STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
BEFORE COMMISSIONER UPENDRA CHIVUKULA

IN THE MATTER OF THE PETITION OF ROCKLAND ELECTRIC COMPANY FOR APPROVAL OF AN ADVANCED METERING PROGRAM; AND FOR OTHER RELIEF	))))))	**BPU DOCKET No. ER16060524 6**

INITIAL BRIEF ON BEHALF OF THE DIVISION OF RATE COUNSEL

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Statement of the Case

This matter concerns Rockland Electric Company's ("Rockland" or "Company") request for pre-approval from the New Jersey Board of Public Utilities ("BPU" or "Board") to remove all existing meters and replace them with Advanced Metering Infrastructure ("AMI"). Rockland's belief that it needs to make this filing may be the best indication that it should be rejected. If Rockland was confident that removing all 73,000 meters in its service territory and replacing them with AMI meters is a reasonable and prudent business decision, then this Petition would be unnecessary. Rockland always has the authority replace its meters and then seek recovery of its prudently incurred costs in a future base rate case. The only reason to seek pre-approval is because Rockland lacks confidence that its proposed AMI investment is reasonable, prudent, and cost-effective. Indeed, Rockland will not commit to investing in AMI unless it receives pre-approval from the Board.

Capital investment decisions are the daily work of any regulated utility. When a utility requires pre-approval in order to make routine capital investments such as meter replacement, this is red flag indicating the utility's concern as to whether it will obtain subsequent approval in a prudency review. For this reason, the Board does not generally grant pre-approval for capital investments such as this. The Board can and should deny the Petition without even considering the merits of Rockland's proposed AMI plan. Instead, the Board should direct Rockland to invest in AMI if and when Rockland determines AMI to be a reasonable and prudent investment, and seek subsequent recovery in a base rate case.

Nevertheless, if the Board chooses to evaluate Rockland's Petition on the merits, it is clear that Rockland fails to meet its burden of proving that AMI is a reasonable and prudent investment. The evidence presented by Rockland proves neither that the costs of AMI are reasonable, nor that the benefits to ratepayers are significant. Indeed, the Company has refused to commit to any cap on costs for the implementation of this program, making any such analysis at this stage speculative. The analyses the Company did provide are lacking. For instance, the Company has not justified something as basic as its selection of an AMI vendor. There is no evidence for the Board to determine, one way or another, whether that decision was reasonable and prudent. We simply do not know at this time.

The cost/benefit analyses in the record are also problematic. The evidentiary record contains three different cost/benefit analyses. However, Rockland omitted a number of costs from these analyses. The omitted costs are real costs that will be incurred and that ratepayers will be asked to pay for in rates.

Additionally, the analyses assume that the AMI meters will enjoy a twenty year lifespan. Yet there is no evidence in the record to support this assumption. Some utility commissions around the country have found that AMI meters are likely to have shorter lifespans, such as ten or fifteen years. Rockland has not shown that its AMI meters will survive for the duration of the payback periods contained in the cost/benefit analyses. Moreover, if new technology emerges during the estimated twenty-year lifespan, Rockland may seek to replace those meters with new meters, stranding the costs of the AMI meters as well as the meters that are currently in service.

Rockland also failed to show that AMI has significant benefits for the ratepayers who will be paying for it. By the Company's own admission, the single largest "benefit" of AMI can only be realized through job losses. While salary and benefit costs will decrease, nine job positions will be eliminated. Shareholders will reap benefits in the form of investment returns from AMI, but the evidence does not show tangible benefits to customers that will demonstrably enhance their quality of service. As explained in greater detail below, while Rockland appears to identify some customer benefits, the magnitude of these benefits is less clear.

In addition, it is impossible for the Board to determine if AMI is a reasonable, prudent investment decision without an examination of alternatives to AMI. Unfortunately, the Board cannot evaluate alternatives because Rockland never adequately examined them. It appears that Rockland only considered alternatives after it had already made a decision to invest in AMI. Rockland should have done an objective evaluation of all alternatives before any decisions were made. It failed to do so.

Finally, the Company made a late request in a discovery response, six months after the filing of its Petition, for the Board to guarantee recovery of stranded costs.[1] There is no evidence in the record to support this request. For the first six months of this case, Rockland had represented to Board Staff and Rate Counsel that there were no rate issues in this proceeding, and that all rate issues would be decided in a future rate case. Due to the Company's late request, neither Board Staff nor Rate Counsel had the opportunity to ask discovery and properly vet this issue. Recovery of stranded costs is always a contentious issue. Because there is no evidence in the record on the subject, and because the Company's late request prejudiced Board Staff and Rate Counsel, Rockland's request for stranded costs must be denied.

For these reasons, and all others detailed below, Rate Counsel urges the Board to deny the Company's Petition.

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[1] The Company did not request stranded costs in its Petition and has not moved to amend the Petition at any time during this proceeding.

Procedural History & Statement of Facts

On May 12, 2016, Rockland filed a petition with the Board seeking a change in base rates and other relief. As part of its base rate petition, and despite no legal requirement to obtain Board approval, Rockland included a request for pre-approval to deploy an AMI program in its entire service territory. (P-1 at ¶ 6). Specifically, Rockland requested pre-approval to remove all 73,880 solid state and electro-mechanical meters throughout its entire service territory. These meters, which currently have a remaining average service life between fourteen and sixteen years, will be prematurely retired and replaced with "smart" meters under the Company's proposal. In support of its proposal, the Company provided at least three different cost/benefit analyses. Each of these analyses differs in terms of the alleged costs, claimed benefits, and suggested payback period. Because the Company seeks Board approval of the program in advance of implementation, these cost/benefit analyses are necessarily based only on estimates.

