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VIA ELECTRONIC MAIL

Honorable Dakin Lecakes
Honorable Maureen Leary
State of New York
Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Cases 18-E-0067 and 18-G-0068
Orange and Rockland Electric and Gas Rate Cases

Dear Judges Lecakes and Leary:

By this letter, Orange and Rockland Utilities, Inc. (“Orange and Rockland” or the “Company”) responds to the Motion to Compel O&R to Respond to Interrogatories IR Sets 2-3 (“Second Motion”) filed by Ms. Deborah Kopald with the Public Service Commission (“Commission”) on September 14, 2018, and the Motion to Compel O&R to Respond to Interrogatories IR Sets 4-6 (“Third Motion”)¹ filed by Ms. Kopald with the Commission on September 17, 2018, in the above-referenced proceedings.² For the reasons set forth below, Administrative Law Judges Leary and Lecakes (“ALJs”) should deny the Motions in their entirety.

General Objections

The Motions are Ms. Kopald’s latest salvos in her ongoing attack on the Commission’s prior determinations authorizing the Company to implement an Advanced Metering Infrastructure (“AMI”) Program across its service territory.³ The Motions would subvert the rate case process in these proceedings by improperly expanding the customary parameters of discovery. As discussed

¹ The Second Motion and the Third Motion are collectively referred to as the “Motions.”

² On August 24, 2018, Ms. Kopald filed a Motion to Compel Response to Interrogatories O&R Set 1 (“First Motion”) in these proceedings. On August 27, 2018, the Company filed a Response to Motion to Compel Response to Interrogatories O&R Set 1. In that Response, the Company demonstrated why the ALJs should deny the First Motion in its entirety. The arguments raised by the Company in its response to the First Motion apply equally to the Motions.

³ See, Case 14-E-0493, *Proceeding on Motion of the Commission as to the Rates Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service*, Order Adopting Terms of Joint Proposal and Establishing Rate Plan (issued October 16, 2015) (“2015 Rate Order”); Case 17-M-0178, *Petition of Orange and Rockland Utilities, Inc. for Authorization of a Program Advancement Proposal*, Order Granting Petition in Part (issued November 16, 2017) (“AMI Expansion Order”).

below, Ms. Kopald's interrogatories seek information wholly unrelated to these proceedings. Rather, they address various issues relating to the Company's AMI Program which the Commission has already fully considered and addressed.

The Motions are particularly inappropriate when viewed against the backdrop of the Ruling Denying O&R's Motion to Strike Testimony ("Ruling"), issued September 10, 2018, in these proceedings. In the Ruling, the ALJs addressed and provided specific guidance as to what issues may be considered in, as well as what issues are outside the parameters of, these proceedings. As noted in the Ruling (p. 19):

[t]he Commission already has approved the scope and budget of O&R's enhanced and expanded AMI program and has authorized O&R to move forward to implement it. What has been left for this proceeding is the establishment of rates necessary to compensate O&R for the program. The issues to be considered in these proceedings with respect to a review of AMI costs are limited to whether incurred AMI expenditures were prudent and within the approved budget cap set forth in the AMI Expansion Order, whether O&R's forecasted expenditures are consistent with that Order and its budget, and whether the proposed revenue allocation and rate design for AMI are fair and reasonable.

The Ruling (p. 20) further noted:

[i]n the AMI Expansion Order, the Commission made the policy determination that O&R should implement AMI and established the scope and extent of such implementation. Those policy determinations have already been made and are not at issue in this proceeding.

The Ruling (pp. 22-26) specifically determined that the safety of smart meters, the energy and cost savings related to smart meters, benefit/cost issues associated with smart meters, smart meter accuracy and overbilling claims, privacy and security issues relating to smart meters, and opt-out fees, were all issues outside the scope of these proceedings.

By filing the Motions, Ms. Kopald serves witness that she either did not read, or did not understand, the Ruling. In either event, the Motions are plainly contrary to the Ruling, as well as the Commission's discovery policies and procedures. Accordingly, the ALJs should deny the Motions in their entirety.

Specific Objections

The Company offers the following specific objections to the interrogatories at issue.

Interrogatory Set 2

This set of interrogatories (*i.e.*, Interrogatories 45-57) is included in Exhibit 1 to the Second Motion. As an initial matter, these interrogatories address the Company's third confidential settlement offer in these proceedings which is not a proper subject of formal discovery practice. Even ignoring this deficiency, however, these interrogatories are objectionable. Certain of these

interrogatories seek granular cost information well beyond the sort of cost information that utilities are customarily required to produce in rate cases.⁴ For example, Question 47 seeks information regarding the costs of “improved field sensors.” Question 48 addresses the costs of “so-called Corporate Communications Transmission Network (“CCTN”) that service the Advanced Metering Infrastructure.” Question 55 inquires as to what percentage of the time of the four new Equipment Technicians will be spent working on the AMI Program, electric vehicle program, street-lighting program and the Smart Home Program, respectively.

The Company would note that the decisions, cited in the Second Motion (pp. 2-3) by Ms. Kopald as supportive of her requests, are a 1992 decision from Oklahoma (*i.e.*, an action against a producer/retail seller of petroleum products for violation of the Oklahoma Unfair Sales Act), and a 1997 decision from Kansas (*i.e.*, a decision involving construction of the valuation standard "retail cost when new" of the Kansas State Constitution). Neither decision addresses utility ratemaking, let alone utility ratemaking in New York State.

