

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.

**RESPONSE TO MOTION TO COMPEL RESPONSE  
TO INTERROGATORIES DPS SET 1**

**Introduction**

On August 28, 2018, Ms. Deborah Kopald filed a Motion to Compel Response to Interrogatories DPS Set 1 (“Motion”) with the Secretary to the Public Service Commission (Commission),<sup>1</sup> requesting that Department of Public Service (Department) Staff (Staff) be directed to respond to certain interrogatories contained in Ms. Kopald’s first set of interrogatories served upon Staff on August 8, 2018.<sup>2</sup> Staff objected to the interrogatories at issue, primarily on the grounds that the interrogatories were duplicative to interrogatories served upon Orange and Rockland Utilities, Inc. (O&R or the Company), requested information belonging to O&R or information related to statements made by O&R and thus were more appropriately directed at the Company, and requested information outside of the scope of the instant proceedings. The Motion is wholly without merit and, for the reasons discussed herein, the ALJs should deny the Motion in its entirety.<sup>3</sup>

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<sup>1</sup> Pursuant to 16 NYCRR §3.6(b), the Motion should be addressed to the Administrative Law Judges (ALJs) assigned to these proceedings.

<sup>2</sup> The first several pages of Ms. Kopald’s Motion inappropriately reference O&R’s response to a separate motion to compel filed by Ms. Kopald in the instant proceedings and thus will not be addressed herein; however, Staff Counsel objects to the improper and baseless characterizations made by Ms. Kopald, particularly in footnote one.

<sup>3</sup> It should be noted that, despite Ms. Kopald’s claims to the contrary, Ms. Kopald made no attempt to resolve this discovery dispute with Staff Counsel prior to filing the instant Motion. Staff Counsel worked with O&R and Ms. Kopald in an effort to provide Ms. Kopald with certain AMI cost information; however, there has been no communication by Ms. Kopald with Staff Counsel regarding the interrogatories at issue herein.

## Background

In O&R's last rate proceedings,<sup>4</sup> the Company proposed to implement an Advanced Metering Infrastructure (AMI) system across Rockland County (AMI Phase One), the first of a two-phase deployment of AMI across the Company's service territory. The Commission approved Phase One of the AMI project in those proceedings, authorizing O&R to deploy AMI across Rockland County, and requiring the Company to develop an AMI Business Plan, including a detailed benefit cost analysis (BCA), a customer engagement plan with privacy principles, and a customer outreach and education plan, through a collaborative process with Staff and other parties to the proceedings.<sup>5</sup>

On June 30, 2016, as part of its Initial Distributed System Implementation Plan (Initial DSIP), the Company filed an AMI Business Plan, as required by the 2015 Rate Order.<sup>6</sup> On July 29, 2016, O&R filed a BCA Matrix and BCA Benefit Summary, which reflected a full service territory deployment of AMI.<sup>7</sup> The filings indicated that, based upon the societal cost test, the net present value of the benefits associated with full deployment of AMI exceeded the net present value of the costs by \$15.6 million.

On February 13, 2017, O&R filed a petition seeking, among other things, Commission authorization for the full deployment of AMI in the remainder of the Company's service territory in Orange and Sullivan Counties (AMI Phase Two).<sup>8</sup> That petition further reflected the expanded scope and functionality of O&R's AMI system resulting from the Company's

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<sup>4</sup> Cases 14-E-0493 and 14-G-0494, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric and Gas Rates.

<sup>5</sup> Case 14-E-0493, et al., *supra*, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans (issued October 16, 2015) (2015 Rate Order), pp. 14-18.

<sup>6</sup> Case 14-M-0101, Reforming the Energy Vision, Initial Distributed System Implementation Plan (filed June 30, 2016).

<sup>7</sup> Case 14-M-0101, *supra*, Orange and Rockland Utilities, Inc. Advanced Metering Infrastructure Benefit Cost Analysis Benefit Summary and Advanced Metering Infrastructure Benefit Cost Analysis Matrix (filed July 29, 2016). The BCA Matrix and BCA Benefit Summary were also filed under Case 14-E-0493. O&R and its affiliate, Consolidated Edison Company of New York, Inc. (Con Edison) filed an AMI Customer Engagement Plan in Case 14-M-0101 on July 29, 2016.

