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.

CASE 18-E-0414 – Petition of Orange and Rockland Utilities, Inc. for Authorization to Defer Incremental Pre-Staging and Mobilization Costs Associated with Winter Storm Toby.

CASE 14-E-0493 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service.

CASE 14-G-0494 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Gas Service.

ORDER ADOPTING TERMS OF JOINT PROPOSAL AND ESTABLISHING ELECTRIC AND GAS RATE PLANS

Issued and Effective: March 14, 2019

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PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 14, 2019

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman, concurring
James S. Alesi

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(Issued and Effective March 14, 2019)

BY THE COMMISSION:

INTRODUCTION

This Order adopts with limited exceptions the terms set forth in the attached Joint Proposal, which was filed on November 9, 2018 and was admitted into the record along with supporting exhibits at the December 18, 2018 evidentiary hearing in these rate proceedings.[1] Signatories to the Joint Proposal include Orange and Rockland Utilities, Inc. (O&R or the Company), Department of Public Service trial staff (Staff), the New York Power Authority (NYPA), the New York Department of State, Consumer Protection Division, Utility Intervention Unit (UIU),[2] the Pace Energy and Climate Center (Pace),[3] the Environmental Defense Fund (EDF), the Public Utility Law Project of New York, Inc. (PULP),[4] the Towns of Clarkstown, Haverstraw, Orangetown, Ramapo and Stony Point, and the Rockland County Solid Waste Management Authority (Municipal Coalition), the New York Geothermal Energy Organization (NY Geothermal), Bob Wyman, and Great Eastern Energy, LLC, (Great Eastern) (collectively referred to as the Signatories). Only certain intervenors filed opposition to the Joint Proposal, namely, Deborah Kopald and Protect Orange County.

This Order establishes three-year electric and gas rate plans in effect from January 1, 2019 to December 31, 2021

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[1] The Joint Proposal is appended to this Order as Attachment A.

[2] UIU is a signatory only to the gas rate plan portion of the Joint Proposal.

[3] Pace is a signatory to the Joint Proposal except for Section B (Rates and Revenue Levels).

[4] PULP is a signatory as to the gas rate plan portion of the Joint Proposal and supports only Sections J (Customer Service) and K (Low Income Assistance Programs) of the electric rate plan portion.

(the Rate Plans), including rates, accounting matters, programmatic initiatives, and other provisions governing O&R's electric and gas service.[5]

PROCEDURAL HISTORY

On January 26, 2018, O&R initiated these proceedings by filing tariff amendments pursuant to Public Service Law (PSL) § 66(12) proposing increases in electric and gas delivery rates and charges.[6] Under O&R's proposed tariffs, the Company sought a $20.3 million increase to existing annual electric delivery revenues, reflecting approximately a 6.7 percent increase in delivery revenues and a 2.3 percent increase in total revenues, and a $4.5 million increase to existing annual gas delivery, reflecting approximately a 2.8 percent increase in delivery revenues and a 1.5 percent increase in total revenues.

On April 13, 2018, O&R filed a Preliminary Update modifying the proposed tariff amendments and sought instead a $22.5 million increase to existing annual electric delivery revenues (approximately a $2.2 million increase from the initial tariff filing) and a $2.7 million increase to existing annual gas delivery (approximately a $1.8 million decrease to the initial tariff filing).

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[5] Joint Proposal, p. 2.

[6] O&R is currently operating under plans establishing electric rates for a two-year period effective November 1, 2015 through October 31, 2017, and gas rates for a three-year period effective November 1, 2015 through October 31, 2018. Cases 14-E-0493 and 14-G-0494, Proceeding as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc.- Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans (issued October 15, 2015) (2015 Rate Order).

On February 5, 2018, the Secretary issued a Notice of Suspension of the Effective Date of O&R’s rate changes through June 24, 2018 and initiated these proceedings to examine the propriety of the rates, charges, rules and regulations contained in O&R’s proposed tariff amendments.

On March 22, 2018, the ALJs issued a procedural ruling establishing the schedule for these proceedings. On May 9, 2018, the ALJs issued a ruling modifying the procedural schedule and set a July 16, 2018 evidentiary hearing date. At the request of the parties and in furtherance of settlement negotiations, on August 24, 2018, the ALJs again issued a ruling modifying the procedural schedule.

On May 25 and 26, 2018, numerous parties, including the Signatories to the Joint Proposal as well as Alliance for a Green Economy NY (AGREE), Nobody Leaves Mid-Hudson (NLMH), Grassroots Environmental Education (Grassroots), and Deborah Kopald, filed direct testimony and exhibits in response to O&R’s filings.[7] In its testimony, Staff recommended a revenue increase of $10.6 million for electric and a decrease of $6.7 million for gas.

On June 12, 2018, the Secretary issued a Notice of Further Suspension of the Effective Date of O&R’s rate changes until December 24, 2018.

On June 12, 2018, O&R submitted a notice of pending settlement negotiations pursuant to 16 NYCRR § 3.9. In furtherance of settlement negotiations, by letters dated June 29, July 31 and August 22, 2018, O&R agreed to a total of three one-month extensions to the suspension period, subject to being

[7] Some parties to this proceeding elected not to file testimony. On June 8, 2018, Staff filed corrections to certain testimony and/or exhibits.

made whole and thereby recovering any revenue under-collections or refunding any over-collections resulting from the extensions. The Commission issued Orders Approving Extension of Maximum Suspension Period of Major Rate Filings on December 14, 2018 and January 17, 2019, the latter of which extended the suspension period until March 25, 2019.

On June 15, 2018, O&R filed rebuttal testimony and further updated its filings. The Company again raised its proposed increase in electric revenues to $30.4 million, but decreased its proposed gas revenues by $0.5 million. Also on June 15, 2018, Staff, Pace, the Municipal Coalition, and Grassroots filed rebuttal testimony. After the deadline for filing rebuttal testimony, two parties, Pace and Ms. Kopald attempted to file - and then requested leave to file - supplemental testimony. Leave was denied in a September 21, 2018 ruling issued by the ALJs.

Settlement negotiations among the parties began during the week of June 20, 2018 and continued from June through October 2018, culminating in the filing of the Joint Proposal on November 9, 2018.[8] The Joint Proposal resolved the issues presented in these rate proceedings as well as certain

[8] On August 23, 2018, the parties sought the involvement of an administrative law judge to oversee settlement negotiations. Thereafter, Judge Sean Mullany, who was not assigned to preside over these proceedings, was appointed to oversee negotiations. During the months of negotiations, the parties kept the presiding judges and Judge Mullany apprised of the status and progress of negotiations and repeatedly requested adjournments of the evidentiary hearing date to allow for continued negotiations. On August 29, 2018, O&R notified the ALJs that the parties had reached an agreement in principle. Thereafter, the parties were engaged in memorializing the agreement into a Joint Proposal.

outstanding issues under the 2015 Rate Order[9] and O&R's pending petition to defer storm costs.[10]

The ALJs thereafter requested input from the parties regarding a proposed procedural schedule for an evidentiary hearing to address the Joint Proposal and for submission of statements in support or in opposition. After giving all parties an opportunity to be heard on a proposed schedule, on November 13, 2018, the ALJs issued a ruling and set the evidentiary hearing for December 18, 2018, and required submission of exhibits by November 16, 2018, statements in support or opposition by November 21, 2018, and reply statements by December 5, 2018.

O&R, Staff, NYPA, UIU, EDF, Pace, PULP, Bob Wyman, and the Municipal Coalition timely filed statements in support of the Joint Proposal.[11] Reply statements in support were filed by O&R and Staff on December 5, 2018.[12] Ms. Kopald, Protect Orange

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[9] 2015 Rate Order, supra n. 6.

[10] Case 18-M-0414, Petition of Orange and Rockland Utilities, Inc. for Authorization to Defer Incremental Pre-Staging and Mobilization Costs Associated with Winter Storm Toby.

[11] On November 21, 2018, Ms. Kopald requested an extension to file her statement in opposition to the Joint Proposal and on November 23, 2018, Protect Orange County requested the same relief. On November 26, 2018 the ALJs denied the extension.

[12] Although Ms. Kopald missed the deadline for filing a statement in opposition to the Joint Proposal, she and Protect Orange County and Pramilla Malick timely filed a "reply" statement. O&R moved to strike the reply because it contained arguments that should have been raised in an initial, timely filing so that other parties would have had the opportunity to respond. Because the Commission is adopting the Joint Proposal in this order, we decline to consider O&R's motion to strike Ms. Kopald's reply because it would not result in a material change to this Order, even if granted.

County through its chair, Pramilla Malick, timely filed a joint reply statement in opposition to the Joint Proposal on that date.

A hearing on the Joint Proposal was held on December 18, 2018 pursuant to a November 29, 2018 Notice of Evidentiary Hearing. Ms. Kopald was permitted to pre-file certain proposed hearing exhibits, only some of which were admitted into the record. Testimony was adduced at the hearing from both O&R and Staff witnesses. Ms. Kopald was the sole party cross examining O&R witnesses at the day-long evidentiary hearing. The hearing resulted in the creation of a 197-page transcript of additional testimony and the admission into the record of 361 exhibits, including the Joint Proposal, direct and rebuttal testimony and exhibits, and the statements in support and reply statements in support and in opposition to the Joint Proposal.

At the close of the hearing, the ALJs requested that the parties file post-hearing briefs that addressed two specific issues: (1) whether the monthly fees for opting out of meters installed under O&R’s Advanced Metering Infrastructure (AMI) program violated the Americans With Disabilities Act for those who are disabled,[13] and (2) whether the use of a 20-year service life for AMI meters in calculating depreciation rates was appropriate.[14]

On January 4, 2019, O&R, Staff, and Ms. Kopald filed post-hearing briefs.

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[13] 42 U.S.C. § 12131, et seq.

[14] December 18, 2018 Hearing Transcript (Tr.), pp. 191-192.

NOTICE AND PUBLIC COMMENTS

Notice of O&R's January 26, 2018 tariff filing was published in newspapers of general circulation in its service areas pursuant to PSL §§ 65 and 66.[15] Pursuant to the State Administrative Procedure Act (SAPA) § 202(1), Notices of Proposed Rulemaking for O&R's electric and gas tariff filings were published in the State Register on May 16, 2018.[16] On November 20, 2018, the Secretary issued a Notice Soliciting Comments and Announcing Public Statement Hearings. Public statement hearings on the Joint Proposal were held on December 4, 2018 in Middletown and on December 5, 2018 in Wurtsboro and Ramapo.[17]

Throughout the proceeding, the public filed written comments and made oral comments at the three public statement hearings in Middletown, Wurtsboro and Ramapo. All commenters opposed O&R's requested rate increases. The public hearings collectively drew nine commenters, all of whom expressed concerns about O&R's AMI program. As of February 28, 2019, 16 written comments had been submitted on the Department of Public Service's Document and Matter Management system, including comments by New York State Senators David Carlucci and John J. Bonacic, Rockland County Executive Edwin J. Day, and Orangetown Town Clerk Charlotte Madigan.

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[15] On February 7, 14, 21 and 28, 2018, O&R caused notice of the electric and gas rate tariff filings to be published in the Journal News and on February 8, 14, 21 and 28, 2018 in the Times Herald Record, both of which are newspapers of general circulation in the Company's service territory.

[16] PSC SAPA Nos. 18-E-0067SP1 and 18-G-0068SP1.

[17] Commissioner Diane Burman joined the administrative law judges to preside at the December 5, 2018 public statement hearing in Wurtsboro.

Senator Carlucci (38th District) questioned whether a rate hike is necessary in light of (1) an independent audit of O&R by PricewaterhouseCoopers LLP, which showed that operating revenue increased by $29 million and net income rose by $12 million between 2015 and 2017; and (2) the lowering of the federal corporate tax rate from 35 percent to 21 percent under the new federal tax law, which he claimed would result in a financial windfall for the Company. Senator Carlucci requested that the Commission deny any rate increase because it “is an unfair burden on the residents and businesses of Rockland County.”

Senator Bonacic (42nd District) opposed O&R’s rate increase, indicating that if state government, municipalities and New Yorkers across the State can do “more with less,” so can utility companies. Senator Bonacic cited the tax cap for municipalities and the need to protect citizens from new taxes and fees. He also indicated that senior citizens are struggling and young people are moving out of state, so utilities “must do their part to provide relief for New York families.”

County Executive Day opposed the installation of smart meters due to health and safety concerns of local residents and forwarded certain documents related to those concerns. County Executive Day requested that the Commission “consider allowing an opt out of this [smart meter] process at no cost to the rate payer.”

Orangetown Town Clerk Charlotte Madigan forwarded a copy of a resolution passed by the Town of Orangetown asking the Commission to reject O&R’s requested increase and to reduce rates “to a level that will both pass the entirety of the Federal income tax savings onto the customer and lower O&R's projected net comprehensive income to a level below 6 percent, and ensure that the remaining increase, if any, is locked into a three year rate agreement so as to prevent increases in the immediate subsequent years.”

Several commenters stated their belief that smart meters pose a health threat, including cancer risk from exposure to radio frequency electromagnetic fields, and that there should be no opt-out fees assessed. Others argued that smart meters posed not only risks to human health, but also to wildlife. Other commenters stated that O&R’s current rates are already extremely high and that the proposed rates are excessive. Some commenters questioned why the Company’s delivery rates were almost two times higher than the commodity rates and criticized O&R’s customer service, claiming that the average wait time for the Company to answer calls was 45 minutes.

One commenter noted that Rockland County is one of the highest taxed counties in the country. Others recounted the changes in the federal tax laws that should inure to the benefit of ratepayers and not require a rate increase. Another commenter recited several recent power outages in Ramapo and stated that it is unacceptable to award a rate increase to a company that has not effectively maintained its existing service and has failed to be ready for storms.

In its comments, solar developer Sunrun, Inc. encouraged the Commission to re-affirm the critical role third parties play in achieving clean energy objectives in this proceeding and urged the Commission’s adoption here of the directive it gave to National Grid and Central Hudson in adopting the joint proposals in their rate proceedings to work with third parties to ensure New York’s energy policy goals are achieved expeditiously and at lower ratepayer expense.

STANDARD OF REVIEW

Our obligation in reviewing a joint proposal is to ensure that its terms produce a result that is in the public interest when viewed as a whole. We must find that the terms of a joint proposal fall within the range of a litigated outcome and that the rates proposed are just and reasonable and are in the public interest.[18] A joint proposal should balance protection of consumers with fairness to investors and the long-term viability of the utility.

The Commission's order establishing settlement procedures and establishing guidelines for reviewing settlement agreements describes the factors the Commission takes into account in evaluating a joint proposal, which are "themselves elements of the public interest standard."[19] These factors are: (1) the settlement's consistency with law and with the regulatory, economic, social and environmental policies of the Commission and the State; (2) whether the result compares favorably with the likely result of full litigation and is within the range of reasonable outcomes; (3) whether the settlement strikes a fair balance among the interests of ratepayers and investors and the long-term soundness of the utility; and (4) the existence of a rational basis for the decision.

The parties to these proceedings were provided an opportunity to submit testimony and other evidence. They also were provided notice of and an opportunity to participate in settlement negotiations. In addition, parties having various diverse interests support the Joint Proposal here, including

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[18] PSL § 65(1).

[19] Cases 90-M-0255, et al., Procedures for Settlements and Stipulation Agreements, Opinion 92-2 (issued March 24, 1992).

parties that are normally adverse. Only two parties oppose the Joint Proposal and on limited grounds related to O&R’s AMI program. We note that the terms of the Joint Proposal indicate that the settling parties made genuine efforts to address the concerns of nearly all the parties. We find no procedural irregularities or unfairness in the process.

We conclude that the Joint Proposal in this case was developed fairly and provided a full opportunity for participation by all interested parties and the public. The Joint Proposal is, therefore, properly before us for a determination of its consistency with the Commission’s settlement guidelines and the public interest.

KEY ELEMENTS OF THE JOINT PROPOSAL AND PARTIES’ POSITIONS

This section discusses key elements of the Joint Proposal establishing three-year electric and gas rate plans and addresses only those elements that are significant because of their impact on electric or gas rates or because they represent a compromise of contested issues. We note that the Joint Proposal proposes to continue certain important provisions of the 2015 Rate Order. Where appropriate, notable modifications to such provisions also are discussed more fully below.

Three-Year Electric and Gas Rate Plans

The Joint Proposal calls for three-year rate plans for electric and gas delivery service commencing January 1, 2019, with Rate Year 1, Rate Year 2, and Rate Year 3 defined as the 12 months ending December 31, 2019, 2020 and 2021, respectively. The Joint Proposal authorizes a return on equity of 9.0 percent and provides for increases in revenue requirements for electric in Rate Years 1, 2, and 3, and a decrease in revenue requirements for gas in Rate Year 1 followed by increases in Rate Years 2 and 3.[20] The change in revenue requirements is shown (in millions) in the following table:

	Rate Year 1	**Rate Year 2**	**Rate Year 3**
Electric	**$13.382**	**$7.988**	**$5.784**
Gas	**($7.520)**	**$3.556**	**$0.714**

The Joint Proposal calls for these changes in electric delivery revenues to be redistributed between the three rate years in a manner designed to mitigate bill impacts, particularly resulting from low income program costs in Rate Year 1.[21] It calls for changes to gas delivery revenues to be similarly redistributed over three years, which is intended not only to stabilize gas bills, but also to minimize the potential for a “hockey stick” effect on rates, that is, a dramatic rate increase in Rate Year 4. This approach will result in the following annual increases to electric revenues and initial decrease to gas revenues in Rate Year 1, followed by increases to gas revenue in Rate Years 2 and 3 (in millions):

	Rate Year 1	**Rate Year 2**	**Rate Year 3**
Electric	**$8.61**	**$12.06**	**$12.17**
Gas	**($5.92)**	**$0.99**	**$0.99**

The total system net billed revenue impacts by percentage recommended by the Joint Proposal are:

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[20] Joint Proposal, Appendix 1, p. 11; Appendix 2, p. 11.

[21] Id.

	Rate Year 1	Rate Year 2	Rate Year 3
Electric	**0.4%**	**1.9%**	**1.9%**
Gas	**(2.5%)**	**0.4%**	**0.4%**

For average residential customers,[22] the approximate monthly bill impacts under the terms of the Joint Proposal will be as follows:

	Rate Year 1	Rate Year 2	Rate Year 3
Electric	**$2.90**	**$3.07**	**$3.04**
Gas	**($1.99)**	**$0.83**	**$1.07**

Low income customers will continue to receive discounts and may see reductions in their monthly bill in the range of approximately 18 percent to 44 percent.[23] The Joint Proposal also continues the Empower-NY services program for these customers.[24]

The major drivers associated with the electric delivery increase in Rate Year 1 of the Joint Proposal include the additional return requirement associated with rate base growth, increases in depreciation expense, labor and benefits, energy efficiency expense, decreased forecasted revenue, environmental site remediation expenses, and storm reserve funding.[25] The most significant offsets to these increases are due to the impact of the 2017 federal income tax changes and the

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[22] The average residential customer refers to a non-heating electric customer using 600 kWh per month and a residential gas heating customer using 100 Ccf per month.

[23] Joint Proposal, pp. 55-56.

[24] Id.

