion to identify costs that may be reduced without impairing the ability to provide safe and reliable service."[24]

The Commission's recent austerity directives clearly require utilities to eliminate, or defer, spending whenever such actions will not compromise their ability to provide safe and reliable service. However, in direct contravention of these requirements, large-scale deployment of AMI would significantly increase utility expenses, resulting in substantial increases to consumer costs. Moreover, there has been no determination by any party to this proceeding that AMI is necessary to ensure the continued provision of safe or reliable service. Therefore, consistent with its recent austerity directives, the Commission should not pursue further development of AMI at this time.

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[23] *Id.* at 1.

[24] *Id.* at 2.

POINT II

THE EXTENT OF AMI DEPLOYMENT AT THIS TIME SHOULD BE LIMITED TO REASONABLE AMI PILOT PROGRAMS

If, *arguendo*, the Commission determines that immediate AMI deployment is appropriate and does not contravene its recent mandate that utilities curtail discretionary spending, that deployment should be limited to reasonable pilot programs. The Commission should direct each utility to file plans requesting authority to conduct AMI pilot programs of reasonable scope and cost before any consideration is given to full-scale deployment of AMI. AMI pilot programs should be designed, at a reasonably low cost, to determine how consumers respond to AMI and to measure the actual benefits associated therewith for various customer segments (*i.e.*, residential, commercial, industrial).[25] The data accumulated from these pilot programs should then form the basis of a properly designed benefit-cost analysis. Based on the results on such pilot programs, the utilities and the Commission will subsequently be able to determine whether further deployment would be cost-effective.

Importantly, the utilities already have recognized the necessity to conduct pilot programs. For example, Central Hudson Gas & Electric Corporation ("CHG&E") expressly recognized the value of an AMI pilot program in determining the cost-effectiveness of AMI deployment in its service territory:

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[25] The CHG&E Pilot Program has a cost of $14.9 million and is more reasonable in terms of consumer impacts than Con Edison/O&R's pilot program which has a cost in the range of $40-$50 million or the National Grid proposed pilot program with an estimated cost of approximately $250 million.

> After the Pilot, **if** the Pilot results demonstrate value for CHG&E's customers, CHG&E intends that it will define requirements and solicit proposals from all interested and qualified AMI providers, and then will consider the full range of possible technologies before making any selection for large-scale deployment. [emphasis added].[26]

National Grid also recognized the necessity to conduct a pilot program before further considering full-scale AMI deployment. Specifically, in discussing the ultimate cost of AMI deployment, National Grid stated that:

> The actual cost cannot be determined with any specificity until pilots are conducted to provide additional insight regarding technical and economic feasibility.[27]

Conducting pilot programs and obtaining actual data prior to the assessment of full-scale deployment of AMI is a critical step necessary in determining whether further AMI deployment in New York is warranted. The essential information gathered from such pilot programs will allow all stakeholders to adequately evaluate the cost-effectiveness of AMI. Moreover, the conduct of pilot programs before consideration of full-scale deployment is consistent with the vision of AMI deployment expressed by DPS Staff at the June 1, 2009 technical conference in this proceeding. Therefore, the Commission should refrain from implementing full-scale deployments of AMI until the utilities justify the cost-effectiveness of such deployments based on the results of appropriate pilot programs.

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[26] Case 09-M-0074, *supra*, Central Hudson Gas & Electric Corporation Advanced Metering Infrastructure (AMI) & Smart Grid Proposal (April 14, 2009) at 7.

[27] National Grid AMI Plan at 8-9.

