STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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Proceeding on Motion of the Commission
as to the Rates, Charges, Rules and Regulations
of Orange and Rockland Utilities, Inc.
For Electric Services

Case 07-E-0949

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STATEMENT OF THE COUNTY OF ROCKLAND IN OPPOSITION TO THE JOINT PROPOSAL

Gilberti Stinziano Heintz & Smith, P.C.
555 East Genesee Street
Syracuse, New York 13202
Tel: (315) 442-0100
Email: jklucsik@gilbertilaw.com
John F. Klucsik, Esq.
Of Counsel

Patricia Zugibe, Esq.
County Attorney
County of Rockland
Allison-Parris County Office Building
11 New Hempstead Road
New City, New York 10956

Dated: April 30, 2008

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I. INTRODUCTION

The County Attorney, County of Rockland ("Rockland County" or the "County") hereby submits her statement in opposition to the Joint Proposal filed by the New York State Department of Public Service Staff ("DPS" or "the "Staff") on April 18, 2008. The Joint Proposal was signed by Orange and Rockland Utilities, Inc. ("O&R" or the "Company") and other parties to this proceeding. It proposes a three-year rate plan that will increase customer rates on average 2.5 percent in each of the three rate years. The rate design of the Joint Proposal provides for larger rate increases for certain residential and municipal service classifications; provides for recovery to the Company of certain energy conservation program costs; and, establishes a Revenue Decoupling Mechanism ("RDM") that reduces fluctuations in Company delivery revenues.

The Joint Proposal represents an improvement from the Company's August 10, 2007 filing, but its recovery of deferred costs comes after 15 years of Company quiescence, and at a

time when residential and municipal customers can least afford the steady and significant increases in electric rates embodied in the Joint Proposal.

II. BACKGROUND

On March 1, 2007, the Commission issued, in Case 06-E-1433, an Order Making Temporary Rates Subject to Refund, pending the determination of permanent electric rates for the Company. The temporary rate order approved the extension of rates at their then current levels.

On October 18, 2007, the Commission issued, in the same case, an Order setting permanent rates and reconciling certain overpayments during the temporary rate period.[1] The permanent rate order essentially confirmed and extended the rates allowed in the March 1, 2007 temporary rate order. The October 18, 2007 permanent rate order also determined that ratepayers had overpaid during the temporary rate period and directed that the overpayments be applied to deferred balances due for pensions and other post employment benefit (OPEB) expenses.[2] As a result, customer overpayments were applied to pension expenses not previously included for recovery in the Company's base rates.

III. RATE INCREASES

On August 10, 2007, the Company filed its proposal to permanently increase charges to customers under tariff rates in its Schedule for Electric Service, P.S.C. No. 2 - Electricity. In its initial filing, the Company sought, for the rate year ending June 30, 2009, an increase in revenue

[1] Case 06-E-1433 and Case 06-E-1547, Orange and Rockland Utilities, Inc. - Rates Order Setting Permanent Rates, Reconciling Overpayments During Temporary Rate Period and Establishing Disposition of Property Tax Refunds, October 18, 2007.
[2] *Id.*, at 2.

requirement of 7.8% or approximately $47.8 million.[3] As it made that August 10, 2007 filing, the Company noted that it would be the first increase in electric distribution base rates since 1993.

This is a point not lost on the County, and influences the County's position on the Joint Proposal. Customers are never enthusiastic about increasing costs. However, sustained and gradual cost increases in times of economic vitality are more tolerable than large cost increases when other prices are increasing dramatically.

When the economy was strong, the Company deferred arguably recoverable costs. Its customers, the rate payers, enjoyed a period without rate increases that are now argued to be necessary to ensure an electric infrastructure that can accommodate economic growth and new home construction, service business relocation to the Company's service territory, and attract short and long term capital at reasonable rates.

Life in Rockland County was good during the years since the Company's last base rate increase in 1993. Between 1997 and 2002, per capita income in Rockland County rose 17.3%.[4] Average annual household expenditures as a percentage of after tax income steadily declined from 92.3% in 1993, to 79.6% in 2006.[5]

Unfortunately, national trends eventually began to impact Rockland County. Retail prices in the greater New York area, which includes Rockland County, in March 2008, saw their largest increase since April 2006, reflecting higher prices for housing, transportation, apparel, food and beverages. Grocery store prices showed their largest increase in 14 months. Compared

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[3] Correspondence, Robert N. Hoglund, Consolidated Edison, Inc. to Jaclyn A. Brilling, State of New York Public Service Commission, August 10, 2007, at 2.
[4] Http://www.epodunk.com.
[5] Based on data from the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Expenditure Surveys 1993-2006, http://www.bls.gov/cex/home.htm.