[25] Staff Summary of Electric and Gas Rates Joint Proposal, Drivers of Electric and Gas Rate Year 1 Delivery Rate Increases; Attachment 1 (dated November 9, 2018).

amortization of regulatory deferrals. The primary rate drivers underlying the gas delivery decrease in Rate Year 1 of the Joint Proposal is the additional return requirement associated with rate base growth along with increases in depreciation expense, operations expenses and labor and benefits, which are all more than offset by cost reductions due to the impact of federal income tax changes and an increase in forecasted revenue.

The major drivers associated with the more modest electric delivery rate increases in Rate Years 2 and 3 continue to be the additional return requirement associated with rate base growth and increases in depreciation expense and labor and benefits expense. Additional upward pressure arises from projected property tax expense and energy efficiency expense. The principal offset to these increases is significant decreases in projected pensions and other post-employment benefits (OPEB) expense.

The major drivers associated with the modest increases in gas delivery rates in Rate Years 2 and 3 continue to arise from the additional return requirement associated with rate base growth and increases in depreciation expense, operations expenses and labor and benefits. Additional upward pressure on rates comes from projected increases in property tax expense. The principal offsets to these increases arise from significant decreases in pensions and OPEB expense as well as increases in forecasted revenue.

The Joint Proposal contains a “make whole” provision for both electric and gas to restore O&R to the same financial position it would be in had rates gone into effect by January 1, 2019.[26]

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[26] Joint Proposal, Appendix 17, p. 11; Appendix 18, p. 5.

Discussion

The Joint Proposal's three-year electric and gas rate plans are reasonable, given the Company's demonstration of need and the major drivers associated with the rate increases. The rates proposed are significantly less than the increase initially requested by the Company. The rate plans were thoroughly vetted by Staff and the parties, as evidenced by the extensive evidentiary record. The Joint Proposal provides customer benefits afforded by multi-year rate plans through the mitigation of bill impacts over three years.

The three-year rate plan is beneficial because it will allow O&R to focus attention on managing its electric and gas businesses rather than filing annual rate cases. At the same time, it will save valuable Staff and intervening party resources. The Joint Proposal also creates rate certainty, which benefits customers and the Company, as well as market participants seeking to provide new or enhanced products and services by allowing long-term planning efforts.

The Joint Proposal strikes a fair balance between the interests of ratepayers and investors, while providing the opportunity to earn a fair rate of return that supports the Company's ability to continue to access reasonably priced capital. The rate increases will allow the Company to replace aging infrastructure and to modernize its system and help the State meets its conservation and energy policy goals. The scale of the Joint Proposal's capital programs is necessary to enable the Company to continue to provide safe and reliable service. The rate increases will allow the Company to meet its legal obligations for items like site investigation and remediation costs and property taxes. For these reasons, we find the rates proposed under the three-year rate plans to be just and reasonable.

Sales Forecasts

The Joint Proposal is premised upon a total electric delivery volume forecast of 3,918,033 megawatt hours (MWh), producing revenues of $302.13 million, in Rate Year 1, and an electric delivery volume forecast of 3,915,872 MWh and 3,889,048 MWh, with total revenues of $302.46 million and $301.05 million, for Rate Years 2 and 3, respectively. The Joint Proposal’s sales and delivery revenue forecast for electric is based on a 10-year normalized average for the period ending December 2016.

In its initial filing, O&R forecasted a total electric delivery volume of 3,883,642 MWh, accounting for the impact of energy efficiency programs and customer installation of solar panels, with projected total delivery revenue of $300.60 million for Rate Year 1. Staff forecasted O&R’s total electric delivery volume at 3,948,498 MWh with a corresponding $304.45 million in delivery revenue for a single rate year. In its rebuttal testimony, O&R increased its forecast of total electric delivery volumes to 3,891,370 MWh, although it decreased its anticipated revenues to $299.78 million.[27] This resulted in a $4.67 million difference between Staff and the Company, although both parties

[27] Exhibit 131, O&R Electric Volume and Revenue Forecasting Panel Update and Rebuttal Testimony, pp. 12-13. The Company explained that the decline in the revenue forecast despite the increase in the total volume forecast resulted from a decrease in the residential volume forecast that was not as large as the increase in the primary volume forecast. The price per MWh in the residential service class is much higher than that in the primary service class, and thus, the revenue decline in the residential class outweighed the revenue increase in the primary, causing an overall decline in the revenue forecast.

relied on a 10-year weather-normalized average in their respective methodologies.

For gas, the Joint Proposal forecasts Company revenues, including firm, interruptible sales and competitive revenues of $228.910 million for Rate Year 1, followed by $241.791 million for Rate Year 2 and $250.051 million for Rate Year 3.[28] The Joint Proposal’s gas sales and delivery revenue forecasts are based on a 30-year weather normalized average for the period ending December 2016.

Staff and the Company’s sales forecasts of Rate Year 1 revenues at current rates were $228.910 million and $228.875 million, respectively, a difference of $35,000, despite relying on two different weather normalized average time periods. While the Company relied on a 10-year average for its gas forecasts, Staff relied on a 30-year weather normalized average.

Discussion

The electric and gas sales forecasts both fall within the range of litigated positions. The Joint Proposal provides for a fair compromise between the Staff and Company positions, which were close from the outset. We can accept the Joint Proposal’s figures, without endorsing any specific approach used to reach the outcome.

Revenue Decoupling Mechanism

The Joint Proposal contains electric and gas Revenue Decoupling Mechanisms (RDM). RDMs are included in some utility rate plans to reconcile deviations in the projections of sales revenues from certain rate classes with the amounts actually

[28] Joint Proposal, Appendix 17, p. 3. “Competitive revenues” are revenues collected by O&R for services performed for competitive suppliers such as billing, procurement, credit and collections.

collected. These mechanisms are intended to diminish any disincentive to encourage or otherwise support customer conservation efforts.

In the Joint Proposal, O&R's existing electric RDM has been modified by the creation of a category for the municipal street lighting class. In its initial testimony, O&R requested that this category be added to its RDM, noting the recent introduction of additional light emitting diode ("LED") street lighting offerings that could potentially lower revenues from street lighting customers.[29] Staff agreed in its testimony with the Company's reasoning and supported including the category in the RDM.[30] The Joint Proposal also recommends changes to the electric RDM to define rate years, deal with partial rate years, and continue the RDM should the Company not file for new rates to become effective at the expiration of the Joint Proposal's rate plan.

The Joint Proposal also recommends that the Commission continue the Company's gas RDM, but with certain changes. The Company's gas RDM would move from a revenue per customer model to a revenue per class model, whereby each customer group now will have a target revenue level established in the gas tariff. In its initial testimony, Staff contended that the current gas RDM encourages the addition of new customers, which could require the need for additional capacity into the Company's city gate and new or upgraded natural gas infrastructure.[31] To avoid these needs, Staff argued that O&R should only add customers that can be supported by its existing infrastructure. Staff

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[29] Exhibit 86, O&R Electric Rates Panel Testimony, p. 30.

[30] Exhibit 188, Staff Electric Rates Panel, p. 34

[31] Exhibit 168, Staff Policy Panel Testimony, pp. 41-42.

proposed that the gas RDM be modified to be measured on a per class basis similar to the electric RDM. This change, according to Staff, would better support the Commission's goals to promote cost-effective energy conservation, increased use of renewable resources, and decreased fossil fuels usage.[32]

Currently, the Company reports its actual gas revenues and customer counts at the conclusion of each rate year. To calculate the gas RDM, the actual customer counts are multiplied by the revenue per customer targets for that rate year to calculate a total revenue target, and actual revenues are then reconciled to that target.[33] The Joint Proposal's change makes the calculation of the gas RDM the same as that of its electric RDM. Under the revenue per class method, a total revenue target for each RDM class is set and actual revenues will be reconciled to those revenue targets, thus eliminating any need for customer counts and the associated incentive with adding new gas customers and the disincentive to discourage or otherwise not support customer conservation efforts.

Discussion

The changes in the Company's electric and gas RDMs are reasonable and supported by the record. The Joint Proposal's gas RDM policy change, in particular, is reasonable for the reasons given in the Staff Policy Panel testimony noted above, including the promotion of cost-effective energy conservation, the increased use of renewable resources, and the decreased use of fossil fuels.

[32] Id., p. 42.

[33] Exhibit 225, Staff Gas Rates Panel, p. 30.

Cost of Capital, Capital Structure, and Earnings Sharing

The revenue requirements for all three years of the proposed rate plans are based on a capital structure with a 48 percent equity ratio and a 9.0 percent return on equity (ROE). In addition, the proportions of long term debt and customer deposits vary slightly for all three years and the cost rate of long term debt declines from 5.17 percent in Rate Year 1 to 5.14 percent in Rate Years 2 and 3. These provisions would provide the Company with an after-tax rate of return of 6.97 percent (Rate Year 1), 6.96 percent (Rate Year 2), and 6.96 percent (Rate Year 3).[34]

In its initial filing, O&R proposed that rates be set based on a capital structure with 48 percent common equity and an ROE of 9.75 percent. In its testimony, Staff recommended an ROE of 8.6 percent and agreed with O&R’s proffered 48 percent common equity ratio. Staff’s finding that the 48 percent common equity ratio was reasonable was based upon its own analysis of the parent company’s financing practices, which incorporated an assessment of the degree of effectiveness of the Company’s current modest ring-fencing provisions, on O&R’s demonstrated willingness and ability to manage its consolidated equity component to its rate authorized levels, and on Staff’s conclusion that a 48 percent common equity ratio will be sufficient to maintain O&R’s financial integrity and allow it to continue to attract capital at favorable terms.[35] Staff now supports the proposed capital structure and cost of capital provisions in the Joint Proposal as a fair compromise.

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[34] Joint Proposal, Appendix 1, p. 11 (Electric); Appendix 2, pp. 11(Gas).

[35] Exhibit 248, Staff Finance Panel Testimony, p. 18.

In its Statement in Support, Staff notes that the Joint Proposal's 9.0 percent ROE is reasonable given the current financial market conditions as well as the increased financial and business risks inherent in setting rates over a multi-year period.[36] Staff notes that its initial 8.6 percent ROE recommendation in its pre-filed testimony was based on data through April 2018, but that thereafter, capital costs generally rose, as reflected in the yield on U.S. Treasury securities.[37] Staff also notes that in April 2018, when the Commission adopted the joint proposal establishing a 9.0 percent ROE in the Central Hudson rate proceeding, the average monthly yield requirements on 10-year and 30-year U.S. Treasury securities were 2.87 percent and 3.07 percent, respectively. As of October 2018, however, Staff indicates that those same average monthly yield requirements had increased to 3.15 percent and 3.34 percent, respectively.[38]

The Company says the provisions of the Joint Proposal relating to a 9.0 percent ROE and the overall costs of capital were very difficult to accept but were agreed to in light of the other agreed-upon provisions and in recognition of current Commission policy to set an ROE for both one-year and three-year rate plans at the lower end of the range experienced within the utility industry as a whole.[39]

No other party objected to the capital structure and ROE recommended in the Joint Proposal.

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[36] Staff Statement in Support, p. 30-31.

[37] Id.

[38] Id., p. 31, fn. 80.

[39] O&R Statement in Support, p. 10.

Ring-Fencing Protection Trigger

The Joint Proposal contains a provision designed to protect O&R from being subject to potential risks posed by the riskier non-utility businesses owned by its parent company, Consolidated Edison, Inc. (CEI).[40] In its testimony, Staff recommended that "ring-fencing" protection be addressed in these rate plans.[41] Staff recognized that although O&R has not had issues complying with the restrictions in the Commission's 1999 Order approving CEI's acquisition of O&R,[42] concerns remained that as CEI's investments "in its riskier FERC-regulated transmission and competitive clean energy businesses grow, it will likely pose additional risk to the utility businesses" and such risk could have a negative impact on O&R's credit ratings over the long term.

The Joint Proposal recommends that O&R provide Staff with the five-year earnings forecast and audited financial statements for CEI and all of its business segments.[43] It further recommends triggers for reporting and submission of a ring-fencing plan. Specifically, if at the end of any calendar year, CEI's investments in non-utility businesses exceed 15 percent of its total consolidated operations (as measured by revenues, assets, or cash flow), or if the ratio of CEI's holding company debt exceeds 20 percent of total consolidated debt, O&R is required to notify the Commission that a trigger

[40] Joint Proposal, Section O, paragraph 4, pp. 65-66.

[41] Exhibit 248, Staff Finance Panel Testimony, pp. 26-27.

[42] Case 98-M-0961 - Joint Petition of Consolidated Edison, Inc., Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. for Approval of a Certificate of Merger and Stock Acquisition, Order Authorizing Merger (issued April 2, 1999).

[43] Joint Proposal, pp. 65-66.

has occurred and must then (1) submit a ring-fencing plan designed to insulate O&R from the risks posed by actions of its parent and its parent's riskier non-utility affiliates, or (2) demonstrate why additional ring-fencing measures are not necessary.[44]

Discussion

The Joint Proposal's terms related to the cost of capital and financial protections from risk represent a reasonable result when compared with a potential litigated outcome. Together the 9.0 percent ROE and the 48 percent equity ratio should preserve the Company's credit ratings while imposing a reasonable cost on ratepayers. The Joint Proposal's 9.0 percent ROE is consistent with the methodology typically used for calculating the cost of equity.[45] This methodology uses both the Discounted Cash Flow (DCF) and Capital Asset Pricing Model (CAPM) analyses, with DCF given a weight of two-thirds and CAPM given a weight of one-third. The DCF analysis is a two-stage model with inputs derived from Value Line applied to a proxy group of similar utility companies. The CAPM computation is based on standard and zero-beta models, with a risk-free rate based on an average of 10-year and 30-year U.S. Treasury Bond yields, the market risk premium derived using Merrill Lynch's "Quantitative Profiles," and the betas of the proxy group companies provided by "Value Line." Using this approach,

[44] Joint Proposal, p. 66.

[45] This methodology, often referred to as the Generic Finance Case methodology, has been in use consistently by the Commission since the mid-1990s. See Case 91-M-0509, Proceeding to Consider Financial Regulatory Policies for Utilities, Recommended Decision (issued July 19, 1993).

Staff’s analysis initially yielded a recommended ROE of 8.6 percent.

We find reasonable Staff’s explanation of its agreement to an upward change in the ROE to 9.0 percent based on more current financial conditions not evident when Staff filed its testimony in April 2018. Staff also notes that this ROE is consistent with the Commission’s previously adopted ROE of 9.0 percent in Niagara Mohawk’s 2018 Rate Order.[46] Significantly, the 9.0 percent ROE reflects a premium that Staff points out “adequately recognizes the increased financial and business risks inherent in setting rates over a multi-year period.”[47] It also encompasses the incremental savings associated with the Company’s implementation of its Business Cost Optimization Program.

We also find appropriate the financial protections and provisions related to ring-fencing in the Joint Proposal. The terms of the Joint Proposal clearly identify the specific conditions under which O&R must submit a plan to adequately insulate the Company from risks posed by the actions of its parent or its parent’s non-utility businesses, or in the alternative, a demonstration why such measures are not necessary. These provisions are in both O&R’s and the public’s best interest. As Staff noted in its testimony, all other New York electric and gas combination utilities have effective ring-fencing provisions in place except for Consolidated Edison

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[46] Case 17-E-0238 and 17-G-0239, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation d/b/a National Grid for Electric and Gas Service, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans (issued March 15, 2018).

[47] Exhibit 346, Staff Statement in Support, p. 31.

Company of New York, Inc. (Con Edison) and O&R. Furthermore, the threshold triggers are consistent with those recommended by Moody's Investor Service and Standard and Poor's reports addressing Con Edison and O&R credit ratings.[48] We agree with Staff that this provision – new in these rate plans – is necessary due to the growth of CEI's non-utility businesses over the last several years. This provision of the Joint Proposal will ensure that Commission review will be prompted should the scale of the non-utility businesses and their attendant risks reach a point where the potential for harm to O&R through a downgrade in its credit ratings could occur.

Earnings Sharing: Threshold, Calculation and Disposition

The Joint Proposal provides for earnings sharing mechanisms during the three-year term of the Rate Plans, with a sharing threshold of 9.60 percent ("Earnings Sharing Threshold"), which is 60 basis points above the recommended ROE of 9.0 percent.[49] The Joint Proposal also provides for three tiers or bands of earnings sharing. Thus, if the Company's earned ROE exceeds the 9.6 percent Earnings Sharing Threshold, but is less than 10.2 percent in Rate Years 1, 2 or 3, then those earnings would be shared equally (50 percent/50 percent) between the Company and its customers. Earnings at or above 10.2 percent but less than 10.8 percent, would be shared 25 percent/75 percent between the Company and its customers,

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[48] Exhibits 257 and 258, Staff Finance Panel Testimony [Exhibits FP-9 and FP-10] "Credit Opinion: Consolidated Edison, Inc; Update Following Negative Outlook" (January 31, 2018); "Orange and Rockland Utilities, Inc. 'A' Rating Affirmed; Stand Alone Credit Profile Revised to 'BBB+'" (August 7, 2017)

[49] Joint Proposal, pp. 18-19.

respectively. Earnings of 10.8 percent and above would be shared 10 percent/90 percent between the Company and its customers, respectively.

The Joint Proposal provides that the actual earned ROE will be calculated on a per book basis, that is, from the Company's books of account for each rate year excluding (1) the effects of any Company incentives and performance-based positive and negative revenue adjustments; (2) the Company's share of any property tax refunds; and (3) any other approved incentives and revenue adjustments in effect.[50] The Joint Proposal also provides that the calculation of earnings will reflect the lesser of a 50 percent equity ratio or the Company's actual average common equity ratio to the extent that it is less than 50 percent of its ratemaking capital structure.[51]

Moreover, the terms of the Joint Proposal specify that for shared earnings in any rate year, the Company is to apply one-half of its own portion of earnings, and all of the customers' portion, to reduce electric and gas deferred under-collections of environmental site investigation and remediation (SIR) program costs. The Joint Proposal further specifies that to the extent that additional shared earnings are available, O&R is to reduce other deferred costs.[52] O&R's annual earnings report must include the amount of SIR program and other deferred costs written down with shared earnings.[53]

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[50] Id., p. 19. The incentives and performance-based revenue adjustments are identified in Appendices 13-16 of the Joint Proposal.

[51] Id.

[52] Id., p. 20.

[53] Id.

The Joint Proposal’s provisions for both the electric and gas earnings sharing mechanisms, including those relating to the Company’s application and disposition of shared earnings to SIR costs and other deferred costs, would continue after the expiration of the rate plans and would remain applicable until base rates are reset by the Commission.[54] Thus, if the Company “stays out” and does not file tariffs for new delivery rates within 30 days after Rate Year 3 expires, the earnings sharing provisions will continue until the Commission resets rates.[55] If the “stay out” period is for a period that cannot be measured in full years, the Joint Proposal recommends a mechanism to properly adjust earnings for any partial period.[56]

Discussion

The Joint Proposal’s earnings sharing mechanisms benefits both customers and the Company by providing a financial incentive to address SIR and other deferred costs. The Joint Proposal’s multiple shared earnings tiers are consistent with rate plans previously approved by the Commission and, in fact, are the same tiers adopted by the Commission in the Company’s 2015 Rate Order.[57] Thus, the terms related to disposition of shared earnings to reduce SIR and other costs are beneficial to customers because they will reduce the overall ratepayer liability for such costs, if there are overearnings.