POINT III

COST-RECOVERY OF ANY AMI-RELATED COSTS SHOULD FOLLOW FUNDAMENTAL PRINCIPLES OF COST ALLOCATION

The utilities and other AMI advocates have suggested that all customers should be responsible for the costs associated with developing and deploying AMI in New York. However, it is a fundamental principle of utility cost-based ratemaking that costs be allocated as directly as possible to the customers that derive the benefit of the cost.[28] Thus, costs should be assigned directly to specific customers, or group of customers, that will require the installation of advanced metering devices.[29] To do otherwise would require one class of customers to subsidize another, in direct contradiction to the objectives of cost-based regulation.[30]

In light of these long-held principles of cost allocation, the Commission should require that any costs associated with AMI, including meter installation, testing or system upgrades, be the sole responsibility of the customers receiving such meters. It would be wholly inequitable to require customers that do not receive such metering and/or have

[28] *See* National Association of Regulatory Utility Commissioners, Electric Utility Cost Allocation Manual (January 1992) at 22 (stating that once "the costs have been functionalized, the next step is to allocate them among the customers classes" as demand-related, energy-related and customer-related costs). In particular, meter costs are classified as customer related and should be allocated on a customers a customer basis. *Id.* at 87, 96.

[29] *Id.* at 38.

[30] *Id.*

already upgraded their metering equipment to bear any of these AMI costs through system-wide surcharges or subsidies.

Most large commercial and industrial consumers in New York have installed interval/advanced metering equipment, and are already subject to time-variant pricing, including Mandatory Hourly Pricing. Large commercial and industrial consumers that have already installed interval/advanced metering equipment should be exempt from all costs associated with meter deployment in relation to AMI because they have already paid for such costs, including the utility systems necessary to implement time-variant pricing for such customers.

Other states have recognized that exemptions for customers that already have installed advanced/interval metering are appropriate. For example, the Public Utility Commission of Texas ("PUCT") has established monthly fixed surcharge mechanisms, similar to a monthly customer charge, to recover costs incurred during AMI deployment.[31] However, this surcharge can only be enforced on those customers, both residential and nonresidential, that had not already installed interval/advanced metering prior to approval of the applicable AMI deployment.[32]

Because the benefits associated with advanced metering will accrue solely to those customers requiring new metering, the corresponding costs associated therewith should

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[31] *See* Docket No. 35718, *Oncor Electric Delivery Company LLC's Request for Approval of Advanced Metering System (AMS) Deployment Plan and Request for AMS Surcharge*, Order (issued August 29, 2008 at 6 (hereinafter, "Oncor AMI Order); and Docket No. 35639, *Application of Centerpoint Energy Houston Electric, LLC for Approval of Deployment Plan and Request for Surcharge for an Advanced Metering System*, Order (December 22, 2008) at 6-7 (hereinafter, "CEHE AMI Order").

[32] *See* Oncor AMI Order at Exhibit A; and CEHE AMI Order at Exhibit F.

be borne solely by such customers. Accordingly, the Commission should refrain from adopting any delivery surcharge or other cost-recovery mechanism designed to recover AMI costs from all customers. Rather, the Commission should adopt an approach similar to that taken in Texas, and exempt all customers that already have installed internal/advanced metering prior to approval of an AMI deployment.

POINT IV

THE COMMISSION SHOULD MODIFY DPS STAFF'S PROPOSED FRAMEWORK TO ENSURE THAT IT PROVIDES INFORMATION CRITICAL TO ASSESSING THE COST-EFFECTIVENESS OF AMI

The Commission should modify the Proposed Framework to ensure that any analysis provides all the information necessary to adequately assess the cost-effectiveness of any proposed AMI deployment in New York. For example, the Commission should require that costs related to AMI be separately quantified by customer class or service classification. Moreover, the AMI benefit-cost analysis should rely exclusively on benefits capable of being quantified. In addition, the Commission should ensure that the analysis independently assesses operational benefits and costs from those associated with AMI-related demand response. These modifications will enable the Commission to be presented with adequate data to properly assess the cost-effectiveness of AMI pilot programs and, ultimately, whether to proceed with full-scale AMI deployment in New York.