with a year earlier, food and beverage costs were up 5 percent. Household energy costs were up 8.4 percent. Regular unleaded gasoline was up 24 percent.[6] In 2007 and 2008, evictions and foreclosures increased dramatically from previous levels.[7]

The Company's move to now recover deferred costs comes at a time when County residents, the towns and villages and the County itself, can least afford the "catch up" suggested by the Joint Proposal. This reality moves the County to oppose the Joint Proposal. Its three-year rate plan is a better proposal than the Company's initial single rate year filing. The three-year rate plan negotiated by the Staff and the Company is a better one than the Company's initial three-year plan. Yet, the Joint Proposal represents three years of difficult rate increases in difficult times. They follow a period when recovery of costs would have been easier.

The Joint Proposal does suggest rate increases less than those originally requested. The County supports those aspects of the Joint Proposal that prevent even greater rate increases. Unfortunately, they are not enough.

IV. ENVIRONMENTAL REMEDIATION

The Joint Proposal treats costs associated with remediation of the Company's seven former manufactured gas plant ("MGP") sites better than in the Company's initial filing, but still not good enough. Pursuant to Consent Orders entered into with the New York State Department of Environmental Conservation ("NYSDEC"), the Company has been investigating and remediating contamination at these sites. Through December 31, 2009, the Company either incurred or estimated it would incur $52.3 million in remediation costs out of an estimated total

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[6] U.S. Bureau of Labor Statistics, New York-New Jersey Information Office, News, http://www.bls.gov/ro2/cpinynj.htm

[7] Personal Communication, Kenneth Destefano, Esq., Chief Assistant County Attorney, County of Rockland, April 24, 2008.

liability of $63.5 million for remediation. The Company Electric Department's share of estimated costs from July 1, 2007 through December 31, 2009 would be approximately $19.3 million, excluding carrying charges.[8]

The Company originally proposed to amortize these remediation costs over a three-year period. The Joint Proposal reflects an extension of this amortization period to five years.[9] The Company has advised that the two-year extension of the remediation cost amortization schedule represents an approximate $3 million reduction in costs the Company must recover from ratepayers now. The County believes that the value of a remediated site will be realized over the period of time the Company owns the remediated site. As a result, the County believes a longer amortization period for recovery of remediation costs would be appropriate.

Nonetheless, the extension of the amortization schedule from 3 to 5 years is an improvement, and the County believes that a significantly different schedule would not result if the issue were litigated. In addition, the County recognizes that deferral of recovery comes with the cost of carrying the deferred charges and those carrying costs ultimately must also be paid. The Joint Proposal also provides for oversight of these significant remediation costs and a protection for ratepayers against their unchecked escalation.

The Joint Proposal requires the Company to file an MGP status report outlining the projected expenditures at each MGP site that are reflected in the revenue requirement for each Rate Year of the three-year rate plan. It also requires a report on remediation expenditures during the previous year. If the level of actual expenditures for site investigation and

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[8] Case 07-E-0949 - Orange and Rockland Utilities, Inc. - Rates, Direct Testimony of Richard A. Kane, August 10,2007 at 35-36.

[9] Case 07-E-0949 - Orange and Rockland Utilities, Inc. - Rates, for Electric Service, Supplemental Testimony of Richard A. Kane, April 24, 2008 at 4.

remediation allocated to electric operations varies in any Rate Year from the levels provided in the rates, then the variation will be deferred and recovered from or credited to customers.[10] That recovery or credit will be subject to Commission review.

The County supports the provisions for oversight regarding MGP site investigation and remediation costs and supports the extension of the amortization schedule for such costs. However, the County would go further in extending the amortization schedule to more closely parallel the period over which the benefits of site remediation will be realized.

V. RATE DESIGN AND SERVICE CLASS IMPACTS

Just as individuals are ratepayers faced with increases in the cost of their delivered electricity, so too are municipalities. The towns and villages and the County itself are ratepayers facing difficult times.

For 2008, the County faces inescapable increases in non-discretionary costs. These include an increase in state and federally mandated programs, the rising cost of employee health insurance, and an increase in the local share of sales tax revenue to towns and villages with police departments. Sales tax and mortgage tax revenues have decreased, following the national trend in declining home sales.[11]

In its August 10, 2007 initial filing, the Company proposed an increase of more than 21% in the Rate Year ending June 30, 2009 for the municipal lighting service classification (SC4). This is the service that keeps the street lights on. The Company also proposed an increase of

[10] Joint Proposal at 25-26.
[11] County of Rockland Budget & Finance Department, Statement of C. Scott Vanderhoef, County Executive to the Rockland County Legislature, October 23, 2007, http://www.co.rockland.ny.us/Budget/Budget/ce-message.php.