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[54] Joint Proposal, p. 19.

[55] Id.

[56] Id., pp. 19-20, Appendix 12.

[57] 2015 Rate Order, supra, n. 6, pp. 12-13.

The Joint Proposal's terms are also consistent with the SIR Cost Order,[58] as both Staff and the Company assert.[59] That Order recognized that excess earnings were well-suited for use in paying SIR costs. The Order established cost and compliance reporting requirements and best practices for SIR cost containment in order to minimize impacts on ratepayers, particularly when current ratepayers do not benefit from contaminated sites and there is the potential to create an inter-generational inequity problem.[60] This provision of the Joint Proposal achieves an appropriate balance between ratepayers and shareholders and is therefore in the public interest.

Federal Tax Cuts and Jobs Act of 2017

In 2017, Congress passed the Tax Cuts and Jobs Act of 2017 (2017 Tax Act), which lowered the highest corporate federal income tax rate from 35 percent to 21 percent and eliminated bonus depreciation. Consequently, the Commission issued an order directing New York utilities to preserve for the benefit of ratepayers the net savings resulting from the 2017 Tax Act

[58] Case 11-M-0034, Proceeding on Motion of the Commission to Commence a Regulatory Review and Evaluation of the Treatment of the State's Regulated Utilities' Site Investigation and Remediation (SIR) Costs, Order Concerning Costs for Site Investigation and Remediation (issued November 28, 2012) (SIR Cost Order).

[59] Exhibit 353, Staff Statement in Support of Joint Proposal, pp. 31-32; Exhibit 343, O&R Statement in Support of Joint Proposal, pp. 18-19.

[60] SIR Cost Order, supra n. 58, p. 31.

through deferral accounting until all net benefits are reflected in rates (Tax Act Order).[61]

In its initial tariff filings in January 2018, O&R proposed rates that reflected the reduction in the tax rate and the termination of bonus depreciation. It also identified excess deferred federal income taxes (EDFIT) totaling $64 million for electric and $52 million for gas.[62] The Company proposed to amortize the benefits related to EDFIT over the average remaining life of the underlying plant assets, that is, 46 years for electric assets and 53 years for gas assets. The Company estimated that the deferred tax benefit between the enactment of the new tax rate (i.e., January 1, 2018) and the beginning of the Rate Year (i.e., January 2019) was approximately $10.4 million for electric and $4.6 million for gas. The Company proposed to also amortize these balances over the average remaining life of its plant assets.[63]

In its May 2018 direct testimony, Staff agreed with O&R's calculation and treatment for the EDFIT balances because it was consistent with Internal Revenue Service (IRS)

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[61] Case 17-M-0815, Proceeding on Motion of the Commission on Changes in Law that May Affect Rates, Order Determining Rate Treatment of Tax Changes (issued August 9, 2018) (Tax Act Order).

[62] Exhibit 18, O&R Income Tax Panel Testimony, pp. 6-7. EDFIT balances generated by the application of accelerated tax depreciation (e.g., plant) are classified as protected, and EDFIT balances generated by something other than accelerated tax depreciation (e.g., regulatory deferrals) are classified as unprotected. IRS normalization regulations require protected EDFIT balances to be passed back over the remaining book lives of the property that gave rise to the excess, whereas with unprotected EDFIT balances, the Commission has discretion in determining timing of the pass back to customers.

[63] Id.

regulations and reflected the "matching principle" whereby the tax benefits matched the remaining life of the underlying assets.[64] Staff disagreed with the Company's proposal regarding the 2018 deferral balance accruing between enactment of the new tax rate and the beginning of Rate Year 1. Staff instead proposed that this balance be passed back to customers over five years, as opposed to the Company's proposal to amortize the balance over the 46 and 53 year lives of the electric and gas plant assets, respectively. Staff explained that these deferral balances are not supported by the underlying electric and gas plant assets and, as such, there is no reason to link the amortization period to these remaining lives. Staff asserted that amortizing the deferral balances over decades would cause inter-generational inequities because ratepayers who funded the excess tax allowance during 2018 would have to wait 40 to 50 years for those benefits to be returned.

The Municipal Coalition disagreed with both the Company's and Staff's positions, proposing instead that the unprotected EDFIT and the 2018 deferral balances be amortized over the three-year duration of the rate plans.[65]

On August 9, 2018, after all testimony had been submitted in these proceedings, the Commission issued the Tax Act Order and established the rate treatment for the tax changes resulting from the 2017 Tax Act. In its order, the Commission expressed its intention that ratepayers should promptly receive the net benefits of those changes and established a process to

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[64] Exhibit 346, Staff Statement in Support, p. 20; Exhibit 183, Staff Witness Jerry Shang Direct Testimony, pp. 16-20.

[65] Exhibit 325, Municipal Coalition Rebuttal Testimony of David E. Peterson, pp. 4-5, 6-12.

assure that outcome.[66] The Commission ordered deferral accounting with interest in order to preserve net benefits for ratepayers, with a sur-credit or pass-back tariff as an offset on customer bills.[67] The Commission noted O&R’s pending rate filings in these proceedings and did not require the sur-credit filings that other utilities were required to make, noting that the effects of the 2017 Tax Act would be “incorporated into the revenue requirements with a comprehensive resolution of all net benefits” for ratepayers.[68]

The Joint Proposal provides for the unprotected EDFIT balance to be amortized over fifteen years and the 2018 deferral balance to be amortized over three years.[69] The electric and gas revenue requirements in Rate Years 1, 2, and 3 reflect the elimination of bonus depreciation beginning in the end of the third quarter of 2017.[70]

While the Tax Cuts and Jobs Act of 2017 reduced the corporate tax rate from 35 percent to 21 percent, it also affected corporate taxes in other ways, including restricting

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[66] Case 17-M-0815, Tax Act Order, supra n. 61.

[67] Id., p. 35-37.

[68] Id., p. 42.

[69] Joint Proposal, pp. 8-9; 31-32.

[70] Joint Proposal, pp. 31-32. Bonus depreciation is permitted in the fourth quarter of 2017 under the 2017 Tax Act and O&R included it through the end of 2017 on its 2017 tax return. As such, the Company will defer all revenue requirement impacts of claiming bonus depreciation for the fourth quarter of 2017 as a customer credit.

the availability of bonus depreciation[71] as of September 27, 2017. Because the Company included bonus depreciation through the end of 2017 on its 2017 federal tax return, the Joint Proposal provides that O&R will defer, for the benefit of customers, all revenue requirement impacts of claiming bonus depreciation for that fourth quarter of 2017, as well as any future allowance for bonus depreciation should it again become available. Additionally, to achieve the Commission's objectives in the Tax Act Order, the revenue requirement impact of other variances from forecast stemming from the treatment of impacts of the 2017 Tax Act will be deferred for future recovery from or credited to customers.

Discussion

The Joint Proposal's treatment of both the unprotected EDFIT balance and the 2018 deferral balance strikes the proper balance between the Company's and Staff's proposal and that of the Municipal Coalition. Amortization over fifteen years rather than the decades-longer period proposed by the Company is also consistent with our 2018 Tax Act Order because it passes back the tax benefits to customers more quickly, mitigates the rate increase, and eliminates potential inter-generational inequity. Although the Joint Proposal does not pass back some of the EDFIT as quickly as some parties had desired, it properly addresses the concern that a future change in the federal tax laws calling

[71] Bonus depreciation is a method of accelerated depreciation which allows a business to make an additional deduction of 50 percent of the cost of qualifying property in the year in which it is put into service. Through the previously allowed deductions, New York utilities were able to save money on Federal Taxes that could be used to either moderate rates or otherwise benefit customers.

for a tax hike would require a costly reversal, resulting in a potentially significant cost to ratepayers.

Reconciliations

The Joint Proposal provides for the reconciliation of several costs and revenues to the levels provided for in the proposed revenue requirements. The Joint Proposal recommends that for reconciled items the variances from levels provided in rates be deferred and that the determination of how the balances are collected or passed back to customers be made by the Commission in the Company's next rate cases. Reconciliations are appropriate and protect customers and the utility when significant costs are difficult to forecast over multiple years with reasonable certainty. Reconciliations may be made in whole, where the entire over- or under-spend is reconciled, or in part, where some percentage of the difference is collected or refunded. Where a risk is associated as part of the normal course of business, or is reasonably foreseeable, or is somewhat controllable by the utility, a partial reconciliation favoring customers' interests may be appropriate to provide a financial incentive to minimizes costs. This section examines some of the Joint Proposal's significant reconciliation provisions.

Among the reconciliation mechanisms continuing from the prior rate plan, the Joint Proposal recommends a full reconciliation of environmental cleanup costs, commonly referred to as Site Investigation and Remediation (SIR) costs, as well as a full reconciliation of O&R's pension and other post-employment benefits (OPEB) costs. No party contested the continuation of these reconciliations and they are consistent with the Commission’s policy statements.[72]

Property Taxes

The Joint Proposal provides for a property tax true-up where variations from projections in the taxes paid by O&R are shared between customers and the Company on a 90 percent/10 percent basis, respectively. Additionally, O&R’s 10 percent share is capped for each of the three rate years at 10 basis points, 7.5 basis points and 5 basis points of its return on common equity for Rate Years 1, 2 and 3, respectively.

Net Plant

Tracking the amount of net plant in-service is a common feature of New York rate plans and is included in the Joint Proposal. Net plant reconciliation mechanisms are generally created to be asymmetrical to the benefit of ratepayers. The mechanisms are intended to encourage a utility to stay within budgets and in-service dates for its plant investment projections, and to ensure that ratepayers are paying rates that support actual investments made, as those rates are based on forecasts. Should a utility subject to a net plant reconciliation not meet its targeted net plant, the utility must preserve for refund to its customers the revenue requirement impact associated with net plant investment that is not made. Conversely, the asymmetrical nature of the mechanism requires a

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[72] See Case 11-M-0034, Review of Utilities’ Site Investigation and Remediation Costs, Order Concerning Costs for Site Investigation and Remediation (issued November 28, 2012), Case 91-M-0890, Accounting and Ratemaking Treatment for Pensions and Postretirement Benefits Other Than Pensions, Statement of Policy and Order Concerning the Accounting and Ratemaking Treatment for Pensions and Postretirement Benefits Other Than Pensions (issued September 7, 1993).

utility to absorb the revenue requirement impact associated with capital expenditures that result in net plant levels that exceed a rate plan’s stated targets.

The Joint Proposal provides for O&R’s electric net plant targets in Appendix 6 and for gas in Appendix 7. The targets were arrived at through negotiation after Staff’s audit of the Company’s proposed capital programs and projects. The targets are cumulative in that the Company’s achievement of such targets is calculated at the end of Rate Year 3 after which the reconciliation is calculated. O&R states that the cumulative approach, combined with the Joint Proposal’s recommendation of flexibility for O&R to modify its capital programs within the stated targets as necessary, provided that proper justification is provided, facilitate efficiency in its electric and gas businesses.

Staff states that it had provided several adjustments and recommendations to O&R during its audit of the Company’s proposed capital programs and projects. It recommended a decrease to several capital projects, including blanket projects, and the delay of the in-service dates of O&R’s Little Tor Substation projects, which caused the Company to move a total of $25.5M from 2019 and 2020 to 2023. Staff notes that the increase in gas capital expenditures is driven primarily by system reliability and main replacement projects that are necessary for safety and reliability purposes. Staff states that the Joint Proposal reflects several of its recommended capital modifications. Staff avers that the net plant targets and tracking mechanisms will allow the Company to complete necessary work with the assurance that the revenue requirement associated with any unspent funds will be deferred for the benefit of ratepayers, and that the Joint Proposal's level of capital expenditures is reasonable.

The Joint Proposal recommends that O&R be required to file quarterly and annual reports on its capital expenditures. The Joint Proposal also recommends that O&R be required to provide detailed information about its Information Services-related projects in its next electric base rate case filing. Staff intends for these reporting and filing requirements to assist the Commission and Staff in their review and oversight of the Company's capital expenditures, providing for robust accountability.

Major Storm Costs

O&R uses reserve accounting for incremental expenses related to service restoration and repair of damages caused by major storms, as defined in 16 NYCRR § 97.1(c). This method establishes a reserve of funds collected from customers that the Company draws against as it incurs qualifying costs. Reserve accounting facilitates and eliminates uncertainty around the recovery of costs associated with unpredictable situations that major storm damage can create. As such, it ameliorates any disincentive the Company may have to responding quickly and thoroughly to these events. The Joint Proposal reflects the agreement of O&R not to charge employee overtime to the major storm reserve for overtime work occurring more than 60 days following the date on which the Company is able to restore service to all customers. In addition, the Company will not charge stores handling, engineering, and other overheads costs to the major storm reserve.

Beyond those provisions, the Joint Proposal modifies the Company's major storm reserve reconciliation mechanism to allow the Company to charge the major storm reserve for certain pre-staging and mobilization costs it incurs in reasonable anticipation that a storm will affect its electric operations for costs exceeding $100,000 per event, up to a total of $1.75 million per event. For pre-staging and mobilization costs exceeding $1.75 million per event, the Joint Proposal recommends O&R be allowed to charge 85 percent of such costs to the major storm reserve and charge the remaining 15 percent as an expense. The provision provides for the reconciliation of the reserve to actual expenditures made during the term of the rate plan.

Other Reconciliations

The Joint Proposal applies accounting reconciliations to costs related to the 2017 Tax Act’s elimination of Bonus Depreciation, Energy Efficiency and Non-wires Alternatives. The mechanisms for those reconciliations are discussed in their respective sections in this Order.

Discussion

Reconciliations, when used appropriately, can address the financial impacts of uncertainties that committing to a long-term rate plan can create. Therefore, their inclusion in Joint Proposals can facilitate agreement where the uncertainty or unpredictably of certain cost elements might give negotiating parties concern preventing agreement. The reconciliation mechanisms discussed here are logical and balanced, as might be expected in an agreement such as this made by parties with diverse interests. As such, they support both the continued provision of adequate service to O&R’s customers and reasonably balance the identified risks of the rate plan term between customers and shareholders. The Joint Proposal’s partial reconciliation provisions provide O&R with an incentive to minimize actual expenses and, as such, are appropriate.

Advanced Metering Infrastructure (AMI)

AMI is an integrated system of meters, communications networks, and data management systems that enable energy usage communications between a utility and its customers.[73] In the 2015 Rate Order, the Commission approved the implementation of the first phase of O&R's AMI program in Rockland County and the installation of "smart meters" to track customer electric and gas usage.[74] That order established a $43.3 million cap on expenditures for the AMI program over five years and required submission of a detailed AMI business plan and separate tracking and deferral of AMI-related expenditures.[75] The 2015 Rate Order deferred recovery of AMI expenditures until O&R's next rate case.[76] Under that order, O&R was required to allow customers to "opt out" of smart meter installation. The order approved the amount and level of fees assessed for opting out.[77]

In a February 13, 2017 petition, O&R sought, among other things, to enhance and expand the AMI program into its

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[73] Case 09-M-0074, Advanced Metering Infrastructure, Order Adopting Minimum Functional Requirements for Advanced Metering Infrastructure Systems and Initiating an Inquiry into Benefit-Cost Methodologies (issued February 13, 2009), p. 6.

[74] 2015 Rate Order, pp. 14-18.

[75] 2015 Rate Order, pp. 14-15; Joint Proposal, p. 20. On November 19, 2016, O&R submitted its AMI Business Plan, which Staff thereafter approved.

[76] 2015 Rate Order, pp. 15-16.

[77] Those fees were set at $15 per month for customers with both electric and gas service, or $10 per month for customers with only one of those services. After AMI meter installation, an additional one-time fee of $90 is assessed for customers requesting meter removal who have both electric and gas service; $45 for customers with only electric; and $55 for customers with only gas. 2015 Rate Order, Appendix A, Joint Proposal, pp. 50-51.

entire service territory.[78] The Commission granted the petition in part and allowed the enhancement and expansion of the AMI program (AMI Expansion Order).[79] The AMI Expansion Order approved the AMI program’s enhancement and expansion and increased the cap on AMI-related capital expenditures to $98.5 million, but still required separate tracking of AMI expenditures.[80] The AMI Expansion Order noted that any AMI-related costs “are subject to further review in O&R’s next base rate proceeding.”[81]

Deborah Kopald filed a petition for rehearing of the AMI Expansion Order, which the Commission denied in its entirety.[82] Ms. Kopald then challenged the AMI Expansion Order in New York Supreme Court and the court dismissed her challenge on the merits, finding that the Commission had a rational basis to approve expansion of the AMI program.[83]

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78 Case 17-M-0178, Petition of Orange and Rockland Utilities, Inc. for Authorization of a Program Advancement Proposal, (filed February 13, 2017).

79 Id., Order Granting Petition in Part (issued November 16, 2017).

80 Id.

81 Id., p. 20.

82 Case 17-M-0178, Order Denying Petition [for Rehearing] (issued May 21, 2018) (Rehearing Order). Ms. Kopald then sought review of the AMI Expansion Order and the Rehearing Order in New York Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules. Deborah Kopald v. N.Y. Public Service Commission and Orange and Rockland Utilities, Index No. 905947-18 (Sup. Ct., Albany County). In a January 2, 2019 decision and order, Supreme Court dismissed Ms. Kopald’s Article 78 Petition on the merits.

83 Deborah Kopald v. N.Y. Public Service Commission and Orange and Rockland Utilities, Index No. 905947-18, Decision and Order (Sup. Ct. Albany Cty. Jan. 2, 2019).

Under the terms of the Joint Proposal considered here, O&R will recover costs associated with the implementation of the Company's AMI program first approved in the 2015 Rate Order and later expanded in the AMI Expansion Order.[84]

Scope of AMI Inquiry in This Case

In her testimony and in numerous motion papers in these proceedings, Ms. Kopald challenged the implementation of the AMI program and the deployment of smart meters in O&R's service territory, as well as the assessment of opt-out fees for those not wanting smart meters installed. Her testimony focused primarily on alleged health effects related to the use of smart meters, although she also discussed privacy, security, functionality, and public policy issues relating to the implementation of the AMI program and smart meters.

In their joint reply statement in opposition to the Joint Proposal, Ms. Kopald, Protect Orange County, and Pramilla Malick continue to challenge O&R's implementation of the AMI program and dispute the Company's claims about what the program can achieve. Their reply asserts that O&R failed to provide a breakdown of AMI costs and has not demonstrated that the program would result in ratepayer or environmental benefits.[85] They also assert that the use of AMI smart meters will result in "profound harm from cumulative exposure" to customers, and that legacy analog meters should be maintained for customer use with no fee imposed to opt out.[86]

Shortly after Staff and intervenor testimony was pre-filed and before the parties entered into negotiations, O&R

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[84] Joint Proposal, p. 25.

[85] Kopald et al. Statement in Opposition, pp. 1-2.

