

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 2-3 (from D. Kopald to O&R) and to COMPEL O&R to COMPLY WITH THE COMMISSION'S ORDER in 17-M-0178 and to COMPEL O&R TO PRODUCE A BREAKDOWN OF AMI COSTS AND NET REGULATORY ASSETS THAT ARE IN THE RATE BASE BOTH FOR THE ENTIRE SERVICE TERRITORY AND THAT ARE PART OF THE FURTHER ROLLOUT ORDERED in 17-M-0178

- I. O&R did not answer all the questions in the interrogatories (sets 2-3) that I served; a full breakdown of accounting costs for AMI was not provided; O&R should be made to answer questions about accounting costs regarding AMI- not just provide what they feel like providing.*

Rate increases that are passed onto the ratepayer, which are the subject of this proceeding, are the product of a formula that has the rate increase and monies collected from the ratepayers as part of revenues within the numerator (the numerator consists of Net Operating Income After Tax, which consists of the Revenues collected from the ratepayer including any increases minus the Expenses, which include AMI expenses) and has the AMI program and other assets in the denominator as Net Regulatory Assets.

To calculate the portion of the rate increase from AMI, it was necessary to assess what portion of AMI is in net regulatory assets and what expenses are related to AMI. To properly review costs, it is necessary to have a full breakdown of the components of AMI pursuant to Order 17-M-0178, which directly contemplated a review of AMI costs in this proceeding. The original 11/16/2017 order in 17-M-0178 signed by Secretary Burgess states:

Further, to ensure that the benefits of AMI deployment materialize, we are implementing a cap on the capital expenditures associated with the AMI project. The capital expenditures will be capped at the Company's estimated AMI project cost of \$98.5

million. *In addition, all costs associated with this project are subject to further review in O&R's next base rate proceeding.*

(Emphasis Added)

O&R has not broken down all costs for review and resists doing so. I cannot do a proper review of costs associated with this project pursuant to the Commission's own order when I don't have all the data. The order does not say "some of the costs", it says "all costs". What all of the money is being used for and accounting for it is one thing. Apparently O&R does not think that anyone should be privy to this information other than the DPS, which told me to get it from O&R. The order doesn't say "Some costs associated with this project are subject to further review *by the DPS* in O&R's next base rate proceeding." It says "*all costs associated with this project are subject to further review in O&R's next base rate proceeding*". I assert that this means that any intervenor should be able to review this information and indeed it is the responsibility of all to do so. All costs are to be reviewed and there is no authority that would limit the review in this proceeding to just the DPS or just to some costs.

Furthermore, costs are not limited to an aggregate of accounts. In previous motions, two cases from other state Supreme Courts cited have found that in the absence of a legislatively defined decision, it cannot even be assumed that costs are limited to accounting costs only. Certainly by that logic, O&R (and the DPS) cannot limit the definition of costs and an attempt to review these costs by saying only certain aggregate accounts of accounting costs (e.g. see page 52 of the PDF of exhibits regarding AMI Operations and maintenance) can be looked at and that the cost breakdowns of the specific facets of AMI must be obscured. To repeat, *So-Lo Oil Co., Inc. v. Total Petroleum, Inc*, 832 P.2d 14 (Supreme Court of Oklahoma, 1992), stands for the proposition that absent a concrete definition, one cannot imagine that the term "costs" refers to a specific accounting definition:

We agree that general accounting methods may be appropriate to interpret a statutory cost definition, but this jurisprudence does not teach that accounting rules may be fashioned to supply the definition where legislative silence prevails.

Likewise, *Board of County Com'rs of Leavenworth County v. McGraw Fertilizer Service, Inc.*, 261 Kan. 901, 933 P.2d 598 (Supreme Court of Kansas, 1997) speaks to the issue of lack of a legislative definition of the term costs:

In the absence of evidence of legislative intent regarding the meaning of "retail cost when new," the court construes the words based upon what the words imply to persons of common understanding, not upon an accounting procedure.

Id. 261 Kan. 901 at 913.

O&R is trying to limit the definition of costs and provide selective information about AMI. Their objection that things I have asked for exceed the scope of the proceedings is inappropriate; O&R provides no legally valid objection to not answer the questions I have offered. I have asked for all expenses related to AMI that O&R seeks to recover, all expenses related to the portion of AMI from the further rollout that was approved in 17-M-0178 that O&R seeks to recover, net regulatory assets related to AMI and net regulatory assets related to AMI from the further rollout and specific items that were specifically referred to in O&R's testimony.

In the last motion I served DPS attorney Lindsey Overton misrepresented in her responsive filing that things I sought were not things that were claims made by O&R in documents they filed with the Commission. Here specific programs for which I asked for cost information herein were referred to in O&R's testimony regarding AMI. What O&R turned over after a few conversations to try to get data were spreadsheets they had already provided to DPS that did include the revenue amount they sought to recover from the ratepayers. I assume that "net plant in service" may be net regulatory assets, but I am not sure it represents the total amount, and in any event there is not a breakdown by specific assets. There is no breakdown of AMI expenses provided of the expenses sought to be recovered in this proceeding. Again, assets are relevant

because they are in the rate base which is part of the formula used to calculate the rate increase. They also must be financed/paid for.