<sup>8</sup> Case 17-M-0178, Petition of Orange and Rockland Utilities, Inc. for Authorization of a Program Advancement Proposal, Petition for Authorization of a Program Advancement Proposal (filed February 13, 2017).

partnership with Con Edison in the implementation of AMI. Due to the expanded scope of the AMI system, the Company estimated incremental capital investments associated with AMI Phase One of \$37.3 million beyond what was approved in the 2015 Rate Order. In addition, the Company requested \$37 million for AMI Phase Two, resulting in a total capital investment of \$98.5 million.<sup>9</sup>

By Order issued November 16, 2017, the Commission, among other things, authorized O&R to expand the technological scope and functionality of the AMI system beyond that approved in the 2015 Rate Order and to continue the deployment of AMI into Orange and Sullivan Counties.<sup>10</sup> The November 2017 Order also implemented a \$98.5 million cap on the capital expenditures associated with the AMI project “to ensure that the benefits of AMI materialize” and provided for a review of the project costs in the O&R’s next base rate proceeding.<sup>11</sup>

On December 18, 2017, Ms. Kopald filed a Petition for Rehearing, alleging legal and factual errors in the November 2017 Order related to the need for a public hearing in that case and the rate effect of AMI deployment.<sup>12</sup> On May 21, 2018, the Commission issued the Order Denying Petition, which denied Ms. Kopald’s petition in its entirety.<sup>13</sup> Specifically, the Commission rejected Ms. Kopald’s argument that the November 2017 Order’s approval of the expanded deployment of AMI constituted a “major change” requiring a hearing under PSL §66(12).<sup>14</sup> The Commission also found that the AMI opt-out charge did not constitute a new provision because it was approved in the 2015 Rate Order and, further, that the deferral of expenses for future recovery is not a present increase in rates, despite Ms. Kopald’s claims to the contrary. The Commission stated that the deferred expenses “may, after review and approval, be incorporated into O&R’s rates.”<sup>15</sup> The Commission rejected Ms. Kopald’s claim that the alleged

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<sup>9</sup> Id. at 19-20. The Commission had previously approved \$23.7 million in capital investments in the 2015 Rate Order.

<sup>10</sup> Case 17-M-0178, supra, Order Granting Petition in Part (issued November 16, 2017) (November 2017 Order).

<sup>11</sup> Id. at 19.

<sup>12</sup> Case 17-M-0178, supra, Petition for Rehearing (filed December 19, 2017).

<sup>13</sup> Case 17-M-0178, supra, Order Denying Petition (issued May 21, 2018) (2018 Rehearing Order).

<sup>14</sup> Id. at 10-11. The Commission further rejected Ms. Kopald’s argument that State Administrative Procedure Act §301 required a hearing in that proceeding. Id. at 12.

<sup>15</sup> Id. at 12.

effects of AMI should trigger a review under the State Environmental Quality Review Act because the presence of AMI meters might prevent ratepayers from accessing their homes and other buildings.<sup>16</sup> The Commission also rejected a number of other arguments made by Ms. Kopald alleging violations of Federal Communication Commission regulations, the Americans with Disabilities Act and the Fair Housing Act related to electromagnetic hypersensitivity (EHS).<sup>17</sup>

On January 26, 2018, the Company filed a proposal for new electric and gas rates effective January 1, 2019, in these proceedings. On May 29, 2018, Ms. Kopald submitted direct testimony in these proceedings, which addressed a number of issues related to AMI. On June 15, 2018, the Company filed a Motion to Strike the direct testimony of Ms. Kopald on the basis that the testimony was improper as it failed to address issues relevant to the Company's rate filings. O&R noted that Ms. Kopald was attempting to relitigate certain AMI-related issues that were addressed and decided by the Commission in the November 2017 Order and 2018 Rehearing Order. The ALJs have not yet ruled on O&R's Motion to Strike.