[86] Id., pp. 2-4.

filed a motion to strike Ms. Kopald’s testimony claiming that it raised issues not relevant to these rate proceedings and that it raised issues already decided by the Commission. In a September 10, 2018 ruling, the ALJs denied O&R’s motion to strike.[87]

In that ruling, the ALJs identified the nature and scope of the issues in these rate proceedings and the AMI-related issues that are outside that scope. The ALJs determined that the Commission had, in prior proceedings, decided most of the issues raised in the Kopald testimony and had not indicated any intention to revisit those issues. The ALJs ruled that the issues in the current proceedings “are limited to the ratemaking mechanics of incorporating the AMI expenditures into rates, albeit with the opportunity to review the expenditures for their reasonable conformance with the prior Commission approval in the AMI Expansion Order.”[88] They further ruled that the design of the out-opt fee was properly within the scope of the case, consistent with the notion that rate design is an appropriate element of cost recovery and a traditional area of inquiry in any rate case. Notwithstanding their determination that most of Ms. Kopald’s testimony was outside the proper scope of this case, the ALJs exercised their discretion to keep the testimony in the record and declined to strike it.

Ms. Kopald sought interlocutory review of that portion of the ruling regarding the scope of these proceedings. On November 16, 2018, we denied interlocutory review on the grounds that Ms. Kopald had failed to identify “extraordinary

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[87] Ruling Denying O&R’s Motion to Strike Testimony (issued September 10, 2018).

[88] Id., p. 27.

circumstances” warranting such review, as required by 16 NYCRR § 4.7(c)(2).[89]

After all testimony had been pre-filed in accordance with the schedule set for the case, Ms. Kopald requested leave to file supplemental expert testimony, which addressed the purported health effects associated with AMI meters and the program’s implementation. The ALJs denied that request.[90] In later rulings on five discovery motions filed by Ms. Kopald, the ALJs continued to adhere to the proper scope of inquiry in these proceedings.[91] The ALJs denied as irrelevant attempts to examine the wisdom of AMI implementation, cost-benefit analysis of AMI implementation, or the alleged health, safety, privacy, security, and functionality of AMI meters. The ALJs’ rulings did find relevant and allow Ms. Kopald’s inquiries into meter failure rates, meter depreciation, and similar elements that bear directly on the AMI costs included in O&R’s revenue requirement for ratemaking purposes.[92] The ALJs also denied Ms. Kopald’s motion for the issuance of a subpoena to the AMI smart meter manufacturer, Aclara Meters, LLC.[93] The ruling noted that O&R’s discovery responses had provided the information Ms.

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[89] Order Denying Interlocutory Appeal of Ruling Denying O&R’s Motion to Strike Testimony (issued November 16, 2018), pp. 7-8.

[90] Ruling Denying Motions to Submit Supplemental Testimony (issued September 21, 2018).

[91] Ruling Memorializing September 20, 2018 Conference to Resolve Discovery Disputes (issued September 28, 2018); Ruling Granting in Part and Denying in Part Kopald Motions to Compel O&R and Staff Responses to Information Requests (issued October 11, 2018).

[92] Id.

[93] Ruling Denying Application for Issuance of Subpoena Duces Tecum (issued November 1, 2018).

Kopald sought from Aclara and had explained the basis of its choice of a 20-year meter service life, including representations made to it by Aclara.

Ms. Kopald sought interlocutory review of the rulings denying her motions to file untimely supplemental expert testimony and to subpoena Aclara. The Commission denied both motions for interlocutory review, again finding that the motions failed to show extraordinary circumstances warranting interlocutory review and did not meet the criteria in 16 NYCRR § 4.7(a)[94]

Following the evidentiary hearing, Ms. Kopald filed a petition, purportedly pursuant to 16 NYCRR Part 8, seeking a declaratory ruling that AMI is contrary to the public interest. On January 2, 2019, ALJ Lecakes issued a ruling indicating that Ms. Kopald’s filing would be treated not as a petition instituting a new and separate proceeding for a declaratory ruling, but instead would be treated as a filing in this case preserving for our review her objections to rulings that foreclosed re-examination of the merits or wisdom of AMI implementation. Ms. Kopald has also sought interlocutory review by the Commission of that determination. That motion remains pending.

Discussion

Having denied Ms. Kopald’s motions for review on an interlocutory basis, we address them on the merits now. In each instance, we affirm the rulings made by the ALJs regarding the

[94] Order Denying Interlocutory Appeal of Ruling Denying Motions to Submit Supplemental Testimony (issued November 16, 2018); Order Denying Motion for Interlocutory Review of Ruling Denying Application for Issuance of Subpoena Duces Tecum (issued January 22, 2019).

scope of these proceedings. As the ALJs correctly ruled, we have already decided that O&R may implement the AMI program in its service territory.[95] Ms. Kopald challenged the AMI Expansion Order through rehearing before the Commission and then pursuant to a challenge in the New York courts, and her challenges have been denied.[96]

Our prior orders explicitly noted that O&R's costs to implement the AMI program would be subject to further review in these rate proceedings and would be incorporated into rates. The ALJs correctly interpreted the language of our prior orders as contemplating a review to ensure that AMI costs were consistent with prior budget estimates, were below the established caps, and were incurred in a prudent fashion.[97] The prudence of AMI implementation per se was established by the 2015 Rate Order, the AMI Expansion Order, and the Rehearing Order. Ms. Kopald's attempts to inquire into the merits of AMI implementation through inquiry into issues of health, safety, societal costs, and the like were properly rejected as beyond

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95 2015 Rate Order, pp. 14-18.

96 Deborah Kopald v. N.Y. Public Service Commission and Orange and Rockland Utilities, supra n. 82; Case 17-M-0178, Rehearing Order.

97 It is not uncommon for the Commission to rule on the prudence of a program or initiative conceptually, while deferring the rate-making mechanics, including a review of specific costs, to a separate rate case. For example, our 2017 order in the Suez Water rate case distinguished between a review of costs and a prudence review of the underlying project for which the costs were incurred. See Case 16-W-0130, Suez Water New York, Inc. – Rates, Order Establishing Rate Plan (issued January 24, 2017), at pp. 33-34, 41-42.

the appropriate scope of these rate proceedings.[98] The only costs properly at issue in these proceedings are accounting costs. The ALJs' rulings on the motion to strike, the motion to file supplemental testimony, the motion for issuance of a subpoena, and the letter characterized as a petition for declaratory ruling were all based on this correct understanding of the scope of our inquiry in these rate proceedings and are affirmed on that basis.[99]

The AMI issues properly before us here include the ratemaking mechanics of accounting for the expenditures of AMI meters and related capital investment as they occur, as well as the proper recovery of AMI costs through rates. Those issues include the depreciation of AMI meters and the structure of the

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[98] We recently considered and definitively rejected health and safety concerns about the electromagnetic fields from smart meters in Case 14-M-0196, Central Hudson Gas & Electric Corporation -- Fees for Residential Customers to Opt Out of Automated Meter Reading Devices, Order Denying Petitions for Rehearing and Reconsideration (issued December 14, 2018), pp. 13-21.

[99] Further, the ruling disallowing the late-filed supplemental testimony was proper given the potential prejudice to other parties and Ms. Kopald's opportunities to assert the legal and policy arguments in other filings. The ruling denying issuance of the subpoena was a proper exercise of ALJ discretion to avoid the need to bring a non-party into the proceeding where O&R had itself provided sufficient information responsive to Ms. Kopald's requests. Finally, a review of Ms. Kopald's purported petition for a declaratory ruling reveals that it did not meet the criteria for such a petition under 16 NYCRR § 8.1. Instead, it complained of evidentiary and other procedural rulings made by the ALJs in this proceeding and was largely repetitive of the motions addressed below and affirmed here. In all of these circumstances, the ALJs exercised appropriate discretion to ensure the fair and efficient administration of these proceedings. All of Ms. Kopald's appeals of the ALJs' rulings and actions are denied.

opt-out fees assessed to customers who elect not to participate in the AMI program. These issues are addressed below.

Accounting Treatment for AMI

The Joint Proposal recommends that net plant reconciliations for AMI expenditures continue to be tracked separately for electric and gas service. The Joint Proposal reflects the electric and gas revenue requirements for the average AMI plant in-service target balances for each rate year.[100] At the end of Rate Year 3, O&R will defer for the benefit of itself or customers the revenue requirement impact, including carrying costs and depreciation, of the amount by which actual AMI capital expenditures resulted in average net AMI plant that is different from the average net plant in-service target, up to the previously set cap. In other words, the Company will refund to or collect from customers any variation in actual versus allowed expenditures, as long as the AMI expenditures do not exceed the approved $98.5 million cap.[101] The Company will report semi-annually on AMI program implementation with reference to the benchmarks set in its November 19, 2015 AMI Business Plan.[102]

In its pre-filed testimony, Staff stated that the AMI program budget for these Rate Plans is reasonable.[103] Staff also agreed with the Company's proposed net plant reconciliation for AMI expenditures, including separate tracking of electric and

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[100] Joint Proposal, p. 25, Appendix 8.

[101] Id.; Staff Statement in Support, p. 35.

[102] Joint Proposal, p. 26.

[103] Exhibit 197, Staff Electric Infrastructure and Operations Panel Testimony, p. 20.

gas expenditures.[104] Ms. Kopald presented no evidence refuting Staff's or the Company's positions. In its Statement in Support, Staff notes that the Joint Proposal adopts the Company's proposals, as supported by Staff in its litigation position.[105] Staff states that the methodology eliminates any financial disincentives the Company might otherwise have to complete the project ahead of schedule and on budget.[106]

Discussion

We agree with Staff that the Joint Proposal's net plant treatment of AMI expenditures provides certainty and transparency because they are tracked and reconciled separately. Furthermore, the Joint Proposal's terms foster incentives for O&R to complete AMI deployment on schedule and within budget, while providing the Company with flexibility to accelerate AMI deployment. The Joint Proposal thereby incentivizes the Company to prudently manage its AMI expenditures, which may not exceed the $98.5 million cap. The Joint Proposal's methodology for this treatment of AMI costs is also consistent with the Commission's order approving Con Edison's current rate plan and its implementation of AMI.[107] We conclude that this provision of the Joint Proposal is both reasonable and in the public interest.

[104] Exhibit 168, Staff Policy Panel Direct Testimony, pp. 35-36.

[105] Staff Statement in Support, p. 35.

[106] Staff Statement in Support, pp. 35-36.

[107] Cases 16-E-0060 and 16-G-0061, Consolidated Edison Company of New York – Electric and Gas Rates, Order Approving Electric and Gas Rate Plans (issued January 25, 2017), p. 33.

Depreciation of AMI Meters

Appendix 11 of the Joint Proposal contains the average service lives, net salvage factors, and life tables used in calculating depreciation expense and the depreciation reserve used to establish the revenue requirements for O&R’s electric and gas service. Included are the legacy meters that will be replaced by smart meters as AMI is implemented, as well as the new smart meters themselves.

Under the terms of the Joint Proposal, O&R will start amortizing unrecovered legacy meter costs due to the implementation of AMI in the first year of the proposed rate plan. O&R will recover its remaining undepreciated legacy meter investment over 15 years, accounting for the costs as a separate regulatory asset. In its initial testimony, O&R proposed to recover the estimated remaining book costs of the legacy electric meters that are being replaced by the digital meters used in the Company’s AMI rollout. The Company proposed to recover $1.57 million per year, over a 15-year period, in order to recover the estimated $23.6 million remaining book cost once the AMI rollout is complete.[108] The Company’s proposal was based on the depreciation treatment for AMI meters adopted by the Commission in Con Edison’s last rate proceeding. Although the Staff Depreciation Panel opined that a separate amortization was not necessary, it noted that the Commission could provide for such treatment to shorten the amount of time that customers are paying for meters that are no longer in service. The Panel recommended that if the Commission were to choose that option, then a modification should be made to the Company’s calculation

[108] Exhibit 11, O&R Depreciation Panel Testimony, p. 29.

for total distribution plant.[109] The Joint Proposal reflects O&R’s proposed treatment of legacy meters, with Staff’s adjustment to the calculation of the composite rate applied to all distribution plant to remove the impact from legacy meters.

O&R proposed the use of an estimated 20-year service life for the digital meters that are replacing the legacy meters as part of the AMI rollout. Staff did not challenge the Company’s proposed 20-year service life, and the Joint Proposal provides for a 20-year in-service life for the new digital meters. The Company’s witness testified that the 20-year service life is based upon representations by the meter manufacturer, Aclara, including the fact that industrial-grade source components, such as network interface cards, can last longer than consumer-based computer components.[110] Staff testified that they were in agreement with the Company’s use of a 20-year service life for the meters for book depreciation purposes.[111] Some of the Joint Proposal’s opponents, including Ms. Kopald, contested the use of 20 years as too long and inconsistent with those opposing parties’ expectations and evidence. The opponents’ claims are grounded primarily in their challenge to the functionality of the meters, based on their belief that the meters cannot perform several of the tasks for which O&R has stated it may use the meters in future years. None of those potential future tasks, however, is proposed in these proceedings, and no funding relating to those tasks is provided for in the Joint Proposal.

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[109] Exhibit 206, Staff Depreciation Panel Testimony, p. 19-21.

[110] Tr., 126-27; 130-132.

[111] Tr., 122; 127.

In her post-hearing brief, Ms. Kopald disputes the 20-year service life used for depreciation purposes, based primarily on a brief filed by the Kentucky Attorney General in a proceeding before the Kentucky Public Service Commission and the Kentucky PSC’s order in the same proceeding. Ms. Kopald also notes her view that depreciation survivor curves are not based on the smart meters being deployed but on older technologies with fewer moving parts and computer components that generally are not “warrantied” past three years. In addition, at the evidentiary hearing, Ms. Kopald attempted to mark a United States Internal Revenue Service memorandum to support her position that digital meters have a shorter life span than the 20 years included in the Joint Proposal’s depreciation tables.

Staff and the Company both dispute Ms. Kopald’s claims, arguing that they are premised on a fundamental misunderstanding of depreciation as used to establish utility rates, and that the opponents have offered no specific alternative proposal for an appropriate service life for the Aclara meters. Staff also argues that the evidence offered by Ms. Kopald is irrelevant in that it concerns other jurisdictions and involves meters from different manufacturers and/or generations than the Aclara meters being installed by O&R in its AMI program. Moreover, Staff argues that the Kentucky PSC order finding was not that AMI meters do not have a service life of 20 years, but, rather, that the utility involved had failed to establish the 20-year service life as a reasonable input for a cost-benefit analysis.

Specifically, the Kentucky PSC order noted that the calculation of the net present value benefits was based on a service life in excess of 20 years, but the utility had proposed to depreciate its digital meters over 15 years and used a 15-

year depreciable life in calculating its cost-benefit analysis. Staff argues that rather than supporting Ms. Kopald's depreciation arguments, the Kentucky PSC order "underscores the need for state utility commissions to review AMI proposals on a case-by-case basis as each utility has unique circumstances and what might be cost beneficial to ratepayers of one utility may result in a net cost to ratepayers of another."[112]

Staff and the Company both assert that Ms. Kopald's reliance on the IRS memorandum is misplaced because the IRS's designation of a six-year class life for digital meters only provides the time over which O&R may account for depreciation of the meters for tax purposes. In the evidentiary hearing, O&R witnesses testified about the difference between book depreciation for financial accounting purposes and tax depreciation under the Internal Revenue Code.[113] Staff explained that the Commission sets rates based on book depreciation, not tax depreciation, and agreed with O&R that tax depreciation expense is the amount recorded on the Company's income tax returns based on the IRS's rules while book depreciation expense is the amount recorded on the Company's books and its financial statements.[114] Staff summarizes its position by stating that the fact that the IRS has provided for a six-year depreciation period for smart meters has no bearing on the expected service life of the meters and, therefore, does not support a shorter average service life for book depreciation purposes because only book depreciation is based on the expected service life of the underlying asset.

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[112] Staff Post-Hearing Brief, p. 8.

[113] Tr., pp. 119-127.

[114] Tr., pp. 122.

In addition to stating concerns similar to those of Staff regarding the extra-jurisdictional material, the Company notes that depreciation studies are performed in rate cases so that the service lives used reflect reality. However, depreciation does not require a precise tracking of actual performance of any single utility asset. The Company explains that when it files new depreciation studies in its future base rate cases, its digital AMI meters will be included in such studies so that the AMI meters may be evaluated in their own class. O&R indicates that new studies will take into account both broad industry information and O&R-specific information for each class, and its depreciation forecasts will indicate whether it is appropriate for the Company to adjust the service life for AMI meters going forward.

Discussion

We find that the record fully supports the Company’s depreciation of smart meters based on an expected 20-year service life. We agree with O&R’s explanation of its depreciation studies and their use in this rate proceeding. Smart meters are a relatively new technology, and there is a lack of data on the actual service life for these meters. As both Staff and the Company state, if in future rate proceedings credible evidence surfaces to suggest that the average service life of the Aclara meters are either shorter or longer than 20 years, an adjustment may be made to the Company’s depreciation rates.

We agree with Staff and O&R that Ms. Kopald has not demonstrated that the Joint Proposal’s depreciation rates are unreasonable. The Kentucky PSC order and the IRS guidance are not persuasive for all the reasons cited by Staff and the Company in their post-hearing briefs. Specifically, the

Kentucky PSC order is from an entirely different jurisdiction and discusses meters different from those at issue here. The calculation of depreciation for utility rates is an art, not a science. While utilities strive for accuracy, we note that the use of longer service lives can help moderate rate impacts to customers.[115] Thus, even if the actual lives of the new digital meters turn out to be shorter than the service lives used for the Joint Proposal's depreciation calculations, such that the depreciation must be adjusted in a future case, that result would not render the Joint Proposal terms adopted here unreasonable or contrary to the public interest or otherwise require our rejection of the Joint Proposal's proposed depreciation terms.

AMI Smart Meter Opt-Out Fees

Notwithstanding the ALJs' ruling that the structure and level of opt-out fees was an appropriate subject for consideration in this case, no party presented evidence challenging the amount or level (as opposed to the existence) of opt-out fees. The Joint Proposal therefore recommends no change to the current opt-out fee structure.

During the evidentiary hearing, O&R's Director of AMI explained how customers are notified of the opportunity to opt out of smart meter installation and described the process for opting out.[116] The witness indicated that 398 O&R customers have

[115] Our statements here also address the concerns expressed by Bob Wyman. In his statement in support, Mr. Wyman advocated for shorter average service lives and expressed concerns about the expected salvage values used for depreciating gas plant assets in Appendix 11 of the Joint Proposal. These concerns are not sufficient to reject the Joint Proposal, to which Mr. Wyman is a signatory.

[116] Tr., pp. 59-64.

opted out as of December 2018 and that the Company expected a total of approximately 1 percent or 3,650 of its customers to opt out based on what most utilities typically have seen.[117] Of the customers who have opted out to date, O&R's witness stated that some were based on privacy or health concerns.[118]

Ms. Kopald makes a legal challenge to the existence of a fee to opt out, without regard to the level of the fee. She contends that the Americans With Disabilities Act (ADA)[119] is violated if a person with an alleged sensitivity to electromagnetic emissions from smart meters must pay a fee to opt out of the AMI program.[120] At the close of the evidentiary hearing on the Joint Proposal, the ALJs requested that the parties brief whether the opt-out fees violate the ADA.[121]

In their post-hearing briefs, Staff and the Company both argue that the opt-out fees do not violate the ADA. Both

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[117] Tr., pp. 54-55.

[118] Tr., pp. 82-83.

[119] 42 U.S.C. § 12101 et seq.