more than 17% for service classification SC5. This is the service that makes traffic signals light up.[12]

The Commission has often expressed its sensitivity to sudden and significant rate increases that induce "rate shock" in consumers.[13] While the Commission's attention to the potential for "rate shock" is most typically articulated with respect to private sector ratepayers, municipalities are ratepayers too. At some point, even municipalities are susceptible to rate shock.[14]

The County has pursued and the Joint Proposal addresses this issue by moderating the percent change in the first rate year for these service classifications. The Joint Proposal provides for a 6.85% increase in street lighting service classification SC4.[15] It provides for a 5.58% increase in the traffic signal service classification SC5.[16]

The County supports the moderation of increases in rates for these service classifications, recognizing that a phase-in of increases over the proposed three-year rate plan will allow municipalities to better predict and plan for these expenses and to address these increases in their annual budget process.

VI. ENERGY CONSERVATION

The confluence of heightened environmental sensitivity, constraints on fuel supplies and resulting increases in energy prices all commend the goal of greater energy efficiency. The Joint

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[12] Correspondence Robert N. Hoglund, Consolidated Edison, to Jaclyn A. Brilling, State of New York Public Service Commission, August 10, 2007, Appendix B.
[13] See, for example, Case 05-G-1494, Order Establishing Rates and Terms of Three Year Rate Plan, Orange and Rockland Utilities, Inc. - Gas Rates, October 20, 2006, at 31-32.
[14] Case 07-E-0949, Orange and Rockland Utilities, Inc. - Rates, Testimony of William A. Atzl, Jr. on Cross Examination, February 5, 2008, Transcript at 54-56.
[15] A similar reduction is proposed for private area lighting, Service Classification SC16, from the initial proposed increase of 18.41% to an increase of 5.77% in the Joint Proposal.
[16] Joint Proposal, Appendix C, at 1.

Proposal furthers this goal with a recognition that its achievement will depend on details to be worked out elsewhere. The Joint Proposal provides that, pursuant to Commission Order in Case 06-E-1433, the Company will submit an Energy Efficiency Plan based on the results of a Market Potential Study now underway. The details and implementation of the Energy Efficiency Plan will be shaped by yet another Commission proceeding - the Energy Efficiency Portfolio Standard Proceeding, Case 07-M-0548, also now underway.

Concurrent with the Rate Year 1 delivery rate changes, the Joint Proposal would have the Company begin collection, via surcharge, of $4 million per year to begin funding the Energy Efficiency Plan.

The County supports the Joint Proposal's nod toward an Energy Efficiency Plan. Energy conservation makes sense from an environmental perspective, a resource utilization perspective and from an economic perspective. While the details of the Energy Efficiency Plan are not addressed by the Joint Proposal nor indeed in this case, the County looks forward to an Energy Efficiency Plan based on a realistic appraisal of likely costs and benefits.

Central to this appraisal is the evaluation of electric efficiency potential by service class. In its September 6, 2007 Energy Efficiency Plan submission, the Company estimated that a fully developed energy efficiency and demand response plan would likely require $10 to $15 million per year.[17] Clearly, fuel to produce the energy we need is in short supply, available only at rapidly increasing cost. The facilities to generate the energy we need are similarly in short supply. But so too are both ratepayer dollars and tax dollars. As a result, dollars spent on energy efficiency and conservation measures must be directed toward the service classes that hold the

[17] Case 06-E-1433, Orange and Rockland Utilities, Inc. - Electric Rates - Phase II, Orange and Rockland Utilities, Inc. Energy Efficiency Plan, September 6, 2007 at 6.

greatest potential for actual reduction in demand, through means that demonstrate the best cost/benefit return. Simply put, we cannot afford to spend ratepayer or taxpayer dollars on efforts that make us collectively "feel good" about energy conservation, but that have little demonstrable effect on energy demand. As a result, the County is cautiously supportive of the Joint Proposal's provision for funding the Company's Energy Efficiency Plan, pending review of the details of that Plan.

VII. REVENUE DECOUPLING MECHANISM

Inextricably linked to energy efficiency, energy conservation and demand side management is revenue decoupling.

On April 20, 2007, the Commission issued a requirement that utilities develop proposals for a Revenue Decoupling Mechanism ("RDM").[18] The Commission concluded that properly designed RDMs are needed to address disincentives to energy efficiency programs. The Company has observed that an RDM is much more than simply a reconciliation of actual revenues to forecasted revenues. An RDM should establish meaningful performance based incentives to focus utility resources on achieving the benefits of an energy efficiency program while aligning investor and consumer interests.[19]

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[18] Case 03-E-0640 - Potential Electric Delivery Rate Disincentives Against the Promotion of Energy Efficiency, Renewable Technologies and Distributed Generation, and Case 06-G-0746 - Potential Gas Delivery Rate Disincentives Against the promotion of Energy Efficiency Renewable Technologies and Distributed Generation, Order Requiring Proposals for Revenue Decoupling Mechanisms (issued and effective April 20, 2007) ("RDM Order").