On June 29, 2016, the Board issued an order that, among other things, bifurcated the AMI portion of Rockland's Petition from the other aspects of the base rate filing.[2] In its order, the Board retained the AMI matter and assigned BPU Commissioner Upendra J. Chivukula as the presiding Commissioner. On July 6, 2016, the Company filed a letter with the Secretary of the Board identifying which materials from the Company's original petition should be considered by the Board as part of the bifurcated AMI matter.

On July 27, 2016, Public Service Electric & Gas Company ("PSE&G") filed a motion to participate pursuant to N.J.A.C. 1:1-16.6. On August 4, 2016 and August 5, 2016, respectively, Atlantic City Electric Company ("ACE") and the Environmental Defense Fund ("EDF") filed

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[2] I/M/O Rockland Electric Co. For Approval of Changes in Electric Rates, Its Tariff For Electric Service, & Its Depreciation Rates; Approval of An Advanced Metering Program; and For Other Relief; Rockland Electric Company – Request For Approval of an Advanced Metering Program; and For Other Relief, BPU Docket Nos. ER16050428 & EO16060524, Order Amending Suspension Order, Bifurcating Petition Issues, Designating Presiding Commissioner, Setting Manner of Service & Intervention Bar Date, Board Order, dated 6/29/16.

Motions to Intervene. The Company filed a letter objecting to ACE's and EDF's motions. Rate Counsel, by letter dated August 15, 2016, objected only to ACE's request for intervention. By Order dated September 15, 2016, Commissioner Chivukula granted PSE&G's motion to participate and EDF's motion to intervene.[3] Commissioner Chivukula denied ACE's motion to intervene, while granting ACE participant status.

On September 9, 2016, Rate Counsel filed the direct testimony of expert witness Tim Woolf. Mr. Woolf's testimony demonstrated that Rockland's request for pre-approval of an AMI program is neither necessary nor appropriate. The Company is not required to obtain Board approval before making this investment. Mr. Woolf argued that the Board should deny Rockland's request for pre-approval to undertake its proposed AMI investments. As Mr. Woolf testified, Rockland can and should invest in AMI once it determines AMI to be a reasonable, prudent and cost-effective investment. (RC-1 at p. 4). In his testimony, Mr. Woolf explained that Rockland's proposal would shift investment risk from Rockland's shareholders, where it properly belongs, to Rockland's captive ratepayers. As a former Commissioner at the Massachusetts Department of Public Utilities ("DPU"), Mr. Woolf noted that Commissions prefer to review costs after they have been spent, rather make decisions based only on estimated, speculative costs and benefits.

On September 30, 2016, EDF filed the Direct Testimony of Ronny Sandoval. The Company filed its Rebuttal Testimony on October 19, 2016. On November 11, 2016, in response to a discovery response asking the actual relief sought by the Company, and without accompanying testimony or an amended petition, the Company for the first time requested pre-approval of its stranded costs. (REB-1) This late request occurred approximately six months

[3] I/M/O Rockland Electric Co. – Request For Approval of an Advanced Metering Program; And For Other Relief, BPU Docket No. ER16060524, Order Regarding Motions to Intervene or Participate, Board Order, dated 9/15/16.

after the Company originally filed its Petition, and despite numerous representations that its Petition involved no cost recovery issues.

The parties engaged in subsequent settlement discussions, but were unable to reach a mutually agreeable settlement. Evidentiary hearings were held before Commissioner Chivukula on March 20, 2017. Mr. Woolf offered oral surrebuttal testimony during the evidentiary hearings, noting generally that pre-approval is unnecessary and inappropriate, and that in any event, Rockland has not met its burden of demonstrating that AMI is a reasonable, cost-effective investment.

Argument

A. Rockland's Request For Pre-Approval To Install AMI Meters and To Recover Stranded Costs on Retired Meters Is Unnecessary, Unprecedented, and Should Be Denied.

1. Board Approval of AMI Is Not Required. Rockland is Free to Invest in AMI When It Determines the Investment is Reasonable, Prudent, and In Customers' Best Interests.

If Rockland's objective is to install AMI meters across its entire service territory, the filing of this Petition is an unnecessary step towards achieving that goal. There is no statute, Board regulation, or Board Order that requires Rockland to get Board approval before making this investment. As Mr. Woolf testified, Rockland should make this investment once its management determines that AMI is reasonable and prudent, and in its customers' best interest. (RC-1 at p. 4).

If Rockland's management is confident that AMI is a cost-effective investment, then it could simply proceed with the investment and recover its prudent costs in a rate case. Management wants pre-approval because it lacks this confidence. It is illuminating that during the evidentiary hearings, Rockland would not commit to investing in AMI without pre-approval from the Board. 56T:L16-L24. If Rockland does not have enough confidence to invest in AMI without pre-approval, this is a strong indication that AMI may not be a cost-effective investment. This reason alone is a sufficient basis to deny Rockland's Petition.

2. Rockland's Request for Pre-approval Requires the Board to Determine Prudence Based on Hypothetical Estimates.

The total actual costs and realized benefits of AMI are not currently known because Rockland has not yet made the capital investment. This is a fundamental problem with

Rockland's pre-approval request. Rockland is asking the Board to make a prudency determination based solely on estimates of costs and benefits, neither of which the Company will guarantee. Essentially, Rockland is asking the Board to step into the shoes of utility management and make its investment decision for it. This is the job of Rockland's management team, who are experts in managing an electric utility and can best foresee whether the benefits of AMI will actually be realized and whether the cost estimates are reasonable. In traditional utility regulation, the Company's shareholders assume the risk that the Board, when reviewing the prudency of actual costs and benefits will agree that the investment decision was reasonable.[4] In exchange for assuming this risk, Rockland's shareholders receive a generous 9.6% return on equity on their capital investments.

