David A. Paterson
Governor

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
CONSUMER PROTECTION BOARD

Mindy A. Bockstein
Chairperson and Executive Director

April 30, 2008

Honorable Jaclyn Brilling
Secretary
NYS Department of Public Service
Three Empire State Plaza
Albany, New York 12223

Re: Case 07-E-0949 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service.

Dear Secretary Brilling:

On April 18, 2008, Orange and Rockland Utilities, Inc. ("Orange and Rockland" or "the Company"), Staff of the New York State Department of Public Service ("DPS Staff") and other parties submitted a Joint Proposal ("Joint Proposal") for consideration by the New York State Public Service Commission ("PSC" or "Commission"). The Joint Proposal would resolve contested matters in this proceeding. Although the New York State Consumer Protection Board ("CPB") is not a signatory of the Joint Proposal, we submit this statement to highlight some of its pro-consumer provisions.

Procedural History

On August 10, 2007, Orange and Rockland proposed to increase its electric delivery rates by $47.8 million for the twelve-month period ending June 30, 2009. Proposals addressing other regulatory issues such as infrastructure spending and retail competition were also included in the Company's filing.

On December 19, 2007, DPS Staff filed testimony opposing various aspects of the Company's filing and demonstrating that the Company had overstated its need for additional revenues. Following the submission of rebuttal testimony, evidentiary hearings were held in early February 2008. The CPB participated in those hearings by cross examining witnesses for the Company and DPS Staff on issues including transmission and distribution capital expenditures, site investigation and remediation costs ("SIR") costs and retail competition.

Settlement conferences took place in February, March and April of 2008. The CPB participated actively in those settlement discussions, focusing on topics we addressed in cross examination, as well as certain revenue requirement issues. The Joint Proposal reflects several of our recommendations.

Analysis

The Joint Proposal would establish a rate plan for Orange and Rockland's electric operations for a three-year period from July 1, 2008 to June 30, 2011. Overall, it contains several provisions that would benefit O&R ratepayers.

I. Rate Issues

Orange and Rockland originally proposed to increase its annual revenue by $47.8 million. It is likely that litigation would have resulted in a large rate increase effective July 1, 2008. However, under the Joint Proposal, rates would increase by $15.6 million in each of the first two years, and $5.7 million in the third year.[1] This represents a sharp reduction in the initial request. Further, the Joint proposal would avoid a large rate increase in the first year by implementing a moderate, levelized rate increase over three years, an outcome that is preferable for customers. Moreover, through use of a temporary surcharge in the third year, the Joint Proposal would help ensure that rate levels at the end of the three-year rate plan, are not excessive.

The Joint Proposal calls for the Company's return on equity to be set at 9.4% for three years. This is reasonable in comparison with recent PSC decisions concerning both one-year litigated rate cases and multi-year negotiated agreements. In its most recent rate decision, concerning a litigated rate case for the electric operations of Consolidated Edison Corporation of New York, Inc., for example, the Commission granted that utility a 9.1% return on equity for one year.[2] The 300 basis points difference between that result and the rate of return implicit in the Joint Proposal, is attributable to a three-year stayout premium, which the PSC has routinely approved in recognition of the higher cost of money and business risk that utilities may face in a multiyear period. In its most recent decision regarding a multiyear negotiated agreement, the Commission approved a rate plan for Con Edison's gas operations

1 In addition to a one-time surcharge of $9.9 million.

2 Case 07-E-0523, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, Order Establishing Rates for Electric Service, March 25, 2008, p. 126.

which was based on a 9.7% return on equity,[3] further demonstrating the reasonableness of the 9.4% equity return in the Joint Proposal.

II. Executive Compensation

Ratepayers should not fund the costs of incentive compensation programs for utility officers. The Joint Proposal recognizes this important principle, by excluding from the Company's revenue requirement, the costs of Orange and Rockland's Restricted Stock Program.[4] The agreement also ensures that ratepayers do not indirectly fund this program, since it requires that these costs be excluded from the calculation of the Company's earnings for the purposes of determining whether Orange and Rockland has exceeded the threshold for sharing earnings with ratepayers.[5]

III. Transmission and Distribution Infrastructure Spending

Orange and Rockland spent $54.2 million on transmission and distribution infrastructure projects in 2007[6] and anticipates spending $84 million in the year beginning July 1, 2008,[7] an increase of 55%. In this and other proceedings, the CPB has expressed concern regarding the oversight of utilities' infrastructure planning and expenditures, particularly in the absence of independent audits of utility operations.[8] Although the Public Service Law requires the PSC to perform, at least every five years, an audit including "an investigation of the company's construction program planning in relation to the needs of its customers for reliable service,"[9] no such audit has been performed of Orange and Rockland in at least 15 years.

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[3] Case 06-G-1332, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service, Order Adopting in Part the Terms and Conditions of the Parties' Joint Proposal, September 25, 2007, p. 5.

[4] TR 381.

[5] Joint Proposal, Section III.11.

[6] Exhibit 4.

[7] TR 183.

[8] E.g., Case 07-E-0523, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, Initial Brief of the Consumer Protection Board, November 30, 2007, p. 7.

[9] Public Service Law §66(19).