[19] Case 06-E-1433 - Orange and Rockland Utilities, Inc. - Rates, Orange and Rockland Utilities, Inc. Revenue Decoupling Mechanism Proposal, September 6, 2007, at 1 ("O&R RDM Proposal").

Inherent in a successful energy efficiency/conservation program is the elimination of revenue associated with increased sales and therewith a reduction in the utility's ability to offset increased costs.[20]

At the heart of an RDM, is the need to break the link between utility sales and revenues and thereby remove utility opposition to the promotion and implementation of energy efficiency programs.[21] An RDM does so by eliminating the revenue reduction that would otherwise result from reduced sales that in turn result from energy conservation. So, a RDM reduces the risk of revenue fluctuation caused by energy conservation.

The Joint Proposal includes a Revenue Decoupling Mechanism. It would set a monthly delivery revenue target for each service classification and would compare actual delivery revenue to the target on a monthly basis. If the monthly actual delivery revenue is less than the delivery revenue target, then the delivery revenue shortfall will be accrued for recovery from customers at the end of the Rate Year. This would be accomplished through a service classification specific RDM adjustment applicable during the subsequent year. If the monthly actual delivery revenue is more than the delivery revenue target, then the delivery revenue excess will be accrued for refund to the service class customers at the end of the Rate Year.[22]

In this way, the Joint Proposal's RDM provision does a fine job of reducing potential revenue fluctuations attributable to variations in delivery revenue - and that is a double-edged sword. The Company is protected against downside delivery revenue variation by the RDM revenue recovery mechanism. On the other hand, the Company is precluded from the benefit of

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[20] O&R RDM Proposal at 4.
[21] RDM Order at 6-8.
[22] Joint Proposal, Appendix E at 1-3.

increased delivery revenue by the RDM refund mechanism. What should be a stabilizing influence on delivery revenue should be a benefit to the Company, its shareholders, its sources of capital and ultimately, its customers.

The problem with the Joint Proposal RDM is that it has no connection to energy efficiency or conservation. It protects the Company against decreased delivery revenues regardless of whether that decrease is caused by customers' energy conscious management of their air conditioners or by a cooler than expected summer. In so doing, it fails to be anything more than simply a reconciliation of actual revenues to forecasted revenues.[23]

There is no obvious connection to the energy efficiency plan, no clearly defined measurement metric nor meaningful, performance based incentive to focus utility resources on achieving the benefits of an energy efficiency program.[24]

While smoothing out the ups and downs of delivery revenue fluctuation may have an overall salutary effect, it should not be confused with a program that promotes cost effective energy conservation[25] or speaks to delivery rate disincentives to the promotion of energy efficiency.[26]

VIII. CONCLUSION

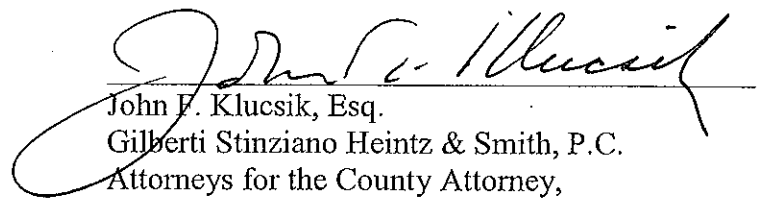
Although the Joint Proposal represents an improvement from the Company's initial filing, and the County supports certain of its provisions, the Joint Proposal for the reasons stated

[23] See O&R RDM Proposal at 1.
[24] Id.
[25] RDM Order at 1.
[26] RDM Order at 2.

above does not strike an appropriate balance among the protection of ratepayers, fairness to investors and the long term viability of the utility[27] and should be rejected.

Dated: April 30, 2008

Respectfully submitted,



John F. Klucsik, Esq.
Gilberti Stinziano Heintz & Smith, P.C.
Attorneys for the County Attorney,
County of Rockland

Gilberti Stinziano Heintz & Smith, P.C.
555 East Genesee Street
Syracuse, New York 13202
Tel: (315) 442-0100
Email: jklucsik@gilbertilaw.com
John F. Klucsik, Esq.
Of Counsel

Patricia Zugibe, Esq.
County Attorney
County of Rockland
Allison-Parris County Office Building
11 New Hempstead Road
New City, New York 10956

[27] Cases 90-M-0255 and 92-M-0138, Settlement Procedures and Guidelines, Opinion No. 92-2, March 19, 1992, Appendix B, at 8.