[120] D. Kopald Testimony, p. 29. Ms. Kopald' post-hearing brief (pp. 10-12) appears to argue that persons with electromagnetic hypersensitivity should be considered disabled under the ADA. Without ruling on this issue, at the close of the evidentiary hearing the ALJs asked the parties to assume such a disability exists for purposes of addressing the ADA issue in their post-hearing briefs (Tr., p. 192). We do not find it necessary to address whether alleged sensitivity to electromagnetic emissions should be considered a disability for ADA purposes. As discussed below, the opt-out fees at issue are assessed by the Company based solely on a consumer's decision to opt out. A consumer's reason for such decision is not a consideration with respect to setting or assessing an opt-out fee. The same fee is assessed with respect to every customer who opts out.

[121] Tr., pp. 191-192. Only Staff, O&R, and Ms. Kopald took the opportunity to respond to the ALJs' request for briefing on the two AMI-related issues.

Staff and the Company point out that ADA Title III, applicable to private entities such as the Company, prohibits discrimination in private places of public accommodation.[122] Staff and the Company assert that there has been no showing that the service territory where AMI meters are being deployed represents a private place of public accommodation owned, leased or operated by O&R, within the meaning of the ADA.[123] Accordingly, both assert that Title III is not applicable to the opt-out fee.

Staff also argues that Title II of the ADA, which is applicable to public entities such as the Commission,[124] is not violated by the opt-out fees. Staff asserts that the Commission's approval of rates here does not trigger Title II protection.[125]

Finally, Staff argues that the ADA requires a showing that persons with disabilities are treated differently than persons without disabilities and that the ADA does not prohibit actions that apply equally to all, like the opt-out fee here.

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[122] 42 U.S.C. § 12182(a) (prohibiting discrimination by a private entity "on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any public accommodation.")

[123] Staff Post-Hearing Brief, pp. 2-3; O&R Post-Hearing Brief, pp. 3-5.

[124] Title II provides, in relevant part, that "[n]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity." 42 U.S.C. § 12132.

[125] Staff Post-Hearing Brief, p. 2. Staff relies on Noel v. NYC Taxi & Limousine Comm., 687 F. 3d 63, (2d Cir. 2012) (local licensing agency did not violate ADA by merely by licensing and regulating taxi industry that itself may have failed to afford meaningful access to disabled passengers).

Staff asserts that the opt-out fees are applicable to all customers, whether or not they have a disability.[126] Staff claims that the opt-out fees are cost-based and are used to pay meter readers, a cost otherwise avoided with AMI meters that communicate electronically and do not require meter readers.[127]

Ms. Kopald's brief does not discuss the various titles of the ADA, does not mention public accommodations under Title III, does not discuss how a Commission rate determination could fall within the scope of Title II of the ADA or could be considered discriminatory, and does not offer any argument regarding how O&R's opt-out fees, applicable to all persons who opt out, are allegedly discriminatory. Ms. Kopald's post-hearing brief also does not address or otherwise refute the legal analysis of the ADA presented by Staff and the Company.

Discussion

We agree with both Staff and O&R that O&R's across-the-board and even-handed assessment of opt-out fees, and the Commission's approval of the fees as part of a rate plan, do not violate the ADA.[128]

With respect to O&R, Ms. Kopald has not established that the opt-out fees discriminate against persons with disabilities. To establish an ADA claim under Title III, a complainant must establish three elements: (1) the complainant is disabled within the meaning of the ADA; (2) the entity owns, leases, or operates a place of public accommodation; and (3) the

[126] Staff Post-Hearing Brief, pp. 4-5, citing Anderson v. Macy's, Inc., 943 F. Supp. 2d 531 (W.D. Pa. 2013).

[127] Staff Post-Hearing Brief, p. 5.

[128] 42 U.S.C. § 12182(a),(b)(2) (defining public accommodation and listing numerous examples); Bower v. NCAA, 9 F. Supp. 2d 460, 481-83 (D.N.J. 1998).

entity's actions were discriminatory.[129] We need not decide whether alleged sensitivity to electromagnetic emissions is a disability under the ADA, or determine if O&R's implementation of meter replacement program somehow reflects "own[ing], leas[ing], or operat[ing] a place of public accommodation" under the ADA,[130] because this case demonstrates unequivocally that the opt-out fees are not discriminatory. The fees are applied equally to <u>all</u> residential customers who choose to opt out, irrespective of whether they have a disability. In addition, the fees are related to costs incurred by the Company, not the nature or condition of a customer. Opting out of having an AMI meter requires the Company to incur costs relating to reading the non-AMI meters, costs not incurred with respect to AMI meters.

Similarly, our decision approving the opt-out fee is based on the recognition that the Company incurs costs when a customer decides to opt out. It has no relationship to any characteristic of the customer, other than the customer's choice to opt out, and is wholly unrelated to whether a customer has a disability. Our approval of O&R's cost-base opt-out fees does not violate the ADA.

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[129] <u>Krist v. Kolombos Rest., Inc.</u>, 688 F.3d 89, 94-95 (2d Cir. 2012)

[130] 42 U.S.C. § 12182(a),(b)(2) (defining public accommodation and listing numerous examples such as hotels, restaurants, movie theaters, convention centers, bakeries, laundromats, museums, schools, etc.). We note that Ms. Kopald makes no argument regarding how O&R's decision to charge the opt-out fee could implicate a "place of public accommodation."

Energy Efficiency

Budget and Targets

The Joint Proposal increases O&R’s electric energy efficiency budget by $0.8 million in RY1, $1.8 million in RY2 and $3.6 million in RY3 over the current electric Energy Efficiency Transition Implementation Plan (ETIP) annual budget of $6.2 million. The Joint Proposal also recommends an increase in the Company’s gross electric energy efficiency targets by 16,589 MWh in Rate Year 1, an incremental 5,396 MWh in Rate Year 2, and an incremental 9,644 MWh in Rate Year 3 for a three-year total minimum gross electric savings target of 134,544 MWh. The Joint Proposal increases O&R’s gas energy efficiency budget by $0.166 million in Rate Years 1, 2 and 3 over the current gas ETIP annual budget of $0.537 million. The Joint Proposal also recommends an increase in the Company’s gross gas efficiency targets by 6,530 dekatherms (Dth). The annual minimum gross savings targets are 22,853 Dth in Rate Years 1, 2 and 3. For O&R to maximize its additional earnings under the gas Energy Efficiency EAM, its gross annual savings targets are 31,764 Dth in Rate Years 1, 2 and 3, for a cumulative annual gross savings total of 95,292 Dth.

In its filing, O&R proposed to spend over the three-year rate plan an additional $10.6 million above its existing electric ETIP annual budget of $6.3 million to achieve a proposed incremental net three-year savings target of 18,091 MWh above its then existing ETIP net MWh target of 19,302 MWh, for a total projected net savings of 37,393 MWh by the end of Rate

Year 3 (or a proposed three-year gross savings of 93,536 MWh).[131] The Company's filed electric revenue requirement also reflected an offset to its proposed costs of $6.36 million in previously collected and unspent Energy Efficiency Portfolio Standard ("EEPS") funds.[132] O&R proposed that its energy efficiency costs be amortized over three years subject to annual reconciliation.

O&R's previous electric and gas ETIP portfolios included three electric programs, the Residential Efficient Products Program, the Small Business Direct Install Program, and the Commercial and Industrial Electric Rebate Program; and one gas program, the Residential Gas Rebate Program. O&R's Energy Efficiency Panel testified that the Company's 2012 through 2016 annual electric portfolio budget of $6.3 million had an associated annual net savings target of 19,302 MWh, at an overall cost of $326 per net MWh. The Company's performance for the 2012 through 2015 program period exceeded 100 percent of its electric portfolio goals on an achieved and committed project basis at an overall cost of $251 per net MWh.[133]

Similarly, O&R's annual gas ETIP portfolio budget of $537,000 had an associated annual savings target of 14,691 net Dth, at an overall cost of $37 per net Dth. For its 2012 through 2015 program period, the Company achieved over 100

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[131] Exhibit 56, O&R Energy Efficiency Panel Testimony, p. 34. In its Order Authorizing Utility-Administered Energy Efficiency Portfolio Budgets and Targets for 2019-2020 (issued on March 15, 2018 (Case 15-M-0252, in the Matter of Utility Energy Efficiency Programs), the Commission restated the annual energy targets on a "gross" basis as opposed to the historic "net" basis which utilized a standard 0.9 net-to-gross factor to account for the effects of free-ridership and spillover.

[132] O&R later corrected its original estimate of $6.36 million of unspent EEPS funds to $7.02 million.

[133] Exhibit 56, O&R Energy Efficiency Panel Testimony, p. 9.

percent of its gas target while spending $2.0 million, resulting in an overall cost of $34 per net Dth.[134] While O&R had proposed in its initial testimony to expand its portfolio of electric energy efficiency programs, it did not propose any additional gas energy efficiency programs.

Staff countered O&R's proposals by recommending an electric energy efficiency portfolio budget increase of $2.05 million above the Company's current electric ETIP budget offset by $1.17 million of O&R's unspent electric EEPS funds. For the Company's electric energy efficiency portfolio, Staff recommended an increase in the annual savings target to 48,566 gross MWh, or an increase of 27,119 gross MWh over the current authorized ETIP annual savings target. Staff recommended an increase in the Company's gas energy efficiency budget of $168,333 and annual savings target of 6,529 gross Dth over existing ETIP levels. Staff also recommended that O&R collect funding for its energy efficiency portfolio costs through base rates rather than O&R's electric and gas surcharge mechanisms.

In rebuttal, O&R agreed with Staff on the amount of unspent EEPS funds to use to offset any increase in energy efficiency costs but proposed amortizing its electric energy efficiency expenditures over 10 years. O&R expressed concern that Staff's recommended 33 percent increase to O&R's electric energy efficiency budget was insufficient for the Company to meet Staff's recommended 158 percent increase to the Company's energy efficiency targets. O&R also argued that Staff's proposed gas energy efficiency budget increase was too low to meet the proposed increase in gas targets.

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[134] Id.

The Joint Proposal provides for a compromise between the two positions in the increases to O&R’s electric energy efficiency budget and targets, while adopting Staff’s recommended increases in the gas energy efficiency budget and targets.

O&R will recover its ETIP costs in base rates. Previously, such costs have been collected through the Company’s ECA and MGA surcharges for electric and gas, respectively. With the move to base rates, the costs are based on a forecast, rather than charged as incurred. The Joint Proposal provides for an asymmetrical reconciliation allowing for any unspent costs to be deferred for the benefit of customers.

Additional Employees

The Joint Proposal shifts the recovery of the costs for O&R’s energy efficiency employee positions into base rates. The Joint Proposal also allows the Company to recover the costs of one additional full-time equivalent energy efficiency position to assist with the expansion of O&R’s energy efficiency portfolio included in the Joint Proposal.

Discussion

The foregoing budgets and targets present an aggressive program for O&R to implement. As the Commission recognized in its December 2018 Order Adopting Accelerated Energy Efficiency Targets (Energy Efficiency Order),[135] the Joint Proposal’s electric targets are higher than those prescribed in that Order, although not the gas targets. On a dollar per million British Thermal Units (MMBTU) basis, the gas targets in

[135] Case 18-M-0084, Comprehensive Energy Efficiency Initiative, Order Adopting Accelerated Energy Efficiency Targets, p. 28 (issued December 13, 2018).

the Joint Proposal are less than those targets prescribed specifically for gas service in the December 2018 Order. Nevertheless, on a combined basis, the Joint Proposal's electric and gas targets, together, represent greater savings on an overall British Thermal Unit (BTU) basis than the targets in the Energy Efficiency Order. As a negotiated settlement balancing several factors, we find that the Joint Proposal's energy efficiency targets take a more refined approach specific to O&R than the approach in the Energy Efficiency Order, which assigns targets intended to work generically across all New York electric and gas utilities. As for the Joint Proposal's indications that the targets set in the Commission's Order in Case 18-M-0084 might supersede or replace the targets established in the Order,[136] we see no reason to replace the specified targets. Thus, O&R should operate under the Joint Proposal's targets until such targets are reset by the Commission.

Energy efficiency targets are designed to spur innovative approaches that can build markets for related products and services to serve the State's long-term energy policy goals. Therefore, we find the targets to be reasonable. Moreover, the Joint Proposal's move of the energy efficiency program costs to base rates is also consistent with the Commission's March 2018 Order in Case 15-M-0252.[137] In the March 2018 Order, the Commission adopted MMBTU targets for gas

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[136] See Joint Proposal Appendix 16, p. 5 and p. 15.

[137] Case 15-M-0252, Utility Energy Efficiency Programs, Order Authorizing Utility-Administered Energy Efficiency Portfolio Budgets and Targets for 2019 – 2020 (issued March 15, 2018) (March 2018 Order).

utilities rather than Dth[138] for a more consistent compilation of data across the multitude of clean energy programs and program administrators. Consistent with our March 2018 Order, therefore, O&R should report its gas energy efficiency savings as gross MMBTU. Finally, allowing for one additional full-time equivalent employee is reasonable when considered in the context of the Joint Proposal's aggressive electric and gas energy efficiency programs.

Non-Wires Alternatives (NWAs):

The Joint Proposal provides a financial incentive for the Company to develop NWAs instead of traditional transmission and distribution infrastructure expansion and related capital costs.[139] It continues the existing, previously authorized Monsey NWA projects and incentives as well as the previously approved NWA Framework,[140] including cost recovery, reporting requirements, project categories, financial incentive and recovery, and change in portfolio megawatt amounts.[141] But it also includes certain changes to the Monsey NWA project and NWA Framework.

With respect to the NWA Framework, the Company agreed to Staff's proposal in testimony to allocate NWA program and incentive costs through the Energy Cost Adjustment (ECA) to Service Class (SC) groups (rather than to individual service classes) based on their individual contribution (by percentage)

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[138] One MMBTU is the equivalent of one Dth.

[139] Joint Proposal, pp. 22-23; 60-61, Appendix 6.

[140] Case 17-M-0178 supra n. 82, Order Granting Petition in Part (issued November 16, 2017), pp. 8-15; 21-24.

[141] Joint Proposal, pp. 60-61.

to non-coincident demand[142] specific to the voltage level of the traditional infrastructure deferred by the NWA projects.[143]

For all future NWA projects, the Joint Proposal recommends that the Company also be allowed to recover any incentives earned and costs incurred via the ECA. The Company will retain 30 percent of a project’s net benefit and accordingly 70 percent of the net benefit will inure to customers. The incentive will be adjusted to reflect the difference between the estimated costs versus the actual costs of a project, sharing equally (50/50 percent) that difference with customers. The Joint Proposal also provides for separate incentive mechanisms for small and large NWA projects to account for different load relief requirements, implementation times and higher cost deferrals for transmission and distribution infrastructure. Amortized costs and incentives will be collected on a per kilowatt hour basis for non-demand billed service class groups, on a per kilowatt basis for demand-billed service class groups, and on a kilowatt of contract demand basis for standby customers.[144]

To the extent that new NWA projects displace capital projects, as reflected in the average electric plant in service balances, the balances will be reduced to exclude the forecasted net plant costs associated with the displaced project and

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[142] In this context, ”non-coincident demand” means the individual peak demand for each voltage level, whether or not that individual demand occurs at the same time as the overall system peak demand. Thus, the agreed-upon approach in the Joint Proposal will more granularly allocate costs by reflecting cost causation that is specific to each voltage level.

[143] Joint Proposal, pp. 60-61; Exhibit 212, Staff Markets and Innovation Panel Direct Testimony, pp. 36-37.

[144] Joint Proposal, p. 61.

carrying charges will be applied as a credit against the recovery via the ECA.[145]

With respect to the Monsey NWA project, Staff and the Company disagreed on the timing and recovery of the project's costs.[146] The Joint Proposal adopts the Company's proposal to recover the costs in base rates with a ten-year amortization period and reconciliation of actual costs incurred over the three-year term of these rate plans.[147] Staff ultimately found that approach acceptable because the Monsey project costs are fairly well-known and it is reasonable to include them in base rates now in order to reflect the actual costs incurred.[148]

Discussion

NWA programs are an important component of the REV Track 2 Order's ratemaking and revenue policy framework.[149] As we found in that order with respect to NWAs, "[t]he public interest is best served when utilities' economic objectives are decisively and substantially aligned with public policy and consumer interests."[150] The Joint Proposal's continuation of NWA

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145 Joint Proposal, p. 22. If the carrying charges of any displaced project is higher than the NWA recovery, the difference will be deferred for customers.

146 Staff Statement in Support, pp. 40-41.

147 Joint Proposal, pp. 22-23; 35.

148 Id. p. 41.

149 Case 14-M-0101 – Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (issued May 19, 2016), pp. 46-47 (NWA projects "are a means by which third-party investment can be integrated with utility systems to improve efficiency and reduce bills").

150 Id., p. 6.

programs and its refinement of incentives are consistent with both the policy and framework of the Track 2 Order.

The Joint Proposal’s adoption of Staff’s proposal to modify the NWA Framework reasonably balances the Commission’s REV policy goals with the Company’s financial incentives. Under the Joint Proposal, O&R will be encouraged to plan for and engage in projects that will replace, defer or delay traditional capital-intensive projects and infrastructure with customer-sited distributed energy resources (DER) and other market-based solutions. These provisions are in the public interest because NWAs can provide cost savings and environmental benefits for customers while maintaining system reliability and resiliency.

The Joint Proposal’s treatment of the Monsey NWA costs is reasonable for the reasons Staff notes. We find the resolution of these issues to be within a potential litigated outcome and therefore reasonable.

REV Initiatives

O&R’s electric revenue requirements in the Joint Proposal include expenditures for REV initiatives to be amortized over ten years, including carbon reduction and platform service revenue programs for electric.[151] The Joint Proposal recommends funding for electric vehicle and heat pump programs, with deferral for customer benefit of the differences in actual program costs and the level provided in rates.[152] These carbon reduction programs are comparable in size and scope

[151] Joint Proposal, pp. 34-36.

[152] Id. p. 35; Appendix 6, p. 1.

to other Commission-approved programs, with similar downward-only reconciliation mechanisms.[153]

The Joint Proposal's recommended platform service revenue programs are an adoption of the Company's proposal to treat its revenues from sales of products and services, advertising, and other program income from the "MY ORU Store" as platform service revenues, with 80 percent being deferred for the benefit of customers and 20 percent being retained by the Company.[154] Staff noted that this approach is consistent with the REV Track Two Order and other recent rate orders.[155]

Discussion

We agree with Staff's position that these initiatives are consistent with our REV Track Two Order and other recent rate orders. These projects advance the Commission's clean energy policy goals. The Joint Proposal properly balances the positions of the parties and fosters the development of REV-related initiatives that are in the public interest. An additional important means to advance our REV objectives is the implementation of earnings adjustment mechanisms described below.

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153 See Cases 17-E-0238 and 17-G-0239, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation d/b/a National Grid for Electric Service, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans (issued March 15, 2018); Cases 17-E-0459 and 17-G-0460, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric Service, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans (issued June 14, 2018).