Other interrogatories seek information extraneous to these proceedings. For instance, Question 54 seeks copies of a “joint use agreement with telecommunications companies.” Question 56 addresses the relationship of the Digital Customer Experience Program and the AMI program. Question 57 seeks information regarding the relationship of the “so-called TODRS Next Generation and MetrixIDR” and the AMI Program. None of these questions have even a tenuous relationship to these proceedings.

Interrogatory Set 3

This set of interrogatories (*i.e.*, Interrogatories 58-75) is included in Exhibit 2 to the Second Motion. Interrogatory Set 3, Questions 58-59, address the Company’s third confidential settlement offer in these proceedings which, as noted above, is not a proper subject of formal discovery practice. Questions 58-69 ask the Company to identify how various aspects of its AMI Program relate to the “further rollout” authorized by the Commission in the AMI Expansion Order, as opposed to the portion of its AMI Program authorized by the Commission in the 2015 Rate Order. Such a distinction has no relevance to these proceedings. As confirmed by the Ruling, the Commission has authorized the Company to implement its proposed AMI Program across its service territory. Whether the approval of a portion of the AMI Program is contained in the 2015 Rate Order, as

⁴ As noted in the Ruling (pp. 20-21), in these proceedings, the Company presented evidence that its AMI expenditures have been and are forecast to be consistent with the program approved by the Commission. Department of Public Service Staff presented testimony in response indicating that the AMI program is on schedule, that the Company’s expenditures are within the amount approved in the AMI Expansion Order, and that the project costs included in O&R’s capital budget are reasonable based on a review of historic costs. In addition, as set forth in Exhibit A of the Company’s Response to Motion to Compel Response to Interrogatories O&R IR Set 1, the Company has provided cost data to Ms. Kopald regarding the AMI Program. Accordingly, the Company has produced AMI Program cost information consistent with the Commission’s usual rate case requirements.

opposed to the AMI Expansion Order, is a meaningless distinction that has no bearing on these proceedings.

Question 70 asks how smart meter data works to “evaluate the impact of electric vehicles.” The Company would note that the Company’s implementation of an electric vehicle program is to be considered in the Commission’s electric vehicle proceeding,⁵ rather than in these proceedings. Questions 71 through 75 inquire into various operational aspects of AMI meters. Accordingly, these interrogatories seek information irrelevant to these proceedings.

Interrogatory Set 4

This set of interrogatories (*i.e.*, Interrogatories 76-98) is included in Exhibit 1 to the Third Motion. These interrogatories all address the Company’s Initial Distributed System Implementation Plan, filed on June 30, 2016, (*i.e.*, one and one-half year prior to the rate case filings being considered in these proceedings).⁶ These interrogatories have no relevance to the issues to be decided by the Commission in these rate case proceedings. In fact, Ms. Kopald acknowledges as much in the Third Motion (pp. 1-2). Because they seek information to relitigate the Commission’s authorization of the Company’s AMI Program, they are inherently improper and should not be allowed.

Interrogatory Set 5

This set of interrogatories (*i.e.*, Interrogatories 99-100) is included in Exhibit 3 to the Third Motion. Question 99 seeks information regarding analog meters. Question 100 seeks “an affidavit documenting that the AMI meters being deployed do not charge the customer for the use of electricity to run the AMI meters themselves.” Neither interrogatory seeks information relevant to these proceedings. In approving the Company’s AMI Plan, the Commission approved the Company’s plan to replace the existing analog meters on its system, thereby rendering Question 99 irrelevant.⁷ As to Question 100, the Ruling (p. 25) stated that “[I]ssues associated with smart meter accuracy and overbilling may not be raised here.”

Interrogatory Set 6

This set of interrogatories (*i.e.*, Interrogatory 101) is included in Exhibit 5 to the Third Motion. This interrogatory seeks information regarding the operation of AMI meters, particularly how they collect, transmit, and store information. None of these topics are remotely relevant to these proceedings.

⁵ Case 18-E-0138, *Proceeding on Motion of the Commission Regarding Electric Vehicle Supply Equipment and Infrastructure*, Order Instituting Proceeding (issued April 24, 2018).

⁶ The Company did not include the Initial Distributed System Implementation Plan in its rate case filing in these proceedings.

⁷ The Company would note that the Commission refused to require Central Hudson Gas & Electric Electric Corporation to offer analog meters to its customers. The Commission concluded “that continuing to supply electromechanical meters is not a viable, long term solution, and is not in the public interest.” Case 14-M-0196, *Tariff Filing by Central Hudson Gas & Electric Corporation to Establish Fees for Residential Customers Who Choose to Opt-Out of Using Automated Meter Reading Devices*, Order Granting, in Part, and Denying in Part, Requests for Modifications of Opt-Out Tariff, (Issued October 20, 2017) (p. 46).

Conclusion

For the reasons set forth above, the ALJs should deny the Motions in their entirety.

Please contact me if you have any questions regarding this matter.

Very truly yours,

/s/ John L. Carley

John L. Carley
Associate General Counsel