Furthermore, the Ruling in these proceedings dated September 10, 2018 is clear that the AMI expansion expenditures must be just and reasonable:

The ultimate issue the Commission must determine in these proceedings is whether O&R's proposed rates, including the AMI expansion expenditures, are just and reasonable and in the public interest. O&R has the burden of proving that the proposed rates meet the just and reasonable standard.

The September 10, 2018 Ruling also states that O&R must make a showing that AMI costs should be passed on to O&R's customers in rates:

The AMI Expansion Order did not alter O&R's burden to make a sufficient showing here that AMI costs should be passed on to O&R's customers in rates.

The Ruling explains that the Commission's order also contemplated an itemized breakdown of AMI expenditures incurred:

In addition, the AMI Expansion Order required O&R to file an annual report with a detailed itemized breakdown of the amount of AMI expenditures incurred, the amount of cost reduction benefits realized, a comparison of the electric and gas AMI plant net balances to the AMI net plant targets, and an earnings computation.

O&R seems to think it doesn't need to breakdown all of the expenditures. Certainly if it is supposed to provide a detailed itemized breakdown of the costs incurred, it can provide an itemized breakdown of costs incurred to date and costs it expects to incur this year for which they are seeking recovery from the ratepayer. Instead, it provided on page 52 of the PDF of Exhibit 5 O&M expenses that are not fully itemized and indeed not all other expenses.

II. O&R has provided some information about plant which appear to be net regulatory assets, but it is not broken down by category; "software" and transmission and distribution are not enough, especially when O&R's testimony refers to specific items that are sought to be paid for that may or may not be doing what O&R claims they are doing; O&R also refers to a joint telecommunications agreement in which they have an arrangement with telecommunications companies to site wireless equipment and I am requesting a copy of that agreement to understand the costs for any wireless transmission, including but not limited to transmission from

meters through telecom equipment to get data back to O&R.

In interrogatory 54, I requested a copy of the joint use agreement with telecommunications companies, which is on or about page 513 of the PDF of Volume 1 of O&R's testimony. I would like to read it as part of the cost review and to understand the costs from any siting and use of wireless transmission equipment which may include AMI. How long the agreement is for and whether O&R has the lowest cost option is one concern; inasmuch as on information and belief, O&R is likely to be using some of these telecommunications companies to site equipment that will be used to relay data back from the meters to O&R, this agreement is very relevant to a cost review of AMI.

The other specific items requested in the other interrogatories from 45 to 57 (See Exhibit 1 and Exhibit 3) and 58-69 (See Exhibit 2 and Exhibit 4) which have to do with the further rollout of AMI in the territory permissioned in order 17-M-0178 that I would like a cost breakdown for- both in net regulatory assets and expenses that O&R would seek to collect from the ratepayers (in response to those that were directly discussed in the testimony include improved field sensors¹, Corporate Communications Transmission Network (CCTN)², alternate RF solutions³ (which relate to security surveillance and DSCADA⁴ which is a system that on information and belief does some of the things that O&R incorrectly claims that AMI does), the electric vehicle charging program⁵, the Smart Home Program⁶, the head-end meter system⁶, the portion of the electric blanket⁷ related to AMI (as well as streetlights, the electric vehicle program, and the Smart Home Program as these are costs I would want to contest in response to

¹ O&R Testimony, Volume 1, page 546 (of the PDF)

² O&R Testimony, Volume 1, page 619

³ O&R Testimony, Volume 1, page 620

⁴ O&R Testimony, Volume 1, page 480, 600, 602

⁵ O&R Testimony, Volume 1, page 146, 574

⁶ O&R Testimony, Volume 2, page 168

⁷ O&R Testimony, Volume 1, page 512-513

the Joint Proposal) as well as the Equipment Technicians⁸. I have also asked for a breakdown of the Smart Home Program⁹, the DCX Customer Experience Program¹⁰, TODRS Next Generation¹¹, Metrix IDR¹² and the LED Streetlight program¹³ and the electrical vehicle program¹⁴ that are related to the AMI program.

The Operations and Maintenance Budget that O&R provided by email on August 24, 2018 – See page 52 of Exhibits PDF breaks down the AMI program thus (Education and Outreach, Labor, Office Supplies/Other, AMI Shared Services, Shared Services-Telecom, and Shared Services-Facilities). This information is too superficial to do a cost review and does not address the specific items that O&R referred to in its testimony, which O&R surely must have financial information for.

