ORANGE AND ROCKLAND UTILITIES, INC.

PROPERTY TAX PANEL
UPDATE/REBUTTAL TESTIMONY – ELECTRIC & GAS

Q. Please state your names.

A. Our names are Stephen Ianello and Stephanie J. Merritt.

Q. Have you previously submitted testimony in this proceeding?

A. Yes. We have previously submitted direct testimony on behalf of Orange and Rockland Utilities, Inc. ("Orange and Rockland," "O&R" or "Company") as the Property Tax Panel ("Panel").

Q. What is the purpose of the Panel's update and rebuttal testimony?

A. We are updating our direct testimony to reflect the actual 2018 County and Town property taxes; we are also responding to the direct testimony of the Staff Revenue Requirement Panel ("SRRP") relating to:

- Staff's proposal to adjust the Company's Rate Year forecast to include an additional adjustment for property tax savings;
- The disposition of future property tax reductions; and

- Staff's proposal to not establish a property tax reconciliation mechanism should rates be set for a single rate year in this proceeding.

UPDATE

Q. Please summarize the Company's property tax updates.

A. The Company has paid all property taxes in relation to the 2018 County and Town Taxes. We used this 2018 payment information in the property tax computation instead of the 2017 County & town taxes, which had been the latest known county and town tax at the time of the Company's initial filing. The 2018 tax payments serve as part of the jump off point for the 2019 Rate Year forecast. (*i.e.*, the twelve months ended December 31, 2019)

Q. Has there been a change in the forecast as it relates to the County and Town Taxes for the three year rate forecast?

A. Yes, overall the 2018 County and Town property taxes did not increase as per the original estimate. This was reflected in the forecast provided as part of the April Preliminary Update. The total electric for the 2018 County and Town taxes decreased $835,817 and the total gas decreased $420,614. These taxes were used as the jump off point for the 2019 Rate Year and therefore resulted in an overall decrease in the revised forecast.

Q. Have there been any change made in the overall escalation rate?

A. No, the overall escalation percentage has not changed. This rate will not change until the Company has experienced a complete property tax cycle for 2018. The 2018 Village taxes are not payable until June 2018 and the School taxes are not completely paid until October 2018.

REBUTTAL

<u>Staff’s Proposed Adjustment</u>

Q. Has Staff proposed any adjustments to your forecast of property taxes?

A. Yes, the SRRP proposed (p. 13) an increase in the amount of tax savings or tax reductions from amount in the historic test year to the Company's Rate Year forecast amount. This adjustment reduces the Rate Year forecast by $177,900 for electric and $19,800 for gas.

Q. Do you agree with this adjustment?

A. No, we do not. Staff erroneously relies on an estimated calculation that was made at the time the assessments in question were settled, rather than on the actual tax expenses incurred. The tax savings identified by Staff were estimates based on available information at the time of settlement. The settlements for Clarkstown, Orangetown and Ramapo are different than other settlements in that the future assessments are unknown and not stated in the settlement agreement. Instead, under the terms of the settlement the Company annually calculates the assessments based on its annual inventory, which is applied to an agreed upon methodology contained in the settlement agreement. These calculations are given to the towns to review and include on the towns' assessment rolls. As the Company explained in its response to Staff interrogatory

DPS Set 20, Question #502 (included in Staff Exhibit ___ (SRRP-3)), many components of the property tax assessment formula are subject to change annually, such as investment in infrastructure, construction costs indices along with equalization and tax rates. The tax saving amounts of $177,900 for electric and $19,800 for gas identified by Staff were estimates that were made with the best available data at the time in order to value the settlement. However, the Company's property tax expense for the historic test year (*i.e.*, the 12 months ended September 30, 2017) is based on ***actual*** expenses. Once again, the Company's response to Staff interrogatory DPS Set 20, Question #502, makes clear that the historic test year includes the actual savings for the Clarkstown, Orangetown and Ramapo settlements. The amounts that Staff refers to are estimates and therefore were not included in the forecast because the actuals were available.

<u>Disposition of Future Property Tax Reductions</u>

Q. The Staff Revenue Requirement Panel rejects the Company's proposed retention of 14% of future tax reductions resulting from property tax litigation settlements. Should the Commission accept Staff’s rejection of this proposal?

A. No. The Commission should accept the Company’s proposal, which is intended to permit such retention only when the future tax reductions are provided by the municipality in lieu of a cash refund or credit for past overcharges.

