

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.

**OCEC RESPONSE IN SUPPORT OF THE MOTION TO COMPEL THE DPS TO
ANSWER INTERROGATORIES FROM SET 1 FROM D. KOPALD**

Preliminary Statement

I and the Orange County Energy Coalition (“OCEC”) are supporting the motion to compel DPS to answer some of the unanswered interrogatories from Intervenor Kopald’s first interrogatory set served to them. The questions Ms. Kopald has moved to compel DPS to answer are different than the questions that O&R was asked to answer. Specifically, she has asked the DPS to explain what assumptions it relied upon to accept O&R’s claims about the benefits of AMI. How can we possibly know if the DPS performed its own calculations or adduced its own proof about smart meters specifically resulting in measurable energy saved and bills lowered unless they answer the questions. Anything submitted in past proceedings had to do with calculations that were supposed to “bake in” these benefits”; since then there has been plenty of time to show empirical evidence that these benefits exist. The DPS regulates other utilities, so if they know of specific information about smart meters delivering the promised benefits, they would have it. They should produce it. Ms. Kopald’s interrogatories cite to statements that were made in testimony submitted by O&R in these proceedings that are part of the record of this case and are therefore appropriate. It is appropriate for the DPS to explain its own analysis that caused them to take O&R’s statements at face value.

The original rate hearing from 2015 that permissioned Advanced Metering Infrastructure (“AMI”) aka (“smart metering”) aka (“the smart meter program”) only allowed it in one part of

Rockland County. The rollout to the rest of Rockland and to Orange and Sullivan Counties for the first time did not get permission to occur until an order by the Commission in 2017 at a proceeding, 17-M-0178 that was not a rate hearing. So a lot of time passed since whatever assumptions were made in 2015. Also a lot of time has passed since the fall of 2017.

On information and belief, when Ms. Kopald tried to make an effort to get O&R to respond to interrogatories about costs without asking for judicial intervention, first she was told no by the company, then the DPS accountant and lawyer indicated to her that she would not be able to get all of the information and anyway it was up to O&R to provide the information. Eventually she was given some but not all of the accounting information requested. Like the entity it is supposed to regulate, it seems that the DPS does not want any kind of real inquiry into smart metering either. Ms. Kopald also reported to me, so I say again, on information and belief, that O&R told her that it was hard to pin down some of the numbers because a lot of the assumptions about the smart meter program keep changing. This appears to be the excuse they gave for not providing accounting information about the smart meter program. There is, though, some logic to the assertion that the assumptions about the smart meter program have changed. The motion about letting in new testimony suggests more evidence that the claimed benefits about the smart meter program have not materialized and are not going to with these systems. So any pronouncements about the smart meter program from a few years ago are unlikely to be the same as in 2017. There was no data shown and no explanations given in 2017 about the rollout. The DPS did not ever explain why they took O&R's claims at face value in the 17-M-0178 proceeding. Since costs are supposed to be reviewed, any and all information that could relate to costs of the smart metering program need to be explored. There are public interest issues to be concerned about here and as an intervenor, it is my duty to review the costs of AMI. The questions Ms. Kopald asked absolutely have to do with AMI costs and since AMI is in the rate

base in two ways (both in the net regulatory assets and in expenses), we and ultimately the Commission are being asked to support a rate hike on the basis of these factors. If the AMI program is not doing what it was supposed to be doing and DPS cannot justify that these benefits exist and never could justify that then or now, the public needs to hear about it in this proceeding. Ms. Kopald's questions are simple ones about how the DPS concluded there were economic savings and other financial benefits to smart meters. Since the DPS insists that they exist, they should not have a problem answering the questions.

These questions are particularly important since other states are REJECTING AMI. New Mexico rejected AMI in the spring as being contrary to the public interest and Kentucky just rejected AMI this week questioning service life of meters, large costs and unrealized benefits. (See Exhibit 1, an article published on August 31, 2018 from utilitydive.com, "As Kentucky regulators reject smart meter plans, troubling trend continues for AMI.") There is a lot of evidence that the DPS did not do a basic or review or ignored evidence that AMI doesn't do what it is supposed to do and it is now more important than ever for the DPS to be held accountable.