154 Joint Proposal, p. 36.

155 Staff Statement in Support, pp. 42-43.

Earnings Adjustment Mechanisms (EAMs)

EAM Metrics, Structure, and Amounts

The Joint Proposal contains EAM metrics applicable to both electric and gas businesses. The electric EAM metrics are related to peak reduction, distributed energy resource (DER) utilization, electric megawatt hour (MWh) reduction, residential electric energy intensity, commercial electric energy intensity, innovative rates participation, environmentally beneficial electrification, and anticipated metrics for interconnection and storage. The Joint Proposal’s electric EAM metrics are capped at a maximum level of basis points available to O&R of 62.5 for Rate Year 1, and 67.5 for both Rate Years 2 and 3. In addition to the electric EAMs, the Joint Proposal also allows O&R to earn a maximum of 10 basis points per Rate Year through a Gas Energy Efficiency metric.

In its filing, O&R proposed four categories of energy efficiency EAMs and a total of nine individual metrics.[156] The Company proposed to earn 70 basis points each year for attaining minimum achievement levels, 85 basis points for mid-point achievement levels, and a total of 100 basis points at maximum achievement levels in each of the calendar years 2019, 2020, and

[156] Specifically, O&R proposed (1) a System Efficiency EAM, consisting of a megawatt Peak Load Reduction metric, a Circuit Peak Load Reduction metric, and a DER Utilization metric; (2) an Energy Efficiency EAM, consisting of a MWh Reduction metric and an Energy Intensity metric; (3) an Interconnection EAM, consisting of an Applicant Satisfaction metric; and (4) an AMI Customer Engagement EAM, consisting of a Customer Awareness metric, a Weekly AMI Usage Report metric, and a High Bill Alert Enrollment metric.

2021.[157] O&R proposed that, if no multi-year rate plan could be agreed to, the EAM targets should be revised to place more emphasis on the programmatic EAMs because of reduced opportunities to achieve outcome-based EAMs.

Staff recommended that, irrespective of whether rates were established by the Commission's adoption of a Joint Proposal and multiyear rate plan or arrived at through litigation, the EAM metrics, targets, and financial incentives should be set for three years. Staff further recommended that the Commission should implement a gas Energy Efficiency EAM metric and an EAM to incent innovation and O&R's adoption of environmentally-beneficial electrification technologies. Staff also disagreed with the three AMI EAM metrics proposed by the Company and proposed its own alternative.[158] Staff recommended the availability of 11 basis points for minimum-level achievement, 28 basis points at midpoint achievement levels, and 50 basis points for maximum achievement during the three years that the electric EAMs would be applicable under Staff's proposal. For gas, Staff recommended the availability of 2.5 basis points for minimum-level achievement, 5 basis points for mid-point achievement, and 10 basis points for maximum level achievement, also for each year of a three-year term.

In rebuttal, O&R generally agreed with Staff regarding overall EAM structure, but it disagreed with the reductions to

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[157] O&R also indicated its preference that any adopted basis point values should be converted to dollar values once the Company's capital structure and rate base are known. In its testimony, Staff agreed that the Company's request was reasonable.

[158] Staff's alternative consisted of a metric to encourage customer participation in Voluntary Time of Use and Smart Home rate options.

the basis points to be made available for electric EAMs, urging the adoption of a maximum incentive of 100 basis points. Additionally, O&R disagreed with a Staff proposal to eliminate some of the Company’s proposed AMI-related EAM metrics. For gas, O&R agreed with Staff’s 10 basis point maximum level for an energy efficiency EAM. O&R’s rebuttal updated its proposed allocation of basis points to 55.0, 77.5, and 100.0 for minimum, mid-point, and maximum achievement levels, respectively.

The EAM metrics in the Joint Proposal reflect those proposed by Staff, including the absence of any additional earnings opportunities related to AMI deployment. The design of each EAM incentive and the associated targets are provided for in Appendix 16 to the Joint Proposal. The Joint Proposal provides O&R with five Electric EAMs, some of which are measured across multiple metrics, and one Gas EAM.

The Joint Proposal’s System Efficiency EAM is based on the Company’s performance measured over three metrics, Peak Reduction, Storage Roadmap, and DER Utilization. Peak Reduction is an outcome-based metric providing an incentive to O&R to reduce its weather-normalized system peak load for its service territory on a year-over-year percentage basis measure at the hour of the system peak in each Rate Year. The DER Utilization metric provides an incentive to O&R to expand the use of DER by its customers. The metric measures the sum of the incremental annualized megawatt hours in each Rate Year from commercial solar photovoltaic installations, Community Distributed Generation, combined heat and power, electric energy storage resources, and other distributed generation source such as wind, hydro, and fuel cells. The Storage Roadmap metric will be developed with Staff in accordance with the Commission’s recent

Order Establishing Energy Storage Goal and Deployment Policy.[159] The metric and targets for Roadmap Storage will be used only for Rate Years 2 and 3.

The Joint Proposal’s Electric Energy Efficiency EAM also is measured across three metrics, an Electric Energy Efficiency MWh Reduction Metric, a Residential Electric Energy Intensity Metric and a Commercial Electric Energy Intensity Metric. The Electric Energy Efficiency metric measures MWh reductions attributable to O&R’s administered electric ETIP energy efficiency programs. The Residential Electric Energy Intensity metric measures reductions in residential (SC 1 and SC 19) customers’ total annual usage on a per customer basis, measured as the annual residential MWh sales divided by the 12-month average number of residential customers. The Commercial Electric Energy Intensity metric measures reductions in O&R’s commercial (SC 2 and SC 20) customers’ total usage on a per employee basis. Both the Residential and Commercial Electric Energy Intensity metrics include true-up provisions for heat pump and electric vehicle charging usage to ensure that the Company does not have a disincentive preventing encouragement of these technologies as a result of the metrics. The Joint Proposal’s Customer Engagement EAM consists of one outcome-based metric, the Innovative Rates Participation metric. This metric provides the opportunity for additional earnings for increasing residential customer participation in opt-in alternative rate design configurations, such as O&R’s newly designed voluntary time of use rates, and other voluntary rate options to be implemented by the Commission in the future.

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[159] Case 18-E-0130, Energy Storage Deployment Program, Order Establishing Energy Storage Goal and Deployment Policy (issued December 13, 2018).

The Joint Proposal’s Environmentally Beneficial Electrification EAM provides O&R with the opportunity for additional earnings for reductions in carbon emissions as a result of increased electric vehicle and heat pump adoption relative to traditional technologies that rely on carbon intensive fuel sources. This EAM will be measured as the incremental lifetime short tons of avoided carbon dioxide from incremental electric vehicles registered in O&R’s service territory and from incremental heat pumps installed during a given Rate Year.

While the Joint Proposal reserves an EAM for interconnection, it does not yet provide for any specific metrics and targets. Instead, the Joint Proposal provides that any metrics and targets will be created following Commission action in the EAM proceeding,[160] should the Commission establish interconnection policies and goals.[161]

Finally, the Joint Proposal includes a Gas Energy Efficiency EAM providing an opportunity for additional Company earnings for O&R’s achievement of energy efficiency savings that are significantly above its historical first-year annual savings target of 16,323 Dth. This metric will be measured as the sum of Dth savings from all of O&R-administered gas ETIP energy efficiency programs.

The annual electric EAM targets are listed in Table 1 of Appendix 16 to the Joint Proposal, with specific incentive

[160] Joint Proposal, Appendix 16.

[161] Case 16-M-0429, In the Matter of Earnings Adjustment Mechanism and Scorecard Reforms Supporting the Commission's Reforming the Energy Vision. On October 24, 2018, Staff filed with the Secretary a proposal on interconnection EAMs, which is now subject to public comment. No Commission action has yet been taken on that Staff proposal.

compensation amounts converted to dollars detailed in Table 2. The annual gas EAM targets and their associated annual incentive amounts in dollars are included in Appendix 16, Tables 3 and 4, respectively.

EAM Cost Recovery

The Joint Proposal provides that any incentives earned by O&R will be collected by the Company through existing surcharges. For electric EAMs, incentives will be recovered through the EAM Surcharge component of the Company’s Electric Cost Adjustment surcharge mechanism. For the gas EAM, any earned incentive will be recovered through a new EAM Surcharge component of O&R’s Monthly Gas Adjustment surcharge. Staff notes that the Joint Proposal’s EAM incentive recovery provisions will align the responsibility for paying the earned incentives with those who enjoy the benefits.

O&R proposed to collect any earned EAM incentives through the Company’s ECA mechanism during the 12-month period after which the incentives are earned. Collection would begin on June 1 of each rate year, following the Company’s filing of its EAM performance report. Under O&R’s proposal, earned EAM incentives would have been allocated among six groups of Service Classes for recovery based on the percentage to system peak that each Service Class or group of classes contributed.

While Staff agreed with the general framework proposed by the Company, it recommended any earned EAM incentives be allocated to Service Class groups commensurate with the type of benefit each EAM metric is designed to produce. Staff’s proposed three allocation methods looked at either a percentage of system peak demand only, energy only, or a combination of system peak demand, non-coincident primary demand, and energy. Although the Company disagreed with Staff’s recommended allocation as unnecessarily complex, the Staff allocation method is incorporated into the Joint Proposal.

Discussion

The Commission has previously declared its intent to create a modern regulatory model that challenges utilities to take actions to achieve the objectives by better aligning utility shareholder financial interest with consumer interests.[162] To accomplish its goal, the Commission identified, among other things, the inclusion of EAMs in utility rate plans to incent shareholders to invest capital and seek third-party solutions that improve the efficiency, resiliency and flexibility of the utility’s physical networks, reduce consumer total costs and achieve the State’s policy objectives. Proper EAMs should reflect the unique characteristics of a utility’s customers, its service area, and its operational capabilities and constraints to support the Commission’s REV objectives and provide for customer benefits.

The Joint Proposal balances shareholder, customer, environmental, and public interests to establish new incentive mechanisms that will align the Company’s business activities with the Commission’s and New York State’s energy and climate policy goals. The Joint Proposal’s EAMs will support energy efficiency programs that will integrate new clean energy technologies from emerging markets. The Joint Proposal’s EAMs also logically follow the recommendations made by the parties in the pre-filed testimony. The Commission has approved similar mechanisms to those included in the Joint Proposal in approving previous rate plans, and the amounts of the earnings available

[162] See Case 14-M-0101, Reforming the Energy Vision, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (issued May 19, 2016).

to O&R are commensurate with the levels approved by the Commission in its 2018 Niagara Mohawk Rate Order and 2018 Central Hudson Rate Order when compared by basis point level.[163] For the foregoing reasons, we determine that the EAMs here are both reasonable and in the public interest.

Revenue Allocation and Rate Design

Electric Revenue Allocation and Rate Design

O&R filed an Embedded Cost of Service (ECOS) study that assigned utility cost responsibility to each service class. Some accounts (such as poles, conductors and transformers) were classified as both customer and demand related and a minimum system study was used to establish the percentage of costs are to be classified as customer and demand related. O&R proposed that, each service class's initial responsibility for revenues be adjusted by one-third of its deficiency or surplus, as shown on the ECOS study, but constrained by a cap that no service class would experience change that was greater than one and a half times the system average delivery revenue change. The Company proposed including its energy efficiency costs in base rates, that it currently collects through its Energy Cost Adjustment (ECA), and to amortize the cost over three years. O&R proposed to allocate the delivery revenue increase, including energy efficiency costs, among the service classes in proportion to their relative system cost contribution.

Staff agreed with the Company's allocation methodology for the revenue requirement increases. However, although Staff agreed with the move of energy efficiency costs into base rates,

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[163] Cases 17-E-0238 and 17-G-0239, Niagara Mohawk - Rates; Cases 17-E-0459 and 17-G-0460, Central Hudson Gas & Electric Corporation – Rates, *supra* n. 154.

it proposed an allocation of energy efficiency program costs based on usage to eliminate a shift in revenue requirement among the service classifications since energy efficiency costs are currently allocated on usage. The Staff Electric Rates Panel testified that under the Company's allocation method, the costs of Company-administered energy efficiency programs allocated to its residential service class would increase by approximately $1.3 million per year, assuming the Staff recommended base rate funding level of $7.2 million for the Company-administered energy efficiency programs.[164]

Although Pace and UIU signed the Joint Proposal, both parties each took issue with O&R's ECOS study methodology.[165] Pace advocated against using O&R's minimum system methodology to determine cost causation, arguing that the approach is inconsistent with New York's REV policy goals.[166] UIU advocated for the classification of distribution costs as completely (100 percent) demand related.

The Joint Proposal allocates one-third of deficiency or surplus as determined by O&R's ECOS Study capped by a change of no greater than 1.5 times the system average overall delivery revenue increase. The Joint Proposal allows for the recovery of

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[164] Exhibit 188, Staff Electric Rates Panel Testimony, p. 19-20.

[165] Pace Statement in Support, p. 6-7; UIU Statement in Support, p. 3-4.

[166] In its Statement of Support, Pace also raised the issue of ratepayers supporting O&R's payment of trade association dues. In response to discovery requests, O&R provided invoices from the trade organizations showing the amounts deducted from their rate requests for the dues based on the trade organizations representations that those amounts were reported to the IRS as lobbying expenses. Based on this evidence, we see no reason to upset the balance of the Joint Proposal.

O&R's energy efficiency costs in base rates incorporating Staff's proposal to allocate those costs based on usage.

Customer Charge

O&R, relying on the results of its ECOS study, proposed to increase its SC No. 1 – Residential customer charge from $20 to $22 and to maintain the customer charge for its other service classes at existing levels. Staff proposed to maintain at existing levels all the Company's customer charges, including SC No. 1. Pace, PULP and UIU all advocated, at least in part, for a reduction of the Company's electric monthly customer charges. UIU advocated for a smaller customer charge sized to recover only those costs associated with connecting a customer to the grid (services and meters).

The Joint Proposal maintains most customer charges at existing levels but proposes a reduction to the charge applicable to SC No. 1 from $20 to $19.50, at which it will remain for all three rate years. Staff notes that the modest reduction is a reasonable compromise of all parties' litigated positions and notes that it expects that the Commission will examine the issue of customer charges on a generic basis in our Value of Distributed Energy Resources (VDER) proceeding.[167] The only other change made to the customer charge is for Service Class 15,[168] which was increased by the overall delivery increase percentage.

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[167] Case 15-E-0751, In the Matter of the Value of Distributed Energy Resources.

[168] Service Class No. 15 applies to buyback service from a customer-operated, on-site generating facility.

Voluntary Residential Three-Part Rate

The Joint Proposal provides for O&R's filing of a voluntary three-part (the three parts consist of a fixed charge, demand charge and a usage charge) rate available to residential customers that use geothermal technology, subject to certain technological requirements, and to other residential customers without qualifying geothermal units, capped at 500 participants during the three years covered by the rate plan. For residential customers with qualifying geothermal units who are not able to participate in the three-part rate, the Company will make available a new annual Rate Impact Credit of $52. This credit is available only to customers who would qualify for the voluntary rate but are not able to take service using the rate because it has not yet been filed with or approved by the Commission or, because AMI metering is not available at the customers premises. Customers who are able to participate in the voluntary rate but choose not to apply for the rate are not eligible to receive a Rate Impact Credit.

Gas Revenue Allocation and Rate Design

O&R provided an ECOS study that analyzed two service classes, SC No. 1 – Residential and Space Heating and SC No. 2 – General Service. After determining the class specific rates of return on a total system basis and applying on-third of the class-specific ECOS study deficiencies and surpluses, the Company allocated the delivery revenue increase among customer classes in proportion to the relative contribution made by each class to the realigned total rate year delivery revenues.

Staff agreed with the Company's methodology, and the Joint Proposal provides for a gas revenue allocation based on the Company's initial proposal. However, O&R has also agreed to provide in its next rate case an alternative ECOS Study as a reference for parties to see how costs might be allocated where transmission and distribution components are classified as 100 percent demand related.

In addition to the foregoing, the Joint Proposal reduces the SC No. 1 and SC No. 6 – Rate Schedule 1A first block charge from $20.00 to $19.50. This flat charge is applicable to the first 3 cubic feet (Ccf) of gas usage per month by a customer in those respective service classes. Usage thereafter is charged on a volumetric basis. O&R initially had sought to increase the charge to $22.00. While this change does reduce the initial charge made to a customer who uses any gas in a month, it does cause a small increase to usage rates after the first block is exceeded. The Joint Proposal retains the first block charges for O&R’s SC No. 2 and SC No. 6 – Rate Schedule 1B customers at $30.00. For the Company’s larger customers in SC No. 6 – Rate Schedule II, the first block consists of usage of 100 Ccf or less. The Joint Proposal retains the existing $255.18 first block charge for these customers.

Gas Billing and Payment Processing Charge

Where O&R performs billing services for an ESCO that sells gas commodity to O&R’s delivery customers, O&R charges a fixed amount per each bill received designed to cover costs related to billing and payment processing. The Joint Proposal increases the per bill charge from $1.02 to $1.30. The increase is based on the results of the Company’s ECOS study relative to the costs for O&R’s billing services. This Company proposal was not challenged by any party.

Gas Interruptible Transportation Rates

The Joint Proposal continues O&R’s rate design for its SC No. 8 Interruptible customers, consisting of a block rate design and a minimum monthly charge. The monthly minimum charge for the first 100 Ccf is $118. Thereafter, those customers are charged under a base charge cap that is equal to 70 percent of the tail block rate for SC No. 6 non-residential customers. O&R’s existing monthly blocked rate structure for SC No. 8 consists of a minimum charge for the first 100 Ccf or less of usage and three blocked rates, the Base Charge plus 5.0 cents for the next 49,900 Ccf of usage, the Base Charge plus 2.5 cents for the next 50,000 Ccf of usage, and the Base Charge for usage above 100,000 Ccf.

In the Company’s last rate plan, there was a cap on the Base Charge such that it cannot exceed $0.27864 per Ccf, or 70 percent of the SC No. non-residential tail block rate. The Company proposed to update the base charge cap from $0.27864 to $0.2830, which would maintain the same 70 percent cap of the SC No. 6 non-residential tail block rate.[169] Staff agreed with the Company’s proposal to update the base charge.[170] The base charges are determined monthly to ensure that they do not exceed the base charge cap. Staff indicates that the Joint Proposal’s interruptible rates reflect the parties’ estimation of the likely results for sales that take place in a competitive market environment.

Discussion

Both the Company and Staff have provided substantial testimony regarding O&R’s ECOS studies and the proposed revenue allocation and rate design. The Joint Proposal’s revenue requirements are allocated fairly among the rate classes consistent with cost of service principles. As with the revenue requirements, the revenue allocation and rate design were agreed

[169] Exhibit 88, O&R Gas Rates Panel Testimony, pp. 32 – 33.

[170] Exhibit 225, Staff Gas Rates Panel Testimony, p. 26.

to by many parties. Parties that signed on only in part to the Joint Proposal did not take issue with the assignment of revenues to the rate classes. Parties that opposed the Joint Proposal also did not raise issues about its assignment of revenues to the different rate classes. On the record before us, we determine that the rates provided for in the Joint Proposal are just and reasonable.

As for the Joint Proposal’s inclusion of a Voluntary Residential Three-Part Rate, we support the parties’ efforts to create diversity in the energy supply market. Here, we approve this proposal’s bounded scope and reach. We expect that Staff and the parties will examine the data that comes from implementation and provide us a critical assessment of its positive or negative effects. Additionally, O&R should consult with Staff and other interested parties and, within 12 months of implementation of a Voluntary Residential Three-Part Rate, file a report on its experience for Commission review. As a general matter, parties should work on developing the record with facts and data in all cases they would seek Commission consideration of similar programs in other utility service territories, or even to continue or expand existing programs.