Q. Please explain why the Commission should accept the Company’s proposal.

A. Staff agrees that the Company’s retention of 14% of property tax refunds and/or credits is consistent with the Commission’s long-standing policy of allowing utilities to retain a percentage of tax refunds to encourage utilities to do their best to control property taxes by challenging property tax assessments. As explained by the Company’s Property Tax Panel, in order to achieve a settlement of a property tax assessment dispute, the Company must often accept a future assessment reduction in lieu of a cash refund or credit. Such a settlement is preferable to proceeding to litigation, the result of which is very uncertain, and is designed to provide customers with benefits reasonably equivalent to a cash refund or credit. To deny the Company the right to share in future tax reductions in such situations would be contrary to the long-standing Commission policy of encouraging utilities to challenge tax assessments that Staff itself acknowledges.

Q. What reason does Staff give for rejecting this proposal?

A. Staff says that the Company has filed several petitions in recent years requesting similar treatment of future property tax reductions and the Commission has rejected these requests.

Q. Is the Commission rationale in its order rejecting the petitions referenced by Staff a basis for denying the Company's proposal in this proceeding?

A. Not in our view.

Q. Please explain.

A. The order rejecting the Company's request stated "[t]here is no evidence that estimated future tax savings are the return of past overcharges or payments that were determined to have been in excess of the appropriate property tax liabilities of the Companies." Assuming for purposes of this testimony that the Commission reached the correct conclusion based on the evidence in that proceeding, the decision in that case turned on a question of fact. The Commission should not preclude the Company from sharing in other than cash refunds or credits prospectively where the Company can provide evidence that reasonably demonstrates that future reductions in assessments (or portions thereof) are in lieu of a cash refund or credit that would not have been achieved to that level absent the Company's decision to forgo litigation to pursue a cash refund or credit.

Q. Didn't the order also reject the Company's request because the Commission determined that O&R was not at risk for property tax variations under its current rate plans?

A. Yes it did. However, we disagree that this aspect of the Commission’s order in those cases should be determinative in this proceeding.

Q. Please explain why.

A. The Commission’s determination of a property tax reconciliation mechanism, whether full, partial or not at all, for a particular rate plan, and the resultant risk/reward to the Company and customers, should not serve to undercut Commission policy with respect to sharing of property tax refunds. That is, sharing in property tax refunds is a Commission policy independent of property tax reconciliation and the Commission has approved O&R sharing in property tax refunds where property taxes are fully reconciled, such as in O&R’s last electric and gas rate proceedings. What is at issue here is only whether certain future tax reductions should be considered the equivalent of property tax refunds.

Q. Is there another reason to reject Staff's position?

A. Yes there is. The Staff Revenue Requirement Panel is also recommending that there be no property tax reconciliation mechanism for O&R if this case results in a one-year rate plan. While we disagree with the Panel's position as to reconciliation, Staff cannot have it both ways. That is, there is no basis for relying on a Commission order that rejects sharing in future assessment reductions because the Company was not at risk for property tax variations and, at the same time, argue that property taxes should not be reconciled and that the Company should be a full risk for such variations.

For all of the foregoing reasons, the Commission should approve the Company's proposed sharing mechanism where the Company has the opportunity to provide evidence that reasonably demonstrates that future assessment reductions are in lieu of a cash refund or credit.

Property Tax Deferral

Q. The Staff Revenue Requirement Panel opposes the Company's request for a full and symmetrical property tax reconciliation mechanism for a one-year case. Do you agree with the reasons provided by Staff for rejecting this proposal?

A. No we do not.

Q. Please explain why.

A. First, while Staff is correct that the property tax forecast for a one-year rate period is less susceptible to variation than a property tax forecast for a multi-year rate period, property taxes represent a very material cost to the Company, the Company has limited ability to control these costs, and therefore any variation below the estimated amount would result in a windfall to the Company and a cost to customers that could otherwise be avoided and vice versa if it turns out that actual costs are above the estimated amount.

Second, while the result of a litigated proceeding is often referred to as a one-year case, these rates continue unless and until superseded by a new rate plan. If there is a material increase in property taxes for the year following the rate year for a one-year case, the absence of a property tax reconciliation mechanism could cause the Company to make a rate filing that may be otherwise avoidable. Third, the Commission should reject Staff's assertion that a reconciliation mechanism eliminates the Company's incentive to minimize costs. The Commission has clearly rejected such assertions through its repeated approval of multi-year rate plans that include full and symmetrical reconciliation mechanisms, including in O&R's last rate proceeding. If such a mechanism does not eliminate O&R's incentive to minimize costs over a multi-year period, it follows that such a mechanism does not eliminate O&R's incentive to minimize costs during a one-year period.

For these reasons, the Commission should adopt the Company's proposed reconciliation mechanism.

Q. Does this conclude your update and rebuttal testimony?

A. Yes, it does.