Discussion

How and why the DPS takes statements at face value is important especially when there is no evidence that these statements are true. The DPS must defend why it accepts claims that look to be false. The DPS's responses to Ms. Kopald's interrogatories (which are only a select few out of the whole set served) are inadequate. For instance, the DPS should provide an estimate of monetary value of how smart meters reduce electric gas and system losses. This is particularly important because Dr. Schoechle is saying this is a false claim as was pointed out in the motion to admit new testimony. He is saying from an engineering perspective this is not an accurate statement at all. Yet his is a major claim that was made about AMI saving costs. We are supposed to review costs in this proceeding. DPS should give its own estimates about how

these system losses are prevented. It speaks volumes that they won't. Perhaps their data shows that this statement is totally false and this would be embarrassing to them. (IR 1-15)

O&R is claiming the meters can be retrofitted to do other functionally supposedly helpful things to the ratepayers. Dr. Schoechle claims they cannot. DPS should explain why they think they can. Since the smart meters can't do anything other than collect data (they are not sending information back to devices in the house to tell them to shut off which Dr. Schoechle says is necessary to actually get any conservation of electricity and the former head of the UK governmental department overseeing smart meters claims that he threw his smart meter in the garbage because he said they don't do much to get electricity savings and don't do anything to change behavior (see Kopald motion to admit new testimony), the DPS should give its view with its own calculations of whether these retrofits to give them some more functionality can even be done and how much they will cost. Right now there is a lot of evidence the smart meters really do not save money or electricity or lower greenhouse gasses. So, if all of these other promises of how they will work are true, the DPS needs to explain what facts they know of that will show that these things can even be done and how much it will cost. OCEC does not believe the meters can be retrofitted to do this and the DPS needs to answer for itself rather than claim this was justified by O&R. The DPS is supposed to regulate O&R and ask critical questions, not genuflect to them and not pass the buck back to them. As far as we can see DPS is stymying this review. As for the claims about the utilities in California and Oklahoma, the DPS should answer whether it sought out its own proof as to these claims. There is no evidence that the demand side programs were working with the meters which is why the claims about OG&E need to be verified. That is the DPS' job. That was the only specific example given by O&R of any locations where the meters fixed a problem and it isn't even clear that the problems that were fixed were because of the meters (and not other technology or other data camouflaging). It is a

problem that the DPS won't answer this and also won't answer the question of whether there is a software retrofit to even make this happen. (IR 1-16)

The July Wall Street Journal article about the hacking is very worrisome. The Department of Homeland Security ("DHS") is now having four hearings. That suggests they are very concerned about data security within the utilities. The smart meters are creating more data that was not centralized in the utility before they were rolled out. The DPS is supposed to oversee O&R. Presumably as a government agency, they have been concerned enough about the public interest to contact DHS in the wake of this bombshell reporting to find out how serious the breaches are and whether the utilities breached use the same cybersecurity as O&R. As a government agency, the DPS should answer this. This is a reasonable question to answer because the privacy implications are immense if the data O&R is collecting cannot be properly secured. Any responsible government agency should be made to answer this question especially in light of the fact that the cybersecurity has been shown by DHS to be inadequate. Russian hacking is not something limited to voting systems and it is not limited to Russians; if information about the meters cannot be secured, load profiles that will tell you when people are home and what they are doing with their homes is worse than having a credit card number stolen and tantamount to having a social security ID stolen. This is very serious and the failure of the DPS to address this simple question is of concern to OCEC. (IR-17)

As mentioned before, since DPS regulates quite a number of utilities, by now they should have evidence that smart meters actually lower customers' bills, reduced use of electricity, and peak loaders have been turned off (which would save costs). If smart meters are not doing this and DPS has no proof, then the costs of smart meters are higher than have been budgeted for. These questions have direct bearing upon costs, which were supposed to be reviewed in this proceeding. These questions are not limited to O&R but cover the questions of what evidence

the DPS has of these major claimed savings *anywhere*. (IR-18, IR-19 and IR-20).

Finally, there is a major claim that smart meters are helping to evaluate the impact of electric vehicles. The DPS needs to explain how smart meters, which are supposed to be providing this “benefit” are providing information that cannot be estimated from other existing sources. (IR-14).

CONCLUSION

Certainly, if the DPS didn’t review costs of the smart meter program in approving the further rollout, they should do it now pursuant to the letter and spirit of the order in 17-M-0178 and should not be thwarting the intervenors who wish to do so now. The order in 17-M-0178 did not say that only the DPS could perform a secret cost review. Obviously that review was to be conducted by all parties to this proceeding. It doesn’t matter if O&R is on track to spend what they said they were going to spend. (Both the DPS and O&R are thwarting that analysis too, but in this case the claimed benefits of these programs have never been demonstrated with actual data by O&R so if the DPS has other data, they should provide it.) Worse, the evidence that has been mounting since 2015 including late-breaking developments in the testimony sought to be admitted suggests that the basic claims about lowering bills, lowering electricity use-age by customers and also by getting peak loaders turned off by moving the times of when customers are supposed to use electricity are FALSE CLAIMS.

At no point has the DPS or O&R demonstrated any legal definition of costs in statute basically just claiming, oh, this is how we do things. Ms. Kopald, in contrast, has cited to *two* State Supreme Court cases that are clear that in the absence of a statutory definition, costs mean more than costs that show up directly on a balance sheet and income statement. OCEC takes the position that the rulings in the Kansas and Oklahoma Supreme Courts are persuasive authority and apply to the question Ms. Kopald has raised herein. In any event, some of these assumptions

about cost savings may be baked into the accounting statements but without seeing all of the accounts leading to them, it is impossible to tell.