Finally, in regard to questions 70-75, O&R needs to explain how smart meter data works to “evaluate the impact of electric vehicles”. I asked for information about AMI costs related to the electric vehicle program because I want to see if that money is being use to evaluate the impact of electric vehicles as well as how much it costs to perform this evaluation. In a cost review, I want to assess how AMI tracks electric vehicles’ performance and which of the utilities’ resources are used for this purpose. This in and of itself is a valid cost review exercise. Furthermore, by knowing what AMI is doing to perform this evaluation, I can assess whether this is an activity that is duplicative to something that can be done with existing data. A proper review of costs includes a review to see if AMI is doing something that would be duplicative of what is already being done or can be done. If the electric vehicle program doesn’t even do what

⁸ O&R Testimony, Volume 2, page 218

⁹ O&R Testimony, Volume 2, page 167

¹⁰ O&R Testimony, Volume 2, page 130

¹¹ O&R Testimony, Volume 2, page 229

¹² O&R Testimony, Volume 2, page 231

¹³ O&R Testimony, Volume 2, page 482

¹⁴ O&R Testimony, Volume 1, page 484, 590, 593

is claimed and the AMI costs do not do something socially useful that isn't already done, the question of whether to pass along AMI costs to ratepayers related to the electric vehicle program must be addressed as well as whether this information belongs in net regulatory assets, notwithstanding the question of whether it has already been approved. The issues of whether something belongs in rate base or on the investor side of the business is pertinent to the Ruling which states, "The AMI Expansion Order did not alter O&R's burden to make a sufficient showing here that AMI costs should be passed on to O&R's customers in rates". (See question 70). With AMI, the ruling of September 10, 2018 indicates if something was pre-approved, it has already been permissioned; it does not follow, however, that that activity should be put in the rate base and passed along to the ratepayers.

O&R claims that smart meter data can reduce "electric and gas system losses". I asked them to estimate the value of this benefit. Quantifying costs saved is part of a review of costs. Even though the Ruling of September 10, 2018 claims that this was already done, if the smart meter data does not reduce "electric and gas system losses" (Dr. Schoechle, whose testimony I have sought to be admitted does not believe that it does), then these costs should not be in the rate base, but should be in the investor side of the business; ratepayers should not be paying higher rates on the basis of assets that should not be in the rate base. (See question 71) Other technology reduces electric and gas system losses so if it can be proven that this statement is false, any electric and gas system losses that are reduced by *other* technologies O&R employs could be in rate base, but any portion attributed to AMI should be reduced from the rate base.

Question 72 is directly related to a concern about the miscalculation on depreciation of AMI meters; as of now, according to Dr. Schoechle, the meters cannot do the stated potential future applications. If they cannot be enhanced with a software-retrofit (I have asked O&R if they can be), these meters will not deliver what is promised and if we know this now, they will

be obsolete sooner and depreciation rates should be adjusted.

Question 73 regards the bombshell news from July in the Wall Street Journal about Russian penetration of U.S. utilities. I have simply asked whether O&R's system is robust enough to withstand the hacking described. The question should be answered especially as I am entitled to review costs. If something was discovered from the Department of Homeland Security and O&R has called them (which hopefully they considered doing as four hearings on this problem are being set up now by DHS), they should be able to answer this question. If a new flaw has been found, O&R will likely have to spend more money, and this needs to be considered in a cost review.

Regarding Question 74, I had previously asked for interrogatory 34 to be answered in another motion, and I had pointed out that the response did not answer the question asked. Here, I am asking for clarification about information in the response given (which was not an answer to Question 34):

Question No. : 34

What evidence is there that the use of smart meters has resulted in supply/demand balancing, including, but not limited to actually shutting off peak-loader energy production facilities, that otherwise would not have been shut off absent the use of the smart meters?

Response

If customers are enrolled in demand response programs and the meters they use have remote connect/disconnect switches, the utility can call for demand reduction. The customer can respond positively. The utility then can disconnect the meter and both the customer and utility can monitor consumption in near real time from that meter to verify that no consumption is flowing.

(See my Motion to Compel Responses to IR-Set 1)

The demand side program is supposed to reduce costs of the entire system. There is no reason why O&R cannot answer the questions I posed in interrogatory 74 b) how many people have enrolled in this program [Demand response] and what feedback have you received from them?

How many times has their electricity been turned off? It is important to assess whether this program is working *to determine whether it should be in the rate base.*

Question 75 is to see if meters are still transmitting data in the event of a power outage. This is relevant to the hacking concerns I have raised in various interrogatories. If the meters are still transmitting in an outage, there may be other opportunities for hacking. Also, if the meters have an internal energy supply, this may also shed light on the question of whether the meters separately meter the use of electricity or pass the costs of that along to the consumer, a separate question I have raised. To date, O&R refuses to swear in an affidavit that they are not passing along the cost of the electricity to run the meter to the consumer, but are paying for that cost themselves. (Either way, the costs of how much electricity is used to run the meter should be broken down in costs, as it may be passed through to the consumer anyway via this rate proceeding.)

For all the aforementioned reasons, O&R should be made to answer the unanswered interrogatories discussed herein and in the exhibits; O&R should be made to comply with the Commission's order in 17-M-0178 and O&R should be made to produce a breakdown of AMI costs and net regulatory assets that are in the rate base both for the entire service territory and that are part of the further rollout ordered in 17-M-0178.

Respectfully Submitted,

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