Rockland wishes to change this paradigm by shifting the risk of its management decisions away from shareholders, to be assumed instead by its ratepayers and even the Board itself. If the Board were to grant pre-approval here, the Board would have to find, based on hypothetical estimates, that the costs and benefits of Rockland's proposal make going forward reasonable and prudent. The Board cannot make that finding on this record. During the discovery process, Rate Counsel asked extensive discovery on the Company's view of the Board's future ability to review the prudency of the AMI investment. Among other things, Rate Counsel asked whether the Board will be able to review the prudency of the Company's decision to invest in AMI (RC-28); whether the Board can deny rate recovery if the costs of AMI end up outweighing the benefits (RC-30); whether the Board can review the technical aspects of the AMI investment (RC-31); and whether the Board can deny rate recovery of any or all of the AMI costs (RC-32). In each instance, the Company answered by claiming that the

[4] See "Pre-Approved Commitments: When and Under What Conditions Should Regulators Commit Ratepayer Dollars to Utility-Proposed Capital Projects?" Scott Hempling and Scott M. Strauss, National Regulatory Research Institute (Nov. 2008), p. 4, n. 7

questions "call for speculation." The fact is, this entire petition calls for speculation. It asks the Board to make the prudency determination in advance without actual costs, data or performance to review. The Board should not take this unprecedented step and should deny the petition.

3. Rockland's Petition Seeks Unconstrained Pre-approval Which, If Granted, Will Shift All Regulatory Risk From Shareholders to Ratepayers.

Rockland seeks not only pre-approval of its decision to invest in AMI, but also seeks an unprecedented guarantee that it will be allowed to recover $8.9 million of stranded costs for its retired meters in a future rate case. If granted, these requests will eliminate regulatory risk for Rockland's shareholders and shift such risk to its ratepayers. Rockland refuses to commit to any cap on AMI costs, or to actually realizing any of the benefits contained in the cost/benefit analysis it has submitted as evidence in support of its petition. (RC-33, RC-35). Rockland wants a blank check to spend on AMI with a guarantee of recovery, a full return on its investment and with ratepayers assuming all associated investment risk.

Without a commitment from the Company to not exceed certain costs or to realize a certain amount of benefits, the costs and benefits of AMI remain speculative. The Board should not make a premature determination that AMI is a prudent investment. There is no basis or reason to do so. Indeed, the decision to proceed, along with associated risks and benefits, is the Company's and should remain so.

4. Rockland's Petition is an Unprecedented Attempt to Obtain Pre-approval of a Routine Capital Investment Decision.

Rockland claims to be seeking pre-approval because AMI "involves a major financial and operational commitment on the part of the Company," and therefore "it is appropriate and prudent for the Company to obtain a determination from the Board…that it supports the Company moving forward." (P-3 at p. 3). Public utilities have long had the obligation to make prudent investments in their utility infrastructure, and to seek recovery of those investments once they are in-service to customers. Many of those investments are significant. The amount does not justify abandoning the normal safeguards to promote prudent utility spending. If anything, the significance of the investment supports following the normal course.

Rockland argues that it obtained prior Board approval for its Smart Grid Pilot Program and storm hardening program in the past. Id. However, unlike AMI, fifty percent of the cost of the Smart Grid program was funded by the Federal Government through the American Recovery and Reinvestment Act of 2009. Indeed, the Board's Order was necessary for Rockland to obtain the federal funding. The Board specifically stated in its Order that the Smart Grid cost recovery mechanism "shall not constitute precedent in any subsequent rate case, petition or other proceeding in which the Company seeks to increase its rates or tariffs…." I/M/O The Petition of Rockland Electric Company Requesting Support For a Smart Grid Pilot Proposal, BPU Docket No. ER09060459, Order Adopting Stipulation, dated 4/5/10, Order at para. 17 ("Smart Grid Order"). The Board further noted that its "authorization in no way sets a new framework or precedent for future actions; instead it reflects the value of the 50% cost contribution opportunity by DOE…which would otherwise be lost if the costs for the Pilot Program were recovered through the normal course of utility regulation." Id. at p. 9.[5] Accordingly, the Board made clear that its Smart Grid Order arose under specific, unique circumstances surrounding federal funding and is not precedential here.

Furthermore, the Smart Grid Order did not provide the Company with a blank check. The Smart Grid project cost $19.4 million, and the Board's approval was limited to recovery of fifty percent of $19.4 million. Smart Grid Order at p. 3. By contrast, in this matter Rockland

[5] It is worth noting that Rockland had also applied to DOE for funding of an AMI project. While DOE selected the Smart Grid project for funding, it declined to fund the AMI project. Smart Grid Order at p. 3.

refuses to commit to any limitation on AMI costs. Finally, the Smart Grid Order reserved "a full and through prudency review" of the Smart Grid project for a future base rate case. Smart Grid Order at p. 6. While the Company agrees to a future prudency review for its AMI investment, the scope of this future review is unclear. The Company refuses to answer questions on what the scope of a future prudency will be, calling such questions "speculative." (RC-28). There is no reason or precedent for the Board to potentially limit the scope of its future prudency review by granting pre-approval to Rockland, something the Board clearly did not do in the Smart Grid Order.