The Joint Proposal contains an important provision to help facilitate oversight and monitoring of Orange and Rockland's transmission and distribution infrastructure spending. In particular, it states:

> The Company will provide Staff and other interested parties with detailed quarterly and annual reports on electric transmission and distribution related capital expenditures. These reports will be in the form set forth in Appendix H.[10]

Although not obviating the need for an independent audit, this new reporting requirement is in the public interest. The utility will provide information in an open and transparent fashion, to permit regulators, representatives of customers and other interested parties, to better monitor the Company's actual and projected capital spending, and rapidly identify issues requiring attention. These reports will provide information that can be used to help ensure that the Company's infrastructure spending keeps pace with the needs of ratepayers. They are an important first step in determining that the costs of those utility efforts are reasonable and efficient. This is a significant improvement over current practice and a benefit of the Joint Proposal.

IV. Site Investigation and Remediation Expenses

Currently, the Company's rates do not include recovery of any SIR costs.[11] The record shows that through June 30, 2007, its electric operations have incurred over $20 million of these costs, and are projected to be responsible for an additional $18.8 million through June 2009.[12] Overall, Orange and Rockland has estimated a total liability of $63.5 million to address all of its manufactured gas plant sites.[13]

The magnitude of these costs, and the substantial upward pressure they will place on the Company's future delivery rates, raises important questions about whether the Company's management and execution of its SIR program, and the PSC's oversight, is adequate. Cross examination by the CPB revealed that DPS Staff reviewed overall SIR expenditures for the purpose of obtaining a representative number to be included in rate levels, but did not conduct a review of the reasonableness of the

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10 Joint Proposal, Section III.12.A.

11 TR 290.

12 TR 290 – 1.

13 TR 283.

Company's SIR bidding process, management practices and efforts to operate a cost-effective SIR program.[14]

The Joint Proposal would help address this concern, by requiring Orange and Rockland to file reports containing information that heretofore had not been available to the parties. The relevant language in the proposed Joint Proposal is:

> Within 90 days of the date of the Commission's order adopting the terms of the Proposal, the Company will file a report that will (a) describe the status of each MGP site as of July 1, 2008, (b) outline the projected expenditures at each MGP site that are reflected in the revenue requirement for [each rate year], (c) summarize the investigation and/or remediation activities to be conducted at each MGP site during the following calendar year (i.e., 2009).
>
> By no later than March 31 after the end of each calendar year covered by the Electric Rate Plan, the Company will provide Staff and other interested parties with a report regarding SIR expenditures during the previous calendar year ("SIR Report"). The SIR Report will (a) describe the investigation and remediation activities, and itemize the actual expenses recorded, that occurred at each MGP site during the previous calendar year, and (b) summarize the investigation and/or remediation activities to be conducted at each MGP site during the following calendar year. After the filing of the SIR Report, the Company will respond to interested parties' reasonable questions regarding the SIR Report, as well as the bidding processes and management practices relating to the Company's investigation and remediation activities.[15]

These reports will provide information to help facilitate a review of the Company's SIR program. It is a necessary and important first step to ensure that the program operates in a cost-effective manner. Given the extraordinary magnitude and growth in projected SIR expenditures, this is an important benefit for consumers.

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14 Id.

15 Joint Proposal, Section III.12.B.

V. Retail Competition

For approximately a decade, Orange and Rockland has operated an "ESCO Referral Program," currently known as "PowerSwitch," under which it informs customers of the opportunity to obtain their energy commodity service from an ESCO, and enrolls interested customers in a program that guarantees a seven percent discount from the utility's commodity price for a two-month period. Following or during that introductory period, the customer may return to utility service, or reach an agreement on terms for continued service from an ESCO. The record suggests that this program has run its course and that if the initiative is to continue, several changes are required. Participation levels have declined markedly in recent years, from 9953 participants in 2003 to only 423 in 2007,[16] suggesting that PowerSwitch is no longer necessary. The record also shows that ratepayers fund the costs of PowerSwitch,[17] a practice that should be changed to ensure that the beneficiaries – ESCOs – fund the program. The program also assigns customers randomly to ESCOs, thereby rewarding ESCOs who do not conduct their own marketing and failing to ensure that customers are well-informed.

The CPB expects the PSC to address ESCO referral programs in a generic fashion, in the near future, as part of its resolution of several cases involving retail competition.[18] The Joint Proposal contains a provision that would apply any changes to these programs ordered by the PSC, to PowerSwitch, pursuant to the following language:

> The results of any Commission order regarding the status, structure, operation or rules concerning ESCO referral programs, as applicable, will be applied prospectively to the Company's PowerSwitch program...

The Joint Proposal thereby recognizes that the PowerSwitch program should not be modified in this case, since the matter is being considered generically by the PSC. It ensures, however, that this three-year rate plan is not a barrier to changing the program in the future, if the Commission finds that changes are warranted.

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[16] Exhibit 57. Enrollments in 2007 represent a 96% reduction from levels in 2003.

[17] TR 498.

[18] These include Case 07-M-0458, Proceeding on Motion of the Commission to Review Policies and Practices Intended to Foster the Development of Competitive Retail Energy Markets; Case 98-M-1343, In the Matter of Retail Access Business Rules; and Case 07-M-1514, Petition of the New York State Consumer Protection Board and the New York City Department of Consumer Affairs Regarding the Marketing Practices of Energy Service Companies.

CONCLUSION

The Consumer Protection Board, while not a signatory of the Joint Proposal in this proceeding, encourages the Public Service Commission to consider the consumer benefits that would result from this proposal, including those identified herein.

Respectfully submitted,

Mindy A. Bockstein

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