The quotes from the article in Exhibit 1 underscore the need to make the DPS answer questions posed to it to explain where the costs savings are, because other regulators are not seeing it.

Kentucky Utilities (KU) and Louisville Gas & Electric (LG&E) proposed to install advanced metering infrastructure (AMI) for a combined 1.3 million customers over the next five years, but regulators at the Public Service Commission (PSC) balked at the \$350 million estimated expense.

The PSC cited conflicting calculations of net savings and inconsistent projections of the meters' expected service life. The rejection is one of several this year, continuing a trend of regulators questioning AMI expansions.

Kentucky regulators questioned AMI costs, but also said that KU and LG&E could not demonstrate new meters were needed to provide adequate service.

In May, the Massachusetts Department of Public Utilities rejected proposals they said "revealed weaknesses in the business case for advanced metering functionality."

For all the reasons explained herein, the motion to compel DPS to respond to certain questions from the first Interrogatory Set served by Deborah Kopald should be granted.

Respectfully submitted,

/s/ Debra Slattery

Orange County Energy Coalition
194 Route 49
Slate Hill, NY 10973

Dated: September 5, 2018
Slate Hill, New York

To:
The Honorable Secretary Kathleen H. Burgess secretary@dps.ny.gov
Judge Maureen F. Leary Maureen.Leary@dps.ny.gov
Judge Dakin Lecakes Dakin.Lecakes@dps.ny.gov
Intervenors in 18-E-0067/18-G-0068

EXHIBIT 1



BRIEF

As Kentucky regulators reject smart meter plans, troubling trend continues for AMI

By Robert Walton

Published Aug. 31, 2018

Dive Brief:

- Kentucky regulators on Thursday rejected proposals by two utilities to install smart meters throughout their service territories, but will allow the companies to resubmit the plan in the future.
- Kentucky Utilities (KU) and Louisville Gas & Electric (LG&E) proposed to install advanced metering infrastructure (AMI) for a combined 1.3 million customers over the next five years, but regulators at the Public Service Commission (PSC) balked at the \$350 million estimated expense.
- The PSC cited conflicting calculations of net savings and inconsistent projections of the meters' expected service life. The rejection is one of several this year, continuing a trend of regulators questioning AMI expansions.

Dive Insight:

Smart meters and other grid modernization technologies are considered foundational to efforts to re-imagine the electric grid, but in at least three instances this year state regulators have questioned whether the advanced infrastructure is really worth the cost.

In May, the Massachusetts Department of Public Utilities rejected proposals they said "revealed weaknesses in the business case

for advanced metering functionality."

In June, the North Carolina Utilities Commission rejected Duke Energy's grid modernization proposal, including storage and electric vehicle infrastructure — not on its merits, but because the utility wanted to establish a special rider to pay for the plan. Like the Kentucky utilities, Duke can make changes and bring its proposal back to the commission.

Kentucky regulators questioned AMI costs, but also said that KU and LG&E could not demonstrate new meters were needed to provide adequate service.

"[T]o the contrary, the utilities stated that their existing meters have an average remaining service life of 15 years or more and would continue to provide reliable service," the PSC wrote in a release.

Given that almost \$53 million in unrecovered costs remains for their existing meters, "KU and LG&E could not prove that their proposal was a reasonable least-cost option, as required by law," the PSC said.

Regulators pointed to differences between the rejected proposals and a smart meter rollout that they approved for Duke Energy last year. Unlike that proposal, regulators said KU and LG&E did not propose any programs to take advantage of smart meters' advanced capabilities.

"They're definitely having to make the business case" for advanced metering, Autumn Proudlove, senior manager of policy research and the North Carolina Clean Energy Technology Center, told Utility Dive.

"Regulators are looking carefully at the cost and benefits of these technologies to make sure benefits do outweigh the costs and that there are not going to be a lot of stranded costs," Proudlove said. "Especially with AMI in several cases, regulators are finding the numbers just don't work and the investments are not justified at this time."

The Kentucky PSC did give the utilities some room to continue working with AMI, however. Regulators allowed KU and LG&E to expand existing pilot programs that offer smart meters on a voluntary basis. The order allows the utilities to double the programs to serve up to 10,000 customers of each.

As of 2016, U.S. electric utilities had almost 71 million smart on the grid, according to the Energy Information Administration. About 88% of those were residential customer installations.

CORRECTION: A previous version of this article misnamed the plan that NC regulators rejected. It was Duke's AMI grid modernization proposal.

Recommended Reading:

 Insider Louisville

PSC denies LG&E and KU's 'smart' meter request [↗](#)