Rockland also alleges that the Board's approval of its storm hardening program provides precedent for pre-approval of AMI. (P-3, p. 4). This comparison is also not valid. Following several major storms in New Jersey, including Hurricane Irene in 2011, a subsequent snowstorm and Superstorm Sandy in 2012 and millions of dollars spent in recovery from these events,[6] the Board issued an order inviting the State's utilities to file proposals to upgrade and protect infrastructure from future major storm events. <u>I/M/O the Board's Establishment of a Generic Proceeding to Review Costs, Benefits and Reliability Impacts of Major Storm Event Mitigation Efforts</u>, BPU Docket No. AX13030197, Board Order, dated 3/20/13. In other words, on its own initiative the Board decided that hardening of utility infrastructure was a significant policy issue that needed to be addressed immediately and proactively. The Board's Order was issued following a truly extraordinary series of storms that affected large portions of the State's utility infrastructure, left ratepayers without power or natural gas for days or weeks and caused unprecedented levels of damage. The Order sought to preserve the utilities' ability to maintain

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[6] Indeed, Rockland alone incurred over $30 million in damages from these major storms. <u>I/M/O the Board's Review of the Prudency of the Costs Incurred by Rockland Electric Company in Response to Major Storm Events in 2011 and 2012</u>, BPU Docket No. EO13070611, Decision and Order Approving Stipulation, dated 5/21/14.

safe, adequate and proper service during major storms, something that is a basic obligation of a utility.

Similarly, BPU approvals of main replacement programs for gas utilities are aimed at addressing safety concerns that were the subject of a "call for action" by the federal government after a gas main explosion in California. They are designed to address a specific problem that required immediate action. I/M/O Public Service Electric & Gas Company for Approval of a Gas System Modernization Program and Associated Cost Recovery Mechanism, BPU Docket No. GR15030272, Decision and Order Approving Stipulation, dated 11/16/15. Governor Corzine's economic stimulus programs were also based on a specific concern that need to be addressed via swift action. I/M/O Public Service Electric & Gas Company for Approval of a Capital Economic Stimulus Infrastructure Investment Program and an Associated Cost Recovery Mechanism Pursuant to N.J.S.A. 48:2-21 and 48:21.1, BPU Docket No. ER09010049 and GR09010050, Decision and Order Approving Stipulation, dated 4/28/09 and I/M/O the Petition of Atlantic City Electric Company for Approval of Certain Energy Infrastructure Investments and Approval of Cost Recovery for Such Projects and Related Tariff Modifications Associated Therewith Pursuant to N.J.S.A. 48:2-21 and 48:21.1, BPU Docket No. ER09010049 and GR09010054, Decision and Order Approving Stipulation, dated 4/28/09. [7]

In contrast, there is nothing extraordinary about Rockland making a business decision on whether to invest in new meters. Meters are a routine component of any utility's infrastructure, and Rockland does not claim that its current meters are unable to provide safe, adequate and

[7] The approval of energy efficiency and renewable energy programs is also distinguishable as they are governed by a specific statute. N.J.S.A. 48:3-98.1. There is no such statute here. There have also been some demand response pilot programs approved in advance. This, however, is not a pilot program as it covers all of Rockland's meters. I/M/O Jersey Central Power and Light Company Concerning Proposal for Four Small Scale/Pilot Demand Response Programs for the Period Beginning June 1, 2009, BPU Docket No. EO08050326 & EO08080542, Order Adopting Stipulation, dated 7/1/09.

proper service. There is no extraordinary danger or problem that the utility is trying to solve via this program. They simply seek assurance that they will get paid no matter what the cost or benefits turn out to be. Rockland thus has failed to present any compelling reason why a decision to replace meters should be singled out by the Board for pre-approval.

5. Rockland's Request For Stranded Costs on Its Prematurely Retired Meters is Untimely, and Should be Denied.

Beginning with the filing of its Petition, Rockland claimed that there were no issues regarding rate recovery in this proceeding. In its Petition, the Company claimed that it "is not seeking cost recovery for this project…and will address cost recovery in a future rate proceeding." P-1, para. 6. The Direct Testimony of the AMI Panel confirmed this. (P-2 at p. 5). A number of discovery responses provided by the Company also referred to the absence of cost recovery issues in this proceeding. For example, when asked what annual rate of return the Company will seek on the AMI meters, the Company stated that it "is not seeking cost recovery for the AMI project as part of this regulatory filing, and will address cost recovery in a future rate proceeding." (RC-3). The Company offered the same explanation for why it did not include a rate of return on the new meters in its cost benefit analysis. (RC-3).

Despite six months of assurances that cost recovery was not an aspect of this proceeding, for the first time in November 2016 Rockland requested guaranteed recovery of its stranded costs. Rockland did not make this request via the filing of an amended Petition; nor was the request contained in the Company's Rebuttal Testimony filed in October 2016. Instead, Rockland made this request via a discovery response filed in response to Rate Counsel's discovery on the Company's Rebuttal Testimony. (RC-26).

The issue of stranded cost recovery should only be considered in the context of a future rate case, if necessary. A rate case is the proper forum to consider the prudency of Rockland's decision to invest in AMI and to consider the issue of stranded costs. Rockland largely acknowledges this through the repeated statements in its Petition, testimony, and discovery responses that cost recovery issues would be decided in a future rate case. Rockland offers no evidence for why it should be entitled to such extraordinary relief as pre-approval of stranded costs.

Furthermore, Rockland's request is untimely. Because the Company waited six months after the Petition was filed to ask for stranded costs and during the final round of discovery on Rockland's rebuttal testimony, discovery was completed and Rate Counsel and Board Staff never had the opportunity to properly probe the issue. This is prejudicial to Board Staff and Rate Counsel. Nonetheless, the Company's request lacks evidentiary support, as the Company never presented any evidence regarding the level or prudency of the stranded costs. For all of these reasons, the only proper forum for consideration of recovery of stranded costs is a rate case. Rockland's request for guaranteed pre-approval of stranded costs must be denied.

