STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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| Complaint of the New York State Consumer Protection Board Regarding the Rates, Charges, Rules and Regulations of Orange & Rockland Utilities Inc. for Electric Service | Case 06-E-0797 |

# COMPLAINT OF THE NEW YORK STATE CONSUMER PROTECTION BOARD REGARDING THE RATES, CHARGES, RULES AND REGULATIONS OF ORANGE AND ROCKLAND UTILITIES, INC. FOR ELECTRIC SERVICE

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Dated: November 8, 2006
Albany, New York

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ORANGE AND ROCKLAND UTILITIES, INC. FOR ELECTRIC SERVICE

Pursuant to Public Service Law ("PSL") §71, the New York State Consumer Protection Board ("CPB") files this complaint regarding the rates charged by Orange & Rockland Utilities, Inc. ("O&R") for electric delivery service. We request that the Public Service Commission ("PSC" or "Commission") immediately initiate a proceeding to investigate the rates charged by O&R for electric delivery service as well as other provisions of the rate plan under which the utility currently operates.[1] This investigation is necessary to help ensure that the utility's rates are just and reasonable for the provision of safe and adequate service.

O&R reported on October 30, 2006, that the rate of return on equity for its electric delivery operations, before sharing, was 16.17% for the 12 months ending June 30, 2006, and averaged 15.15% for the three years ending June 30, 2006.[2] These profit

[1] Case 03-E-0797, In the Matter of Orange and Rockland Utilities, Inc.'s Proposal for an Extension of an Existing Electric Rate Plan, Order Adopting the Terms of a Joint Proposal, October 23, 2003, Attachment, Joint Proposal, July 1, 2003 ("O&R Electric Rate Plan").

[2] Case 03-E-0797, Letter from Ms. Grace Scarpitta, Assistant Controller of Consolidated Edison Company of New York, Inc., to Mr. Charles Dickson of the Department of Public Service, regarding Electric Earnings for the Twelve Months Ended June 30, 2006, October 30, 2006 ("O&R Earnings Letter").

levels are far in excess of the Company's cost of equity and are manifestly not just and reasonable. Moreover, it appears that O&R's earnings on its electric operations will increase even further in the future. In addition, despite this overearnings situation, and contrary to the public interest, the carryover provisions of its otherwise expired rate plan permit the Company to defer a litany of costs including for pensions, other post-employment benefits ("OPEBs"), Manufactured Gas Plant ("MGP") site remediation costs, and research and development costs, for which it will likely seek recovery from ratepayers in the future.

Specifically, the CPB requests that the Commission issue an Order, on an expedited basis, directing O&R to Show Cause why: (1) its electric delivery rates should not be reduced by at least $25 million; (2) the earnings sharing provisions of its rate plan should not be revised in line with recent PSC determinations and (3) its rate plan should not be revised to prohibit the Company from using deferral accounting when its earnings exceed the revised sharing threshold we recommend. Consistent with the PSL, we urge the Commission to give these important rate issues "preference over all other questions pending before it and decide the same as speedily as possible."[3] Should changes to O&R's rate plan of the nature we recommend not be able to be implemented in approximately 60 days, we urge the Commission to establish temporary rates for O&R's electric delivery operations.

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[3] Public Service Law §72.

I. THE COMPANY'S RATE PLAN IS NOT IN THE PUBLIC INTEREST IN THESE CIRCUMSTANCES.

The O&R Electric Rate Plan formally covered the period July 1, 2003 through October 31, 2006, although the vast majority of its provisions continue until modified by the PSC. The Company continues to share earnings exceeding 12.75% on equity, equally between shareholders and customers.[4] The utility also continues to reconcile and/or use deferral accounting for nine separate costs, including pensions, OPEBs, MGP site remediation costs and research and development costs.[5]

