

Hon. Kathleen Burgess
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza Agency Building 3
Albany, NY 12223-1350

January 15, 2017

Re: Reply to Response to Petition for Rehearing

Case 17-M-0178 – Petition of Orange and Rockland Utilities, Inc. for Authorization of a Program Advancement Proposal

Dear Secretary Burgess:

ConEd engages in much misdirection by focusing mostly on one claim of many that I made in asserting that the meter has a separate billing mechanism. Even if we assume this is true (and this Commission should question whether this is in fact the case and vet this issue in a hearing as it has not been proven; the schematic diagram does not prove O&R's claims¹ which are not sworn to in an affidavit), ConEd ignores the fact that the charges themselves, which ipso facto cannot have gone through without the approval of this petition (there would be no opt-out fee levied absent the approval of O&R's petition in this case for a rollout; the opt-out fee only exists with the approval of the meters), should have triggered a public hearing before the petition was considered. I reiterate that 1,819 opt-outs would result in \$300,000 in charges (which would trigger a mandatory hearing per the law) and while smart meter charges may have been approved in a previous rate case, they were not permissioned to be rolled out further absent the approval of this petition.

ConEd cannot say this is a "speculative" claim and rely on the fact that fewer than that will opt-out to justify the failure to hold a public hearing before this petition was approved. There is a type of circular argument- if we deny that these charges will occur, we can justify not having had a public hearing as required by N.Y. DPS §66, 12(f). The overbilling issue inherent to the meters themselves will almost certainly add to the charges needs to be vetted, and these charges incontrovertibly were not allowed to go into effect by the Commission. ConEd's "Theory of Operation" Schematic also does not show that overbilling does not occur per the evidence I provided in the University of Twente report. The very question of what the various charges are must be vetted in a public hearing. There is more than a mere scintilla of likelihood that these charges will exist; in fact, it is more likely than not that they will.

The approval of this petition was a further overreach because ConEd has failed to properly demonstrate the results of its pilot study and that the various problems and FCC breaches that I documented have not occurred in Rockland County. Also, apparently, the fire and explosion risk I suggested was reported at the locus of O&R "smart" meters a mere few weeks after I petitioned for rehearing and two days after ConEd responded; apparently, my claim wasn't so "speculative" as ConEd had asserted on 12/27/17: <https://patch.com/new-york/newcity/smart-meter-installation-safety-issue-carlucci>.

¹ The "Theory of Operation" schematic diagram proffered by O&R in its response does not show how charges are calculated and doesn't show that O&R bills itself for the electricity separately.

Finally, O&R and ConEd are not the same entity even though one is a subsidiary. O&R should not be using ConEd findings and/or practices in Westchester to justify use in O&R territory, including so-called purchase synergies. However, it/they utilize this petition to approve costs to be amortized and collected from the ratepayer later. This is not a misunderstanding by me of how the process works as it/they assert. This is a violation of the law by them even if this has been an ongoing *modus operandi*, and it was an abuse of discretion for the DPS to permission more purchases for this scheme, which was not demonstrated to be safe, sustainable or even ultimately cost effective, and to allow these expanded purchases to be paid for at a future rate hearing.

O&R wrote in their initial petition:

In its 2015 Rate Order, the Commission approved \$23.7 million of the Company's original \$43.3 million projected cost for its proposed AMI system. Since then the scope and functionality of the Company's proposed AMI system has increased, mainly due to the Company's alignment with Con Edison's implementation of an AMI system.

This is an obvious admission that the scope of the project has increased past what it was initially acknowledged to be at a previous rate hearing and that O&R is trying to use this petition to amortize the costs of this increased scope. This should be the subject of a rate hearing and not part of this petition. The charges and services for this expanded scope were not pre-approved by the Commission in a prior rate hearing; they were not "allowed to go into effect by the commission or made by the utility pursuant to an order of the commission after hearings held upon notice to the public".

In conclusion, I reiterate my request to the DPS to vacate its decision, advertise and then hold a public hearing per the law before deciding O&R's petition.

Respectfully yours,



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