B. Even If the Board Decides to Consider the Petition on the Merits, Rockland Has Failed to Demonstrate that AMI is a Reasonable and Prudent Investment.

1. In Providing a Flawed Cost/Benefit Analysis in Its Petition, Rockland Failed to Meet Its Burden of Proof.

Rockland has failed to meet its burden of proving that AMI is a reasonable and prudent investment. The cost/benefit analysis presented in Rockland's Petition did not incorporate many costs associated with AMI that customers will be required to pay, such as the costs of debt and equity to finance the meters. As Mr. Woolf testified, Rockland's petition offered an economic analysis which failed to present a net present value revenue requirements analysis – in other words, the impact that AMI will have on the ratepayers who will be paying for the program. (RC-1 at p. 11). As Mr. Woolf testified, "'[w]ithout results that are presented in terms of present value of revenue requirements, it is not possible to make a determination of the impacts of an investment on customers." (RC-1 at p. 15). Rate Counsel had to make three attempts to obtain this information. When Rate Counsel first asked for this information, the Company refused to provide it. (RC-3). In Rate Counsel's second attempt, the Company provided an alternative analysis, but it was not a revenue requirements analysis. (RC-16). Only after Rate Counsel's third attempt did the Company finally provide the revenue requirements analysis. (RC-17).

Even after this laborious discovery process, the Company continues to rely on the cost/benefit analysis presented in its Petition. (P-3 at p. 6). Because it fails to show the impact on ratepayers, this analysis fails to meet the burden of proving that AMI is a reasonable and prudent investment. The Board cannot make a determination on prudency without knowing an investment's impact on the ratepayers who will pay the bill. The burden of proof rests with Rockland, and for this and numerous other reasons explained below, it has failed to meet this burden.

2. Rockland Fails to Meet Its Burden of Proving that the Costs of AMI Are Reasonable and Prudent.

In order for a utility's costs to be eligible for rate recovery, such costs must be reasonably and prudently incurred. <u>See</u>, <u>e.g.</u>, <u>N.J.S.A.</u> 48:3-57(e) (allowing EDCs to recover "all reasonably and prudently incurred costs incurred in the provision of basic generation services….) <u>See</u> <u>also</u> <u>Public Service Coordinated Trans. v. State</u>, 5 <u>N.J.</u> 196, 222 (1950); <u>I/M/O Public Serv. Electric & Gas. Co. for an Increase in Rates – Hope Creek Proceeding</u>, BPU Docket No. ER85121163, Board Order, dated 4/6/87. The legal requirement of reasonableness and prudency of costs presents a barrier to approval of

Rockland's petition. Because Rockland is asking for approval of AMI in advance, Rockland could only present estimated costs and benefits in its petition. Yet the Board has no way of knowing how accurate these costs and benefits estimates really are. Accordingly, estimated costs and estimated benefits do not offer a sufficient basis for the Board to determine that AMI is a prudent and reasonable investment.

Rockland itself furthers this concern by refusing to commit to either a cap on the costs of AMI, or a guarantee of the estimated benefits it claims will be realized. (RC-33, RC-35). Indeed, that Rockland refuses to make commitments to its own estimates of costs and benefits raises the question of the value of these estimates. The Board should consider Rockland's refusal to make such commitments in evaluating the weight of the evidence in this proceeding. The Board should not make a determination that AMI is a reasonable and prudent investment when Rockland itself offers little faith in the accuracy of its own estimates.

Rockland also has not justified the costs charged by its AMI vendor. The Company has not demonstrated that it made a prudent decision in its selection of Silver Spring as its AMI vendor. The Company selected Silver Spring as the provider of the AMI meters, communications system, and data and asset management systems. The parties know that Rockland sent Request for Proposals (RFPs) to four vendors, including Silver Spring, and were provided with a list of the factors that Rockland considered in selecting Silver Spring. However, there is no additional information on the other three bids, including those bids' proposed pricing, which is needed to evaluate whether Rockland's selection of Silver Spring was a reasonable and prudent decision. Instead, Rockland claims that "the Company is unable to provide any additional details from the bidding and selection process" because the bids were submitted pursuant to non-disclosure agreements.[8] (RC-37). The parties in this matter executed a confidentiality agreement to allow for the exchange of confidential information. Nevertheless, the Company has refused to provide this information.

Furthermore, the costs presented by Rockland are not comprehensive. Rockland omitted a number of costs from its cost/benefit analyses. These are costs that will be incurred and that ratepayers will be asked to pay for in rates. First, the cost/benefit analysis provided in the Company's Petition does not incorporate a rate of return on either the new AMI meters or the prematurely retired meters. (RC-3). Yet the Company acknowledges that it will seek to recover the same rate of return on the AMI meters that it earns for all other capital investments. Id. Rockland will ask ratepayers to pay this rate of return in its next rate case, yet it has chosen to omit this real cost from the evidence it now offers the Board. Similarly, Rockland now seeks "acknowledgement from the Board that it will be able to recover the costs of the meters that it replaces as part of its proposed AMI program." (RC-26). Rockland also acknowledges that it will seek to earn a rate of return on the retired meters. (RC-2). Despite these glaring omissions, Rockland continues to rely upon its original cost/benefit analysis. (P-3 at p. 6).

Other costs were similarly omitted from the cost/benefit analyses. The Company omitted all capital costs associated with AMI's two management systems – the new Meter Data Management System (MDMS) and the Meter Asset Management System (MAMS). Along with the AMI meters, the new MDMS and MAMS form the three major components of an AMI system. (P-2 at p. 29). Yet, their costs were excluded from the cost/benefit analyses.