Performance Mechanisms: Electric Reliability and Gas Safety

The Joint Proposal recommends establishing performance metrics to measure activities in the areas of electric reliability and gas safety.[171] For electric reliability, if the Company fails to meet the established metrics, it will incur negative revenue adjustments. For gas safety, the Joint Proposal provides that if the Company meets or exceeds the

[171] Joint Proposal, p. 46; Appendices 13 and 14.

established metrics in these areas, it will incur positive revenue adjustments; and if the Company fails to meet the metrics, it will incur negative revenue adjustments. These positive and negative adjustments will be recovered from or credited to customers. The adjustments will be made through the Energy Cost Adjustment (ECA) or Monthly Gas Adjustment (MGA) over a twelve-month period beginning on June 1 of each rate year. These adjustments are assessed volumetrically to customers as cents per kilowatt hour (kWh) and cents per 100 Ccf, respectively and are reconciled annually.

With one exception related to gas pipeline replacement, the Joint Proposal provides that all electric reliability and gas safety performance targets will continue after the term of this rate plan until changed by the Commission.[172]

Electric Reliability Performance Mechanism

The Joint Proposal provides for continuation of the same electric reliability performance mechanism (ERPM) that was adopted in the 2015 Rate Order, which addresses the frequency and duration of electric outages.[173] The two components of this performance metric are a Customer Average Interruption Duration Index (CAIDI) and a System Average Interruption Frequency Index (SAIFI). The Joint Proposal contains specific targets and exclusions for both. It imposes a negative revenue adjustment of 20 basis points annually for failure to meet the targets.[174]

[172] Joint Proposal, Appendix 14, p. 1, fn. 2. The cumulative 66-mile leak-prone gas main replacement target does not remain in effect beyond 2021, but the requirement to remove 20 miles of pipeline per year does.

[173] Joint Proposal, Appendix 13.

[174] Joint Proposal, Appendix 13, pp. 1-2.

This performance mechanism excludes outages from major storms, incidents such as a strike or catastrophic events beyond the Company's control, and incidents involving generation or the bulk transmission system beyond the Company's control. It does not exclude incidents resulting from the Company's unsatisfactory performance.

The Company will measure this performance mechanism by calendar year for 2019, 2020 and 2021, and will report annually on its performance by March 31st of the year following the reporting year, with the first report due March 31, 2020. The report will include the Company's system-wide performance and identify whether a revenue adjustment is necessary and if so, the amount of adjustment. The Company's report will also identify whether any exclusions should apply to its performance for that year and provide the basis and support for the exclusion.

Gas Safety Performance Mechanisms

As with the electric reliability performance mechanism, the Joint Proposal in large part continues but enhances the Company's existing gas pipeline safety activities.[175] These activities involve leak detection and management, removal of leak-prone pipes, emergency response, damage prevention, and any events of regulatory non-compliance. The annual positive revenue adjustments for surpassing various pipeline metrics is 32 pre-tax basis points. The potential annual cumulative negative revenue adjustment for the Company's failure to meet minimum targets is a maximum of 150 pre-tax basis points.[176]

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[175] Joint Proposal, Appendix 14.

[176] Joint Proposal, Appendix 14, p. 1, fn. 1.

Leak Management

The Joint Proposal recommends a performance mechanism for the Company to reduce its total leak backlog and to maintain its repairable leak backlog. The Joint Proposal establishes annual targets of a maximum of 50 for total leak backlog (Types 1, 2, 2A, and 3) and of a maximum of 20 for repairable leaks (Types 1, 2, and 2A). The mechanism applies both positive and negative revenue adjustments: five basis points imposed for a total leak backlog greater than 50; ten basis points imposed for repairable leaks greater than 20. If the Company reduces the threshold year-end total leak backlog, it will realize a positive revenue adjustment of between 2 and 6 basis points, depending on the remaining backlog. At the end of each calendar year during the rate plan, the Company will implement a ten-day timeframe to meet the targets.

The Joint Proposal allows the Company to retain consultants to perform procedure review and program enhancements related to this mechanism.

Leak-Prone Pipe Removal

The Joint Proposal recommends a requirement that a minimum of 20 miles of leak-prone pipes be removed from service in 2019, 2020 and 2021, with a cumulative total of 66 miles removed by December 31, 2021.[177] This performance mechanism maintains the existing positive revenue adjustments of between 2 and 6 basis points and sets the negative revenue adjustment at 15 basis point for failure to meet the 2019 and 2020 targets and 7.5 basis point for failing to meet the 2021 targets.

The Joint Proposal also recommends that the Company perform a study of coated steel pipes to determine how many

[177] Joint Proposal, Appendix 14, pp. 4-5.

pipes may be ineffectively coated and should be categorized as leak-prone, which must be submitted to Staff for review. Staff then will establish criteria for including such pipes in the Company’s replacement program.[178]

The Joint Proposal maintains existing inspection efforts commensurate with the removal rates, incorporates consultant support, and requires annual reporting on removal progress.[179]

Emergency Response

The Emergency Response performance mechanism recommended in the Joint Proposal maintains the current minimum statewide emergency response targets and encourages additional improvements through positive revenue adjustments. The Company must respond to a minimum of 75 percent of emergency reports within 30 minutes, 90 percent within 45 minutes, and 95 percent within 60 minutes.[180] The mechanism includes positive and negative revenue adjustments for achieving or failing to achieve targets. The positive revenue adjustments range from two to six pre-tax basis points based on the range of the Company’s response time to emergencies. For example, if O&R responds within 30 minutes to gas leak or odor calls for at least 90 percent of the emergency reports or more, it will receive positive revenue adjustments. A negative revenue adjustment of twelve basis points annually will be triggered if the Company fails to respond to at least 75 percent of emergency reports within 30 minutes.

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[178] Joint Proposal, Appendix 14, p. 5.

[179] Joint Proposal, p. 51; Appendix 14, pp. 4-5, 8-11.

[180] Joint Proposal, Appendix 14, pp. 2-3.

Damage Prevention

The Joint Proposal recommends a damage prevention performance mechanism designed to protect and prevent damage to natural gas pipes. This mechanism would establish total annual damages for each rate year and new tiers of negative revenue adjustments ranging from 5 to 20 basis points for each calendar year the targets are not attained.[181] The damage prevention categories will be evaluated as a whole rather than individually and the Company will have the option to average the current and prior year damages numbers.[182] The performance mechanism would require reporting on damage prevention targets through tracking and measuring damage to gas facilities pursuant to the guidelines in the Annual Gas Safety Performance Measures Report.

Regulatory Non-Compliance and Violations

Under the terms of the Joint Proposal, the existing negative revenue adjustment for regulatory violations identified by Staff during field and records audits would be modified.[183] Only violations identified in Staff field and record audit letters will be counted in this metric. The Joint Proposal defines “high risk” or “other risk” categories of violations, establishes thresholds, and sets negative revenue adjustments for exceeding the established thresholds.[184]

The Joint Proposal also identifies procedures for the Company to cure violations (within five business days of a compliance meeting with Staff). It limits the Company’s

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[181] Joint Proposal, Appendix 14, pp. 3-4.

[182] Joint Proposal, Appendix 14, pp. 9-11. This mechanism also allows for seasonal and video locating contractors and an excavator education program to assure damage prevention.

[183] Joint Proposal, Appendix 14, pp. 5-8.

[184] Joint Proposal, Appendix 14, pp. 5-8, 12-14.

exposure resulting from multiple violations of a single regulation and limits any negative revenue adjustment assessed to no more than 75 basis points.[185] The Joint Proposal provides for Staff to submit a final non-compliance audit report to the Secretary and recommends procedures for the Company to dispute and appeal any Staff findings in the report.[186]

Discussion

The Joint Proposal's electric and gas performance mechanisms are designed to provide financial incentives to motivate the Company to continue to provide reliable and safe service to its customers. These are well-recognized incentives that have been utilized in other rate cases. The performance mechanisms outlined in the Joint Proposal benefit customers and are in the public interest because they are designed to improve electric reliability and gas safety.

With respect to the Joint Proposal's electric reliability performance mechanism, no party to these proceedings recommends any modifications to the CAIDI or the SAIFI targets or any changes to the potential positive or negative revenue adjustments. The Company has been meeting the targets for both metrics set under the 2015 Rate Plan and is providing reliable service. The Company is expected to continue to meet the targets under the Joint Proposal. We therefore find this performance mechanism to be in the public interest.

With respect to the gas safety performance mechanism and its several components, we find that the Joint Proposal will improve the Company's performance in this area and enhance public safety and compliance with the Commission's gas safety

[185] Joint Proposal, Appendix 14, pp. 5-8, 11-15.

[186] Joint Proposal, Appendix 14, pp. 7-8.

regulations. The metrics established are reasonable given the Company's previous performance.

The repairable leak and leak backlog metrics encourage the Company to exceed the established targets with the assistance of consultants devoted to those tasks. Both the Company and the public will benefit from the knowledge and expertise of the consultants tasked with meeting the metrics. Similarly, the metrics (removal of 22 miles of leak prone pipes annually and 66 miles over three years) are likely to be met with the assistance of consultants and put the Company on track to complete total removal by 2031, four years before the Commission's goal of 2035 for completion statewide.[187] The revenue adjustment incentives accelerate the Company's progress every year.

In addition to improving system safety, these metrics will result in lower methane emissions from leaking and potentially leak prone pipes and consequently will have an environmental benefit. the Joint Proposal properly addresses the necessity of improving gas safety and realizing environmental benefit.

The Joint Proposal's emergency response metrics are designed to decrease the time for the Company's qualified responders to answer emergency calls and investigate and resolve problems. This too benefits the public and assures that more urgent issues are addressed quickly.

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[187] Case 15-G-0151 – In the Matter to Consider Implementation of a Recovery Mechanism to Support the Accelerated Replacement of Infrastructure on the Natural Gas System; Order Instituting Proceeding for a Recovery Mechanism to Accelerate the Replacement of Leak Prone Pipe (issued April 17, 2015), p. 6.

The Joint Proposal’s tiered damages prevention metric is similarly beneficial to the public because it requires the Company to maintain high overall levels of prevention through the use of locating contractors and video inspection cameras. This enhances the Company’s ability to manage damage prevention and increases the program’s overall effectiveness. Although the Joint Proposal allows for the Company’s implementation of a two-year averaging in lieu of an annual target if the Company fails to meet an annual target, the incentives remain the same. We find the excavator education program to be particularly beneficial in light of the many annual violations for failure to provide notice of intent to excavate to the one-call notification system.

Finally, the metrics to reduce regulatory violations strikes the correct balance between achieving compliance and limiting the Company’s exposure for multiple violations of the same regulation. This metric does not change the Company’s obligations because violations not captured in this metric may still be subject to a penalty action under PSL §§ 25 and 25-a.

In sum, the gas and electric performance mechanisms support the Commission’s existing electric reliability and gas safety policies to assure continued safe and reliable operation of the Company’s gas system and are in the public interest.

Performance Metrics: Customer Service

The Joint Proposal recommends establishing customer service performance metrics for both electric and gas services that measure and enhance the Company’s activities with its customers.[188] It continues previous metrics but, consistent with Staff recommendations, also modifies the metrics for residential

[188] Joint Proposal, Appendix 15.

terminations and uncollectibles, customer complaint rates, customer satisfaction surveys, and call answer rates.[189]

This proposed performance mechanism sets targets and implements maximum positive and negative revenue adjustments of $800,000 to limit and reduce the number of terminations and uncollectibles.[190] It sets 5-year average and lower and upper annual targets for both.

In the areas of customer complaints, customer satisfaction surveys, and call answer rate, the Joint Proposal recommends negative revenue adjustments of up to $2.25 million annually (i.e., up to $1.5 million for electric customers and $750,000 for gas customers).[191] Under the Joint Proposal, existing targets would become more stringent for customer satisfaction surveys (increased from 91 percent to 92.6 percent) and call answer rates (for calls answered within 30 seconds, answer rates increased to 60.3 percent in RY3).

Discussion

The Joint Proposal’s customer service performance mechanisms provide sound incentives for the Company to improve its customer service. It provides reasonable earnings consequences based on the quality of services provided to customers in specific areas. We find the provision setting targets and positive and negative revenue adjustment for terminations and uncollectibles to be reasonable because it protects customers against the Company’s immoderate use of terminations to the detriment of the health and safety of New York ratepayers, while encouraging the Company to reduce

[189] Joint Proposal, Appendix 15, pp. 1-3.

[190] Joint Proposal, Appendix 15, pp. 3-4.

[191] Joint Proposal, Appendix 15, p. 5.

uncollectibles. The more stringent targets for customer satisfaction and call answer rate and the associated negative revenue adjustments are reasonable.

The components of the customer service mechanism will encourage the Company to further improve the customer service experience. When viewed with the other customer service provisions, including the elimination of fees associated with payments made by credit/debit card, new procedures regarding applications for new service,[192] and the requirement to file a proposal for the implementation of an electronic deferred payment agreement program, we find the Joint Proposal to be in the public interest.

Electric and Gas Affordability Programs

Consistent with the Commission's recent examinations of utility offerings of low-income assistance,[193] the Joint Proposal, Appendices 6 and 7, provides for funding for payment assistance to be made available to O&R's customers who have difficulty paying their utility bills timely due to financial circumstances. The figures included in the Joint Proposal are based on O&R's projections included in its initial filing of a rate allowance of $13.4 million in Rate Year 1, $13.7 million

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192 The Joint Proposal modifies the Company's new service procedures to make them consistent with the requirements found in the Home Energy Fair Practices Act.

193 Case 14-M-0565, Energy Affordability for Low Income Utility Customers, Order Granting in Part and Denying in Part Requests for Reconsideration and Petitions for Rehearing (issued February 17, 2017); Order Approving Implementation Plans with Modifications (issued February 17, 2017); Order Adopting Low Income Program Modifications and Directing Utility Filings (issued May 20, 2016) (collectively, the Affordability Orders).

for Rate Year 2, and $13.9 million for Rate Year 3.[194] These amounts provide for monthly bill credits to O&R's customers that are eligible for its Home Energy Assistance Program (HEAP) offerings.

For HEAP, the monthly credit available is based on the type of service received and the customer's household income level. Consistent with the Commission's Affordability Orders, O&R provides for four tiers of discount level to its HEAP-eligible customers. Electric heating and non-heating customers will each receive a monthly credit of $35 for Tier 1, $55 for Tier 2, $76 for Tier 3, and $57 for Tier 4. Gas heating customers will receive a monthly bill credit of $7, $23, $39, or $25 for Tier 1 through Tier 4, respectively, with non-heating gas customers receiving a $3 monthly bill credit across all Tiers. These program costs and the available discounts assume a total participation level of 13,000 customers.[195]

The Joint Proposal also requires that O&R adjust benefit levels to keep program costs within the budget cap of 2 percent of total Company revenue as required by the Affordability Orders. In its pre-filed testimony, Staff indicated that O&R's filing complied with the Commission's affordability policies concerning the levels of proposed low-income discounts and proposed budgets, as well as reconnection fee waivers, arrears forgiveness, and implementation.[196]

Reconnection Fee Waiver

O&R's Reconnection Fee Waiver Program allows for a one-time waiver of the reconnection fee for low income customers

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[194] Exhibit 62, O&R Low Income Panel Testimony, p. 11.

[195] Id., pp. 10-11.

[196] Exhibit 292, Staff Consumer Services Panel Testimony, p. 31.

that received Home Energy Assistance Program benefits in the previous 12 months and who had their service shut off for non-payment. The Joint Proposal includes the continuation of this program.

O&R noted that reconnection fees waived in 2017 totaled approximately $30,000.[197] Staff's Consumer Services Panel supported O&R's proposal to continue the fee waiver, noting that the program is consistent with the Commission's policies on affordability.[198]

Discussion

The Commission has striven to define for both utilities and their customers its expectations for serving low income customers. As the Commission noted in its order instituting its proceeding on affordability, it has long recognized that the "aid, care and support of the needy are public concerns," and, therefore, for decades has provided low income assistance programs for the poor through local utilities.[199] Helping a utility's neediest customers meet their payment obligations is an important function of rates that benefits the transmission and distribution system by reducing uncollectibles. As demonstrated by the Company's 2017 total waivers, the impact on the customer population is small and any impact is greatly outweighed to the benefit it can provide to O&R's most financially vulnerable customers. We have no

[197] Exhibit 62, O&R Low Income Panel Testimony, pp. 13-14.

[198] Exhibit 292, Staff Consumer Services Panel Testimony, p. 31.

[199] Case 14-M-0565, Energy Affordability for Low Income Utility Customers, Order Instituting Proceeding (issued January 9, 2015), p. 1 (quoting from the New York State Constitution, Art 17, Sec. 1).

hesitation in determining that these provisions of the Joint Proposal are reasonable and serve the public interest.

Additional Gas and Electric Programs

Gas Demand Response Pilot Program

The Joint Proposal recommends that we require O&R to develop a Gas Demand Response pilot program. The pilot is modeled on a Con Edison Gas Demand Response pilot program, approved in Case 17-G-0606, that targets Con Edison’s commercial and industrial customers. The sponsoring parties intend for the O&R pilot to provide insight to the Commission, O&R and its customers, and the parties as to optimal gas demand response operational parameters and achievable customer response for a potential broader program. As part of the program, O&R will test the feasibility of incentives to achieve net reductions of natural gas demand during peak gas demand days. As part of the pilot, O&R must conduct a benefit-cost analysis for any proposed demand response program, except for any program governed by Part 230 of the Commission’s Rules and Regulations, which sets forth utilities’ obligations regarding the provision of gas service to all applicants, including utilities’ responsibilities for the costs for mains and service.[200] O&R would be required to consult with Staff and other interested parties and then, within 12 months of this order, file a proposed gas demand response pilot program implementation plan.

[200] In its statement in support, EDF questions the exclusion of Part 230 projects from the pilot’s BCA requirement, but we agree the exclusion is appropriate. Requiring the production of a BCA where Part 230 applies would be duplicative, since Part 230 already requires an analysis of costs compared to revenues.

Both O&R and Staff note that, if the pilot is successful, the net reductions gained could defer or eliminate the need to pursue pipeline projects or add peak day assets to the Company’s portfolio. Such an outcome would be consistent with the State’s policy of reducing fossil fuel use.

Gas Research and Development Program

In its 2015 Rate Order, the Commission required O&R to file a plan describing how it planned to use previously collected but unspent gas research and development funds of approximately $2,892,641.[201] On January 19, 2016, O&R filed its proposal which it has been implementing, although it has not spent all its collected funds.

In its pre-filed testimony, Staff raised a concern about O&R’s spending levels that have not changed in over 10 years, despite its history of underspending its collected funds and its recent balance of approximately $1.950 million. Staff urged the Company to coordinate with NYSEARCH, the research arm of the Northeast Gas Association, for projects such as methane detection for customers and first responders, as well as gas safety projects addressing integrity verification measures and damage prevention, noting that these are areas that could still benefit from research and development. Additionally, Staff recommended that the Company file quarterly reports with the Commission on its gas research and development Millennium Programs funded through the MGA, as well as its research and development projects funded in base rates.