On August 7, 2018, Ms. Kopald filed a Motion to Admit the Testimony of Dr. Timothy Schoechle and Dr. David O. Carpenter and Other Exhibits (Kopald Motion for Supplemental Testimony).<sup>18</sup> On August 10, 2018, the Company filed a response opposing the Kopald Motion for Supplemental Testimony on the basis that Ms. Kopald was again attempting to relitigate the matters previously decided by the Commission and to introduce irrelevant material into the record of these proceedings.<sup>19</sup> The ALJs have not yet ruled on the Kopald Motion for Supplemental Testimony.

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<sup>16</sup> Id.

<sup>17</sup> Id. at 13-15.

<sup>18</sup> Cases 18-E-0067, supra, Motion to Admit the Testimony of Dr. Timothy Schoechle and Dr. David O. Carpenter and Other Exhibits (filed August 7, 2018).

<sup>19</sup> Case 18-E-0067, supra, Response to Motions to File Supplemental Testimony (filed August 10, 2018), p. 3, n. 1. The Company also relied on its June 15, 2018 Motion to Strike Ms. Kopald's Testimony.

## Discussion

### **1. Ms. Kopald's Interrogatories Inappropriately Seek Another Review of the Commission's Previous Approval of AMI**

As previously discussed, the November 2017 Order approved the expanded scope of AMI and authorized O&R to deploy AMI in Orange and Sullivan Counties, all subject to a cap on the capital expenditures related to the project. The Commission further noted that all costs associated with the AMI project would be subject to review in the Company's next base rate proceeding. Staff consistently performs this type of cost review for large, ongoing capital projects. Given the magnitude of O&R's AMI project, the Company has been required to track the capital expenditures associated with AMI separately from other capital expenditures to aid in Staff's continued review of those costs. In these proceedings, the Staff Electric Infrastructure and Operations Panel performed the cost review, as directed by the Commission, and provided a summary of its findings in direct testimony.<sup>20</sup> As noted in that testimony, Staff's review demonstrated that the Company's budget included in these cases is consistent with the amount approved by the Commission in the November 2017 Order and, to date, the Company is on schedule and under the budget approved for the AMI project.<sup>21</sup>

In her Motion, Ms. Kopald incorrectly argues that the Commission intended for Staff to conduct a review of "all of the AMI costs in this proceeding," including "accounting costs, economic externalities which are not accounted for on an accounting statement and unrealized benefits." In making this argument, Ms. Kopald relies on the Commission's statement that "all costs associated with [the AMI] project are subject to further review in O&R's next base rate proceeding."<sup>22</sup> This statement, however, appears under the heading "AMI Cost," a sub-section of the Order clearly confined to accounting costs.<sup>23</sup> In that sub-section, the Commission also discusses electric and gas AMI net plant balances and the potential deferral of AMI costs, institutes a cap on the capital expenditures associated with the project, and requires O&R to make an annual filing including the following information: amount of AMI expenditures incurred during that period, amount of cost reduction benefits realized during that period, a

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<sup>20</sup> Case 18-E-0067, supra, Direct Testimony of Staff Electric Infrastructure and Operations Panel (SEIOP) (filed May 25, 2018), pp. 17-20.

<sup>21</sup> SEIOP Direct Testimony, p. 19.

<sup>22</sup> November 2017 Order, p. 19.

<sup>23</sup> Id. at 18-19.

comparison of the electric and gas AMI net plant balances to the AMI net plant targets, and an earnings computation for the period.<sup>24</sup> Ms. Kopald's attempt to expand the Commission's directive to a full Staff review of O&R's entire AMI project is inappropriate and should be rejected.

The Commission has conducted an extensive review of O&R's AMI program, beginning four years ago when the Company filed its initial proposal for AMI Phase One in Cases 14-E-0493 and 14-G-0494, and culminating in its evaluation and approval of the Company's AMI Business Plan, cost benefit analysis and Customer Engagement Plan in Case 17-M-0178.<sup>25</sup> In Ms. Kopald's view, the Commission should require Staff to conduct a full review of the AMI program, including the costs and benefits that were already reviewed by Staff both as part of the Initial DSIP in Case 14-M-0101 and as part of the petition in Case 17-M-0178, and approved by the Commission in the November 2017 Order. For the reasons discussed herein, Ms. Kopald's thinly veiled attempts to pursue a second plenary review of the AMI project in the hope of obtaining different results should be rejected.