The MDMS is the central repository of meter data, provides data to other Company information systems, and may eventually support other applications such as complex rate

[8] When Rockland signed such non-disclosure agreements with these vendors, Rockland was aware that it would eventually seek regulatory approval for AMI.

structures. Id., p. 30. The current MDMS system is seven years old. 62T:L21. Because it cannot support AMI, the Company's current MDMS will be retired. The Company intends to replace the current MDMS with a new MDMS that is designed to support AMI. The MAMS will manage the AMI meters and related components, and will be able to manage the configuration, testing, reporting, etc. of meter assets. Id. Needless to say, the MDMS and MAMS are both integral elements of the proposed AMI system. Rockland will eventually seek rate recovery of the new MDMS and the MAMS from ratepayers. The current MDMS is fully functional except that it is unable to support AMI. Nevertheless, Rockland omitted the capital costs of these systems from its cost/benefit analyses, because "[t]he Company is not requesting approval of any capital costs in this proceeding." (RC-13). This assertion is irrelevant to the cost/benefit analysis, as the Company will eventually seek recovery of these expenditures, which are a direct result of the implementation of AMI meters.

Other costs were omitted from the cost/benefit analysis despite the Company heralding their associated benefits. One example of this is the cost of the new web portal that Rockland is developing, known as the Digital Customer Experience (DCX). The DCX is necessary to allow customers to view their usage data in fifteen minute increments, and is expected to be made available prior to deployment of AMI. (RC-7). The AMI Panel testified that "AMI provides customer, operational and societal benefits. The detailed, customer level energy consumption data provided by AMI, will give our customers insight into their usage patterns and allow them to more effectively manage their energy use and reduce their electric bills." (P-2 at p. 20). Arguing that AMI advances the Energy Master Plan's goal of energy efficiency, the Company claims that "[c]oupling AMI with a data access web portal that allows customers to view and analyze their granular real-time data, provides customers with the necessary tools to modify their usage and lower their energy costs." (P-2 at p. 10). Even though the Company claims that customers and the State will realize these benefits, the Company did not include the costs of developing and deploying the DCX in the cost/benefit analyses. When questioned about this omission, Rockland claimed the DCX is a "separate corporate initiative" that is "unrelated to the AMI program." (RC-14). When asked the cost of providing sub-hourly usage information to customers through the DCX, the Company declined to provide that information. Id.

Although the DCX may provide other functions such as budget billing, it is inaccurate for the Company to claim that the DCX is "unrelated to the AMI program" and exclude any associated costs in its analysis. This is particularly true since the Company simultaneously argues that customers will realize certain benefits that are only available through the DCX. There is no question ratepayers will eventually be asked to pay for the DCX in rates. Yet the Company has failed to provide information on what the DCX will cost and has failed to incorporate these costs, even on an allocated basis, into the AMI cost/benefit analyses. This is yet another example of how the Company's cost/benefit analysis fails to offer adequate evidence that AMI is a reasonable and prudent investment.

3. Rockland has Failed to Demonstrate That Customers Will Realize Significant Benefits From AMI.

a. Almost Half of the "Benefits" of AMI Come From Job Losses.

One undisputed fact in this case is that almost half of the estimated benefits from implementing AMI will come in the form of job losses. (RC-2). In fact, the savings from job losses is by far the single largest estimated benefit of AMI. Nine meter reading positions will be eliminated. The Company represents that no individual meter readers will lose their jobs, but rather they will be transitioned to new positions. Nevertheless, Rockland's total payroll will have at least nine fewer positions once AMI is implemented. Meter reading positions, which are a traditional entry level career path into the utility, will be eliminated. There will also be additional labor reductions in the call center and the Gas and Electric Meter System (GEMS)[9]. Combined with the loss of the nine meter readers, the cost savings stemming from job reductions totals approximately $22,275,000. This represents the lion's share of the cost reductions; it also represents the largest single quantified "benefit" of AMI, dwarfing the next largest benefit by almost $10,000,000. (P-2 at p. 32-33). The Board must consider whether it wishes to support a program where the biggest "benefit" can only be realized from job losses which may bring other economic costs.

b. AMI Provides Little, if Any, Direct Benefit to Rockland's Ratepayers.

A review of Rockland's Petition reveals that the main beneficiaries of an investment in AMI will be the Company's shareholders. Shareholders will benefit by realizing a rate of return on a multi-million dollar investment in new meters, while continuing to earn a rate of return on the prematurely retired meters. Meanwhile, the "customer benefits" appear to mainly relate to Rockland's operations. The Company will be able to remotely disconnect service to customers. If an outage occurs, Company employees will be made aware of where the break in service occurred without a truck roll, and whether they restored service to all customers who experienced the outage. AMI will provide the Company's engineers and analysts with access to extensive customer usage data. The real time information provided by AMI will allow the Company to manage the distribution system more effectively. (P-2 at p. 17, 24). The benefits of AMI to shareholders and the Company are obvious. What is harder to quantify is the extent to which the customers – who will pay 100% of AMI's costs – will benefit from AMI. In its Petition and accompanying testimony, Rockland offers several examples of purported customer

[9] GEMS involves management of meter inventory.

benefits from deployment of AMI, including energy consumption data being made available to customers through the DCX, faster outage restoration, reduced meter reading costs, fewer estimated bills, and remote turn on/turn off of service. (P-2 at p. 20-21). Yet the value of these benefits is far from assured. For example, in order to access the DCX, customers must have access to a computer and the internet. This may limit the benefits for low-income customers. Furthermore, there are many customers who simply cannot adjust their usage patterns. For these customers, access to their usage data may be interesting, but of little useful benefit.