Under the terms of the Joint Proposal, the Company is required to provide a report and update detailing its research and development progress and describing it future plans. The

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[201] 2015 Rate Order, supra n. 6.

filing is due within six months of this Order. Thereafter, O&R would be required to submit an annual research and development report within 60 days of the end of each Rate Year and a quarterly research and development expenditure report as part of its quarterly capital expenditure reports. With these reporting provisions, the Joint Proposal recommends continuing O&R's collection of funding through its MGA for its research and development programs, including those programs run pursuant to the Commission's Millennium Program.[202]

The Joint Proposal addresses Staff's concerns, adopting Staff's recommendations regarding increased reporting. Staff states that continuation of the Company's research and development projects can benefit customers through enhanced safety and improved service.

Renewable Gas Standards

The Joint Proposal provides that O&R develop and evaluate a potential list of renewable gas providers within the Company's service territory to determine whether opportunities exist for future consideration. To complete this task, the Joint Proposal provides for consultant costs of up to $75,000. O&R's results are to be filed with the Commission within 12 months of this order. The intended result of this evaluation is that the Company will add a renewable gas interconnection standard to its O&M procedures, including any necessary interconnection fees, allowing it to take advantage of renewable gas supplies in its service territory.

[202] Case 99-G-1369, Petition of New York Gas Group for Permission to Establish a Voluntary State Funding Mechanism to Support Medium and Long Term Research and Development (R&D) Programs, Order Concerning Permission to Establish a Voluntary State Funding Mechanism to Support Medium and Long Term Gas Research and Development (issued February 14, 2000).

The foregoing provision of the Joint Proposal arises from Staff's pre-filed testimony. The Staff Gas Programs and Supply Panel recommended that the Company be required to quantify the number and location of landfills, water treatment facilities, and shut-in natural gas wells, and to determine the costs and benefits of integrating these potential renewable gas supply sources into the Company's Transmission and Distribution System.[203] Staff based its recommendations on the United States Environmental Protection Agency's (EPA) programs to reduce emissions of methane rich gas from municipal solid waste landfills, and its newly enacted rule strengthening the requirements on landfills' collection of landfill gas emissions.

Remote Methane Leak Detection

The Joint Proposal incorporates a Staff recommendation to fund Remote Methane Leak Detection technology for first responders with customer credits resulting from the Commission's assessment of 2016 gas safety performance measure negative revenue adjustments. Staff states that providing and training first responders on the use of Remote Methane Leak Detection equipment is beneficial to public safety. Remote Methane Leak Detection technology can detect the presence of methane in areas of concern, such as in a closed and unventilated building, for example. Thus, this technology can be used as the first line of defense for first responders prior to entering a building or zoned off perimeter.

Residential Methane Detectors

The Joint Proposal also incorporates a Staff recommendation that O&R distribute Residential Methane Detectors

[203] Exhibit 240, Staff Gas Programs and Supply Panel Testimony, pp. 19-22.

at no cost to residential customers. Staff states that this provision will benefit the public because the distributed equipment can alert residents of potential methane accumulations, allowing for the affected persons to take action, such as evacuating premises and notifying the utility, before elevated methane levels produce a risk to public safety.

Customer-Owned Street Light Dimming Pilot

The Joint Proposal provides for a customer-owned street light dimming pilot program. Through this pilot, O&R will allow for the installation and use of smart control nodes on approximately 25 street lights, owned by no more than two of the Company’s municipal customers that take service under SC No. 6.

This pilot is responsive to an issue raised by NYPA in pre-filed testimony. NYPA proposed certain tariff amendments that would allow customers to purchase, install and maintain network lighting control (“NLC”) nodes on street lights and use those devices for metering purposes.[204] NYPA explained that the NLC nodes would, among other things, allow municipalities to dim street lights, thereby reducing energy consumption and extending the useful lives of the street light facilities.

Staff noted its awareness of a demonstration project using the NLC nodes in Schenectady, New York, through Niagara Mohawk Power Corporation resulting from a 2014 Commission proceeding. Staff did express some concerns with NYPA’s proposal regarding customer control of street lighting facilities and the opportunities for self-dealing, inasmuch as the utility would have difficulty ensuring the accuracy of its

[204] Exhibit 312, New York Power Authority Testimony of Jesse Scott, p. 10.

own metering and billing but did note that these issues could be addressed through the implementation of appropriate rules and procedures. Staff also expressed its concern with the process that would need to be used to approve the nodes for metering purposes under the Commission’s meter approval regulations in 16 NYCRR Part 93, including the requirement that a utility must sponsor the subject device and indicate its intention to use it upon approval.[205] Ultimately, the supporting parties agreed to employ a pilot program that Staff represents may produce some energy efficiency and economic benefits while addressing its other concerns by providing a basis for the testing needed to satisfy the Commission’s regulations.

As a pilot, the program is sized such that information may be gained without causing any substantial rate disruption. The Joint Proposal’s pilot addresses Staff’s initial concerns, requiring O&R to separately meter each street light to record actual usage eliminating any use of the NLC nodes as metering devices for billing. Staff states that the pilot, as designed, will provide information on the accuracy of the NLC nodes, and whether the nodes can deliver energy efficiency and economic benefits.

Discussion

The programs described in this section can provide many benefits to the health and safety of O&R’s customers and the public. Based on the reasons stated above, and those provided by Staff in its Statement of Support of the Joint Proposal, these programs are both beneficial and in the public interest.

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[205] Exhibit 302, Staff Electric Rates Panel Rebuttal Testimony, pp. 4-8.

Management Audit

Public Service Law § 66(19)(c) requires the Commission to make findings regarding a utility's compliance with any recommendations in its most recent management and operations audit report. In pre-filed testimony, Staff described the most recent management and operations audit (2014 Management Audit) of O&R and the status of the Company's compliance.[206] The 2014 Management Audit was a combined audit of O&R and its corporate sibling, Con Edison.[207] The 2014 Management Audit was performed by NorthStar Consulting Group and its report served as the basis for the Implementation Plan Order.[208] The audit focused on Con Edison's and O&R's construction program planning processes and operational efficiency, addressing issues from the combined utilities' previous management audit and assessing the companies' implementation of the Commission's Reforming the Energy Vision policies.

The Final Report contained 23 recommendations applicable to O&R. At the time of the pre-filed testimony, 13 recommendations were considered complete by both Staff and the

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[206] Exhibit 186, Staff Testimony of Elizabeth Katz Toohey. In addition to describing O&R's compliance with the most recent management and operations audit, Staff's testimony described two other audits: an audit concerning the reliability of customer data provided to the Commission (Case 13-M-0314), and an audit concerning utility staffing levels and the use of independent contractors (Case 13-M-0449). Staff did not raise any issues of concern with the Company's compliance with either of those audits.

[207] Case 14-M-0001, Consolidated Edison and O&R – Management and Operations Audit, Order Approving an Implementation Plan (issued October 13, 2016) (Implementation Plan Order).

[208] Case 14-M-0001, Consolidated Edison and O&R – Management and Operations Audit, Management and Operations Audit Final Report of NorthStar Consulting (issued April 21, 2016) (Final Report).

Company, with eight considered completed by the Company and under review by Staff. Two recommendations remained incomplete but were being implemented by the Company. Staff also noted that O&R has consistently provided timely written updates and has met with Staff to discuss its progress between those written updates. We adopt the Staff Testimony of Elizabeth Katz Toohey as our findings under Public Service Law §66(19).

The Company requested recovery of $73,000 for its electric operations and $36,000 for its gas operations related to the unamortized costs for conducting the 2014 Management Audit. No party contested the Company's requests, and they are incorporated into the Joint Proposal.

Resolution of Storm Toby Petition

On June 26, 2018, O&R filed a petition requesting Commission authorization to defer $5.362 million of pre-staging and mobilization costs related to Storm Toby (Storm Petition).[209] The Storm Petition indicated that O&R had incurred costs in preparing for Storm Toby, which had been predicted to hit its service territory as a significant storm, but ultimately did not culminate into a "major storm" within the meaning of the regulations governing storm recovery.[210] Storm Toby followed

[209] Case 18-E-0414, Orange and Rockland Utilities Petition for Authorization to Defer Incremental Pre-Staging and Mobilization Costs Associated with Winter Storm Toby (filed June 26, 2018).

[210] Storm Petition, p. 3. A "major storm" is defined as a period of adverse weather during which service interruptions affect at least ten percent of the customers in an operating area and/or result in customers being without electric service for durations of at least 24 hours. 16 NYCRR § 97.1.

shortly after Storms Riley and Quinn, whose severity both met the criteria to be considered major storms.[211]

The Storm Petition asserted that, subject to final reconciliation, the Storm Toby costs met the criteria for deferral accounting treatment and recovery in rates because (1) the costs were incremental; (2) the costs were material to earnings insofar as they exceeded five percent of the Company’s net income; and (3) the Company was not over-earning during the relevant time period because its earned rate of return excluding those costs was 8.7 percent which is below the allowed 9.0 percent rate of return allowed under the existing order approving rates .[212] The Storm Petition claimed that O&R did not have sufficient earnings to absorb the Storm Toby costs and argued that the costs should be passed on to ratepayers.

The Joint Proposal here includes a proposed resolution of O&R’s Storm Petition by allowing the Company to defer and recover over six years up to $4.5 million in previously incurred prestaging and mobilization costs, subject to Staff review of final invoices.[213] Given the magnitude of these costs, the Joint Proposal allows for a six-year recovery as opposed to recovery over the three-year timeframe for this rate plan. The Company

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[211] Storms Riley and Quinn were destructive back-to-back nor’easters that downed trees, lines and poles, causing damage and power outages to about 140,000 customers across O&R’s service territory. Sullivan County was hardest hit by Storm Riley’s violent winds and Rockland County was most impacted by Storm Quinn’s heavy, wet snow.

[212] Id., pp. 3-4.

[213] Joint Proposal, p. 27, fn. 26; pp. 32-34; Appendix 3, p. 1. The recovery of $4.5 million for Storm Toby costs is included in the total $10.225 million annual storm recovery, which is in excess of collections for major storm reserve funding for the three-year term of these rate plans.

also agrees in the Joint Proposal to refrain from charging employee overtime for work performed more than 10 days after restoration of power following any major storm.[214]

In support of the Joint Proposal's terms resolving the Storm Petition, Staff agrees that the costs at issue were material to the Company's earnings and were extraordinary in nature and that recovery of those costs is consistent with Commission practices.[215] Staff also states that, although it has reviewed the majority of invoices and found them to adequately support the charges, it has not completed that review.[216] The Joint Proposal protects Staff's completion of their review by allowing the deferral of costs subject to that review.

Discussion

We find recovery of Storm Toby costs to be reasonable. We agree with Staff that this recovery method balances the impact on the Company with the impact on customer rates. We also find that the Company's reasonable and necessary preparation for major storm events is in the public interest even when anticipated major storms do not develop. Such preparation could result in faster service restoration. The Company should not be penalized for its efforts to prepare for a predicted major storm, particularly in light of the two other major storms (namely, Storms Riley and Quinn) that had hit its service territory shortly before Storm Toby was predicted to hit. The amount of recovery is reasonable in relation to the costs the Company incurred and is less than the Company's

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[214] Joint Proposal, p. 33.

[215] Staff Statement in Support, pp. 38-39.

[216] Id.

initial request. Thus, it is within the range of a potentially litigated outcome.

Resolution of Travelers Litigation Prudence-Related Claims

The Joint Proposal calls for the Company to reduce its deferred SIR cost balances by $9 million to reflect coverage the Company could have received as insurance proceeds under multiple third-party liability policies if it had been successful in its litigation with Travelers Indemnity Company.[217] These policies, issued between 1956 and 1972, covered contamination emanating from several manufactured gas plant (MGP) sites owned and operated by the Company and/or its predecessors and would have provided a total of approximately $15.2 million in coverage.[218] The Joint Proposal allocates the $9 million cost balance reduction as follows: $6 million to the Company’s electric business and $3 million to the Company’s gas business, all of which is to be amortized over five years.

Discussion

The $9 million deferred SIR cost balance reduction reasonably resolves the Staff’s prudence-related claims against the Company resulting from the Travelers litigation in light of the judicial determinations that the Company had failed to give timely notice of potential environmental claims at MGP sites. Recovery of the SIR cost associated with the claims Travelers

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[217] Joint Proposal, p. 29; Travelers Indemnity Co. v. Orange and Rockland Utilities, Inc., 73 A.D.3d 576 (1st Dept. 2010), leave to appeal dismissed, 15 N.Y.3d 834 (2010); Travelers v. O&R, 2013 N.Y. Misc. Lexis 3180 (Sup. Ct. N.Y. Cty. 2013); Travelers v. O&R, 124 A.D.3d 436 (1st Dept. 2015), leave to appeal denied, 26 N.Y.3d 904 (2015).

[218] Case 14-E-0493 and 14-G-0494, supra n. 6, Staff Report Regarding Orange and Rockland Utilities, Inc. Insurance Litigation (filed May 21, 2018), pp. 1-2 (Staff Report).

denied, including recovery of attorneys' fees and carrying charges resulting from the litigation, was left unresolved in the 2015 Rate Order. In that order, the Commission found that "because the Court's decision was rendered so late in this proceeding, the record is not fully developed on the question as to whether O&R should be allowed to recover the disputed SIR costs in rates."[219] The Commission gave O&R the opportunity to show why, under the circumstances of the Court of Appeal's determination to deny leave to review the Appellate Division's decision in Traveler's favor, the Company should be allowed rate recovery of SIR costs for which Travelers had denied coverage.

Following the 2015 Rate Order, O&R submitted reports attempting to justify rate recovery of SIR costs for the MGP sites that had not been covered by Travelers.[220] O&R primarily asserted a "change in the law" was the reason Travelers prevailed in its argument that O&R had failed to give timely notice of the MGP site claims. In response, Staff disputed O&R's change in the law rationale and argued that recovery from ratepayers of SIR costs associated with the Travelers litigation

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[219] 2015 Rate Order, pp. 43-44. In those proceedings, the Commission recognized the Municipal Coalition's request for ratepayer relief from O&R's SIR costs, but nevertheless stated that further process was needed to determine if such relief was appropriate, finding that the allowance of such costs is "generally consistent with the Commission's established approach in accounting for SIR costs and with the findings reached in the SIR Oder." See Case 11-M-0034, Proceeding on Motion of the Commission to Commence a Review and Evaluation of the Treatment of the State's Regulated Utilities' Site Investigation and Remediation (SIR) Costs, Order Concerning Costs for Site Investigation and Remediation (issued November 28, 2012)

[220] Cases 14-E-0493 and 14-G-0094, O&R Report on Travelers Litigation (filed December 15, 2015); O&R Supplemental Report on Travelers Litigation (filed May 9, 2016).

was not proper. Staff asserted that under the Commission's traditional prudence standard for costs, O&R had not acted reasonably in failing to provide Travelers with timely notice, particularly after inquiries from environmental regulators about the MGP sites and after internal reports showed the likelihood of contamination, both of which facts the Supreme Court had expressly recognized.[221] Staff argued that O&R's actions were imprudent and that an adjustment to its SIR deferral balances was warranted.

We find this resolution to Staff's prudence-related claims arising from the Travelers litigation to be in the public interest because the Joint Proposal recommends a $9 million write off in SIR costs. It effectively allocates some responsibility to the Company for its failure to timely notify and recover SIR costs from its insurer and accordingly reduces ratepayer exposure to those costs. The Joint Proposal's $9 million reduction of deferred SIR costs is consistent with our SIR Order, which recognized that sharing of such costs between shareholders and ratepayers "may be appropriate in specific cases, either to serve as an incentive where utilities have failed to adequately constrain SIR costs."[222]

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[221] Cases 14-E-0493 and 14-G-0094, Staff Report, pp. 15-17 (citing Travelers v. O&R, 73 A.D.3d 576 (1st Dept. 2010); Travelers v. O&R, 2013 N.Y. Misc. Lexis 3180 (Sup. Ct. N.Y. Cty. 2013); and Travelers v. O&R, 124 A.D.3d 436 (1st Dept. 2015).

[222] Case 11-M-0034, Proceeding on Motion of the Commission to Commence a Review and Evaluation of the Treatment of the State's Regulated Utilities' SIR Costs, Order Concerning Costs for Site Investigation and Remediation (issued November 28, 2012), pp. 30-31.

CONCLUSION

Based on the foregoing and despite some limited opposition to its adoption, we find the Joint Proposal to be in the public interest. The Joint Proposal contains several provisions that further important State and Commission objectives. By adopting the Joint Proposal's terms, we require O&R to pursue important energy efficiency initiatives and non-wires alternatives, update aging infrastructure, and implement important electric reliability and gas pipeline safety programs, while mitigating the potential economic impact of the recommended rate increases on ratepayers.

The rate plans we adopt here compare favorably with the likely outcome of a litigated case among normally adversarial parties. The evidence in the record forms a rational basis for our adoption of the terms of the Joint Proposal. Having reviewed this record, we find that the Joint Proposal strikes the proper balance between the interests of ratepayers and utility investors, as described in our Settlement Guidelines.

The recommended increases in rates over the three-year term of the electric and gas rates plan are reasonably necessary to meet increased Company costs and to support spending for capital improvements and employee additions, which are necessary to improve electric and gas operations and enhance overall electric and gas system integrity, safety and reliability.

In summary and for the reasons set forth above, we adopt the terms of the Joint Proposal, with the exceptions of Section O, paragraphs 5-13, on which we take no position. We find the Joint Proposal otherwise to be, in all respects, consistent with the public interest.

The Commission Orders:

1. The terms of the Joint Proposal dated November 9, 2018, which is appended to this Order as Attachment A, are adopted and incorporated as part of this order, with the exception of Section O, paragraphs 5 through 13.

2. Orange and Rockland Utilities, Inc. is directed to file cancellation supplements, effective on not less than one day’s notice, on or before March 25, 2019, cancelling the tariff amendments and supplements listed in Attachment B to this order.

3. Orange and Rockland Utilities, Inc. is directed to file, on not less than one day’s notice, to become effective on a temporary basis, such further tariff amendments as are necessary to effectuate the terms of this Order. The Company shall serve copies of its filing on all parties to these cases. Any comments on the compliance filing must be filed within 14 days of service of the Company’s proposed amendments. The amendments specified in the compliance filing shall not become effective on a permanent basis until approved by the Commission.

4. Orange and Rockland Utilities, Inc. is directed to file such tariff changes as are necessary to effectuate the terms of this order for Rate Years 2 and 3 on not less than 30 days’ notice. Such tariff changes shall be effective only on a temporary basis until approved by the Commission.

5. The requirement of Public Service Law Section 66(12)(b) that newspaper publication be completed prior to the effective date of the proposed amendments directed in Clauses 3 and 4 above is hereby waived for Rate Year 1. The Company is directed to file with the Commission, not later than six weeks following the amendments’ effective date, proof that notice to the public of the changes made by the amendments has been published once a week for four successive weeks in daily and

weekly newspapers having general circulation in the service territory and areas affected by the amendments. Newspaper notice is not waived for tariff changes necessary to implement the rate plans in Rate Years 2 and 3.

6. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

7. This proceeding is continued.

By the Commission,

(SIGNED) KATHLEEN H. BURGESS
Secretary