## **2. Ms. Kopald's Interrogatories Request Information Irrelevant to the Instant Rate Proceedings**

Ms. Kopald's interrogatories in these proceedings reflect a fundamental misunderstanding of the purpose and scope of discovery. The Commission's regulations state that "[d]iscovery requests should be tailored to the particular proceeding and commensurate with the importance of the issues to which they relate" and may not be "unduly broad."<sup>26</sup> Ms. Kopald's interrogatories do not satisfy this standard and, as such, her Motion should be denied in its entirety. None of the interrogatories posed to Staff have any bearing on Staff's review of the AMI costs included in the Company's rate filing and, thus, are irrelevant to the instant base rate proceedings.

As discussed above, Ms. Kopald's interrogatories all relate to her attempt to compel Staff and the Commission to complete another full examination and review of O&R's AMI project, effectively a reexamination of the issues evaluated and decided in the 2015 Rate Order, November 2017 Order and 2018 Rehearing Order. Specifically, the interrogatories seek

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<sup>24</sup> Id. at 19.

<sup>25</sup> Id. at 16.

<sup>26</sup> 16 NYCRR §5.8(a).

information related to stated benefits of the AMI system (Questions 14-15, 18-20), information related to the retrofitting of AMI meters for certain applications (i.e. Time-of-Use rates, Critical Peak Pricing and demand side management programs) (Question 16) and the capability of the AMI system to withstand attempted hacking intrusions (Question 17). These interrogatories are improper and fail to address issues relevant to O&R's current electric and gas base rate filings and, for these reasons, Ms. Kopald's Motion should be denied.

### **3. Ms. Kopald's Interrogatories Are Unreasonably Repetitive and Duplicative**

The Commission's regulations specifically prohibit unreasonably repetitive and duplicative discovery.<sup>27</sup> Not only are several of the interrogatories at issue in this Motion identical to interrogatories served upon O&R in these proceedings,<sup>28</sup> but these interrogatories inappropriately request Department Staff to opine on statements without providing the source of the quotations.<sup>29</sup> Notably, Ms. Kopald served the duplicative interrogatories at issue simultaneously on Staff and the Company. To the extent Ms. Kopald argues that these interrogatories are not duplicative insofar as they request the Department's understanding of statements presumably made by O&R, this argument is without merit and should also be rejected.

Ms. Kopald attempts to distinguish the interrogatories directed at Staff from those served upon the Company by phrasing the questions specifically to inquire as to "the DPS' understanding of how smart meter data works." For example, Ms. Kopald served the following interrogatory on O&R (Question 70): "Please explain how the smart meter data works to 'evaluate the impact of electric vehicles'?" Simultaneously, Ms. Kopald served Question 14 upon Staff, which states: "Please explain the DPS' understanding of how the smart meter data works to 'evaluate the impact of electric vehicles.'" To the extent Ms. Kopald is requesting Department Staff to opine on statements made by O&R, such a request is inappropriate.

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<sup>27</sup> 16 NYCRR §5.8(b).

<sup>28</sup> Questions 14-17 directed at Staff are virtually identical to Questions 70-73 directed at O&R.

<sup>29</sup> Although the Commission's regulations require interrogatories be presented in a clear manner (16 NYCRR §5.3(a)), many of Ms. Kopald's interrogatories request an explanation of the Department's understanding of various quotations without identifying the source of those quotations. Given that these interrogatories are identical to those served upon O&R and Ms. Kopald inquires as to Staff's understanding of those statements, Staff Counsel can only assume that those quotations are related to statements made by O&R.

Moreover, the interrogatories are unnecessarily duplicative and an improper use of discovery in these proceedings.

Conclusion

For the reasons discussed herein, Department Staff respectfully requests that the ALJs deny Ms. Kopald's Motion in its entirety.

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Respectfully Submitted,

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