The value of improved outage restoration is also questionable. AMI may facilitate quicker restoration for fair weather localized outages, or for smaller storms. It is not clear, however, that AMI will improve restoration times when Rockland's service territory is faced with larger storms such as Hurricane Irene and Superstorm Sandy. If power is lost to large portions of the service territory, the battery life of the access points is only eight hours. (RC-35). In storms such as Superstorm Sandy and Hurricane Irene, where outages endured for days, the benefits of AMI will be lost after eight hours. While the Company may be able to deploy some back-up generators, the Company has not represented that such generators would restore the entire AMI network during a superstorm. Accordingly, the benefits of AMI will be limited during extended outages, when such benefits are arguably most needed.

Furthermore, the Company acknowledges that its current Smart Grid technology already allows identification of customer outages at a granular level of two hundred fifty customers. (RC-23). The Board approved a rate increase in the Company's recent Storm Hardening petition to pay for installation of this technology. While AMI would allow outage identification at an individual customer level, it does so at a significant additional cost. The Company has not demonstrated that AMI will significantly improve outage restoration times compared to its existing Smart Grid for the average customer.

Finally, Rockland claims that customers will benefit from fewer estimated meter readings. However estimated meter readings are most problematic when meters are located indoors. Barring weather issues, meters located outdoors should not be subject to frequent estimated meter readings. In Rockland's service territory, only 10.6% of meters are located indoors. (RC-25). For the other 90% of customers with outside meters, the meter reading benefit of AMI is likely to be minimal.

In summary, the benefits of AMI for the majority of Rockland's customers are speculative and outweighed by AMI's significant costs. These costs will be paid by Rockland ratepayers, not by shareholders, who will be the primary beneficiaries of AMI. Rockland has failed to present a convincing case that AMI offers a significant benefit to its customers, particularly given its cost.

4. Rockland's Examination of Potentially Cheaper Alternatives was Inadequate.

Given that implementing AMI across its entire service territory costs more than thirty million dollars, Rockland should have examined whether more cost-effective alternatives such as Automated Meter Reading ("AMR") were desirable. Mr. Scerbo admitted during the evidentiary hearings that the Company never performed any studies on implementing the alternative of full deployment of Automated Meter Reading. 59T:L21-L24. Instead, the AMI Panel simply testified that alternatives to AMI are "inadequate." (P-2 at p. 36). Yet when asked to provide cost estimates for these alternatives, Rockland admitted they do not have any. (RC-10). Instead, Rockland dismissed alternatives after a discussion with its AMI vendor and its meter installation vendor. Id. This approach is flawed. Rockland only selected these vendors after sending out

RFPs for proposals to install AMI. In other words, the Company appears to have discussed alternatives only after it had already made the decision to deploy AMI. An "examination" of alternatives after a decision has been made is not prudent. Alternatives should have been evaluated before a decision on whether to deploy AMI was made. It appears this never occurred, as the Company does not even have cost estimates of alternatives. (RC-10).

Second, when Rockland did examine the alternative of installing an Itron AMR bridge meter, Rockland assumed that the Company would eventually deploy AMI. Id. It then ruled out the Itron AMR meter because the meter is not compatible with Itron AMI meters, and customers would have to purchase a second AMI meter. Id. However, Rockland never explained why it made the assumption that deploying AMI is inevitable. Rockland should have done independent cost/benefit analyses of various alternatives, such as full deployment of AMR. Such an examination should have occurred before any decisions were made. It appears this did not happen. Because it has failed to present evidence of adequately examining alternatives, Rockland has not met its burden of proving that AMI is a reasonable, prudent investment.

5. Rockland Has Not Demonstrated That The Proposed AMI Meters Have a Life Span Equal to or Greater Than Their Payback Periods.

Rockland provided cost benefit analyses assuming a 20 year useful life for the AMI meters. This life span is not adequately supported in the record and is lower than what has been projected in other states. Moreover, Rockland's three cost benefit analyses show that the period of time before the benefits of the meters outweigh the costs (the "payback period") may be as long or longer than the useful life. This would make the investment imprudent.

All of Rockland's analyses assume a twenty year service life of the meters. However, Rockland has not offered evidence to support this proposed service life. Other utility commissions around the country have adopted much shorter service lives for AMI meters. In 2016, the Maryland Public Service Commission reaffirmed a ten year service life for Baltimore Gas & Electric's AMI meters.[10] In Kentucky, Duke Energy recently proposed a fifteen year service life for electric AMI meters.[11] Duke Energy and the Kentucky Attorney General entered into a stipulation that, among other things, agreed to Duke's proposed fifteen year service life.[12] In Pennsylvania, the Legislature passed legislation requiring EDCs to file a smart meter technology procurement and installation plan for commission approval. As part of that plan, the company should include "a depreciation schedule not to exceed 15 years." 66 Pa.C.S §2807(f). With the rapid pace of changing technology, these AMI meters may be obsolete in much less than twenty years.

The cost/benefit analysis in the Company's Petition states that AMI will have a discounted payback period of 15.5 years. (P-2 at p. 35). Rockland also provided two other cost/benefit analyses during discovery, one offering a revenue requirements analysis showing a discount payback period of 11.0 years, and the other offering an analysis from the Company's perspective showing a payback period of 17.9 years. (RC-16, RC-17). If the useful life is closer to 15 years, the AMI meters may not last long enough for the benefits to outweigh the costs.