A. AMI-Related Costs Should be Quantified Separately by Customer Class or Service Classification

DPS Staff's Proposed Framework should be modified to require that AMI-related costs be quantified separately by customer class or service classification. This will provide the necessary information to develop an appropriate cost allocation to consumers in the event that further AMI deployment is determined to be cost-effective. As stated above, this is consistent with the fundamental principles of utility cost-based ratemaking, which is to ensure costs are allocated as directly as possible to the customers that cause such costs. Failure to examine AMI-related costs by customer class or service classification would threaten the ability to allocate costs appropriately, and potentially result in inequitable subsidization.

B. The Commission Should Rely Only on Quantifiable Benefits to Assess the Cost-Effectiveness of AMI

DPS Staff's Proposed Framework relies heavily on incorporating qualitative benefits. Specifically, the Proposed Framework states that "[u]tilities should also provide a qualitative discussion for those benefits which a dollar value cannot be estimated."[33] Moreover, the Proposed Framework provides that "[s]ome benefits are not quantifiable but will be described qualitatively."[34]

[33] Proposed Framework at 4.

[34] *Id.* at 12

DPS Staff's Proposed Framework should be modified so that only quantifiable benefits are utilized to assess the cost-effectiveness of AMI deployment in New York. It is important to recall that the results of the benefit-cost analysis will determine whether further deployment of AMI, which may cost New York State consumers billions of dollars, is warranted. Thus, it is imperative that such determinations be based on only actual, quantifiable benefits that are capable of verification. By contrast, qualitative benefits are highly subjective and speculative, thus, providing an unreliable measure by which to assess overall cost-effectiveness of AMI deployment. Accordingly, the Commission should modify the Proposed Framework to remove reliance on any such qualitative benefits. The potential cost implications to consumers are simply too great to rely on wholly subjective benefits that are incapable of being subsequently reviewed for veracity.

C. The Commission Should Modify the Proposed Framework to Require Independent Analysis of Operational and Demand Response Benefits/Costs

DPS Staff's Proposed Framework should be modified so that operational and demand response benefits and costs are individually assessed. Such an independent analysis of operational and demand response benefits and costs has been utilized in other states, such as Vermont. [35]

The importance of separately quantifying operational and demand response benefits and costs cannot be overstated. Operational benefits are more easily quantified and

[35] Freeman, Sullivan & Co., *Benefit-Cost Analysis for Advanced Metering and Time-Based Pricing - Final Report* (March 26, 2008) at 2-3; 34-35, available at http://www.state.vt.us/psb/document/ElectricInitiatives/Vermont%20report%20final.doc.

verified than demand response benefits. Moreover, demand response benefits are contingent upon other actions, such as approval by the Commission of time-sensitive rates, as well as customer participation in such rate options. As recognized in Vermont, "both utilities and regulators are extremely reluctant to fully embrace more economically rational pricing, even while basing their decisions to deploy AMI in part on the benefits that pricing reform can generate."[36] Accordingly, the Commission should ensure that the benefits and costs of operational and demand response changes relating to AMI are separately identified and quantified so that the Commission can fully comprehend whether AMI deployment itself will be cost-effective, or whether such cost-effectiveness is contingent upon other required actions, such as the development, approval, and customer-acceptance of new time-sensitive rates.

[36] *Id.* at 11.

CONCLUSION

Based upon the foregoing reasons, Multiple Intervenors submits that the Commission should not pursue significant AMI deployment at this time given the state of the economy and the enormous financial burden associated with such deployment. To the extent that AMI is deployed at all at this time, the Commission should require each utility to conduct low-cost AMI pilot programs before any consideration is given to full-scale AMI deployment. In addition, Multiple Intervenors respectfully requests that: (i) recovery of any AMI-related costs be limited to those customers eligible to receive such meters and exempt those who previously paid for their own advance/interval meters; and (ii) the Commission modify DPS Staff's proposed benefit-cost analysis, consistent with the recommendation provided herein, to ensure that such analysis generates the information critical to properly assess the cost-effectiveness of AMI deployment in New York.

Dated: June 15, 2009
Albany, New York

Respectfully submitted,

William J. McCarthy, Jr.

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