Because Rockland is also requesting stranded costs for its legacy meters, customers will be forced to pay for two meters simultaneously under Rockland's proposal. If the AMI meters become obsolete before twenty years, customers may not receive the full benefits associated with

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[10] I/M/O the Application of Baltimore Gas & Electric Co. for Adjustments to Its Electric & Gas Base Rates, Case No. 9406, Order, dated 6/3/16. http://www.psc.state.md.us/search-results/?keyword=9406&search=all&search=case&x.x=20&x.y=14

[11] I/M/O the Application of Duke Energy Kentucky, Inc. for a Certificate of Public Convenience & Necessity Authorizing the Construction of an Advanced Metering Infrastructure; Request for Accounting Treatment; and All Other Necessary Waivers, Approvals & Relief, Case No. 2016-00152. http://psc.ky.gov/pscecf/2016-00152/adele.frisch%40duke-energy.com/12062016043344/2016-00152_-_DEKs_Stipulation_and_Recommendation.pdf

[12] As of this brief's filing, that stipulation is awaiting the approval of the Kentucky Public Service Commission.

the costs they paid for the AMI meters, and instead may be asked to pay for three meters simultaneously. Rockland bears the burden of proof in this proceeding and has not proven that the AMI meters will outlast the various payback periods it offers in the cost/benefit analyses. Without this, Rockland cannot and has not proven that AMI is a reasonable, prudent investment.

C. Rockland's Proposal to Perform Work on the Customer's Side of the Meter, and Capitalize Those Costs in Rates, Violates Settled New Jersey Case Law and Would Be Poor Public Policy.

During the deployment of AMI, Rockland plans to perform repairs to customer-owned property. Specifically, Rockland proposes to repair or replace any faulty customer-owned equipment on the customer's side of the meter, such as meter pans, faulty electric cables, etc., as necessary. (RC-20). Per the Company's tariff, customers are responsible for the maintenance of such equipment. Rockland intends to take the unusual step of not only performing such repairs/replacements, but of subsequently capitalizing such costs to rate base. (RC-22).

There are a number of problems with Rockland's proposal. First, the cost of performing these repairs is not known. Rockland budgeted $242,000 plus a 10% contingency for this work, based on suggestions made by other utilities and its AMI consultants. (RC-21). Yet Rockland has no idea how many buildings/residences in its service territory will really require repairs.

After Rockland performs the repairs and replacements, ownership of these newly repaired or replaced facilities will remain with the homeowner. 60T:L15-23. Nevertheless, Rockland proposes to capitalize the costs of this property and add the costs to Rockland's rate base. This proposal is contrary to settled New Jersey law. The New Jersey Supreme Court has long held that in a rate proceeding, "[t]he rate base is the fair value <u>of the property of the public utility</u> that is used and useful in the public service." <u>I/M/O Public Serv. Coordinated Transport</u>, 5 <u>N.J.</u> 196, 217 (1950) (emphasis added); <u>accord</u> <u>In re New Jersey Power & Light Co.</u>, 9 <u>N.J.</u> 498, 509

(1952) ("It is established that the rate base in a proceeding of this nature is the fair value of the property of the public utility that is used and useful in the public service at the time of its employment therein…."); Atl. City Sewerage Co. v. Board of Public Util. Comm'rs., 128 N.J.L. 359, 365 (1942) ("The rate base is the fair value of the property used and useful in the public service.") Thus work performed on a customer's property should clearly be excluded from rate base under New Jersey law. Rockland's proposal also contradicts its own tariff. Tariff leaf No. 42 states in part that:

> All wiring and apparatus including service switches, fuses, meter loops and a proper location and support for the Company's meter and other apparatus shall be furnished and maintained by the customer in accordance with the Wiring Rules and Regulations of the Company, the National Electrical Code of the National Board of Fire Underwriters, all laws and governmental regulations that may be in force, and it shall be a condition precedent to the initial and continuing supply of electricity by the Company …The Company reserves the right to make an inspection of the premises before connecting service wires or installing meter in order to see that its rules are complied with, but in doing this, assumes no liability for the safety of the installation.

The Company's tariff states that it is the customer's responsibility to maintain the meter pan and other wiring and fuses needed for the Company to supply electric service. This filing does not propose to change that tariff. By assuming this responsibility and performing repairs on the customer's behalf, the Company will be violating its own tariff.

Finally, allowing utilities to perform work on the customer side of the meter is poor public policy. It rewards customers who may have neglected to properly maintain their home or other building at the expense of all ratepayers in Rockland's service territory. It further financially penalizes those ratepayers that made capital investments on their own property without ratepayer funds. For this reason, and all the other reasons set forth above, the Board should refuse to allow Rockland to perform work on customers' properties.

Conclusion and Recommendations

For all of the reasons set forth above, the Board should deny Rockland's request for pre-approval to install AMI meters. As with all other capital investments, Rockland should invest in AMI if and when Rockland determines AMI to be a reasonable, prudent investment. Rockland may then seek approval of its investment in AMI during a future base rate case.

If the Board decides to approve Rockland's Petition, the Board must impose at minimum the following conditions to safeguard ratepayers:

1. A hard cap on Rockland's rate recovery.
2. A reduced return on equity for the AMI investment to reflect the reduced risk borne by the Company's shareholders.
3. A specific requirement that the estimated value of the benefits ($82 million) be credited to customers in rates. If actual benefits are greater than $82 million, Rockland will also pass these along to customers in rates.
4. A clear statement that the Board will review both the prudency of the Company's decision to invest in AMI, and the prudency of the actual costs spent in implementation; and that the Company bears the risks that it will not recover its full investment.
5. Denial of recovery of stranded costs for existing meters.

6. A clear statement that the Company is prohibited from performing any repair or replacement work on the customer side of the meter.

Respectfully submitted,

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