As indicated in the O&R Earnings Letter, the Company earned a return on equity for its electric operations before sharing of 13.38%, 15.85%, and 16.17% in the twelve month periods ending June 30 of 2004, 2005, and 2006, respectively. Overall, it earned a total of 15.15% in the three-year period, demonstrating a persistent pattern of earnings that vastly exceed what is necessary to meet the PSL's requirements of safe and adequate service at just and reasonable rates. In addition, the Company's ever-increasing earnings reflect an obvious trend and nothing in the O&R Earnings Letter suggests that the trend will reverse, or even subside. Further, a key provision of the O&R Electric Rate Plan recently expired, under which the Company amortized a total of $11 million of deferred pension and OPEB costs over the three years ending June 30, 2006.[6] Since it is no longer required to amortize deferred pension and OPEB costs in that amount, the Company's electric earnings will increase beyond the recent 16.17% level, ceteris paribus. Higher earnings are also expected because the Company

4 O&R Electric Rate Plan, p. 6.

5 Id., p. 14.

6 Id., p. 10. By avoiding an expense of $11 million, the Company's return on equity would increase by approximately 370 basis points.

projects that its electric capital expenditures in 2007 will be approximately $3.7 million less than in the twelve months ending June 2006.[7]

Moreover, the 12.75% earnings sharing threshold is patently unreasonable this time, as evidenced by recent PSC decisions on this matter. For example, the PSC recently approved a Joint Proposal for O&R's natural gas operations that was based on a return on equity of 9.19% for a one-year period, augmented to 9.8% to reflect a three-year stay-out premium of 36 basis points and premium for business risks associated with the three-year Joint Proposal of 25 basis points.[8] Other recent PSC determinations regarding return on equity include 9.6% for a three-year agreement for Central Hudson Gas & Electric Corporation[9] and 9.55% for a one-year rate case for New York State Electric & Gas Corporation.[10] Based on data for the twelve-month period ending June 30, 2006, the Company's electric customers paid approximately $20 million more in that period than if rates were set to yield a return on equity of 9.37%, the average of the one-year return in the PSC's two most recent decisions, involving O&R and NYSEG.[11]

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[7] O&R Earnings Letter, Attachment 2. The relief we request cannot be claimed to jeopardize the provision of safe and adequate service because it fully reflects all capital spending proposed by the Company. The CPB has not attempted to identify all factors which are expected to lead to further increases in O&R's electric earnings in the future. This partial list is sufficient to demonstrate the reasonableness of the relief we request.

[8] O&R 2006 Gas Rate Plan, pp. 23 – 4. It is also noteworthy that the appropriate rate of return for O&R's electric operations is likely to be less than that required for its gas operations, since investors require a return of 9.1% for electric utilities, 10 basis points less than what is required for gas utilities, according to the most recent analysis of 28 utilities conducted by Merrill Lynch. (Merrill Lynch, Quantitative Profiles, October 9, 2006)

[9] Cases 05-E-0934 and 05-G-0935, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Gas and Electric Service, Order Establishing Rate Plan, July 24, 2006 ("Central Hudson 2006 Rate Order"), p. 12.

[10] Case 05-E-1222, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric and Gas Corporation for Electric Service, Order Adopting Recommended Decision with Modifications, August 23, 206, p. 96.

[11] Calculated as the average of 9.19% and 9.55%.

Consideration of this one factor alone indicates that the Company's electric delivery rates could be reduced by approximately $20 million. Consideration of other factors including those identified above, indicates that O&R's electric delivery rates could be reduced by approximately $25 million.

Compounding the harm to ratepayers of the status quo, the Company is permitted to defer certain costs, including pension, OPEB and MGP site remediation expenses, which have been the main drivers of rate increases ordered by the PSC for other utilities.[12] These deferrals set the stage for future rate increases that could be avoided or mitigated by prompt PSC action. Prompt action to minimize the burden on O&R's customers is especially warranted in view of the PSC's recent decision to authorize delivery rate increases for O&R's gas customers of 8.29%, 7.67% and 6.90% on November 1 of 2006, 2007 and 2008, respectively.

Overall, carryover provisions of O&R's otherwise expired Electric Rate Plan that establish rate levels including the target rate of return on equity, earnings sharing and deferrals, at a minimum, must be modified. The alternative, under which the Company would be permitted to continue to enjoy earnings far in excess of what is just and reasonable, while deferring costs for potential future recovery from ratepayers, does not reflect an appropriate balance between the interests of shareholders and ratepayers, results in rates that exceed what is necessary for the provision of safe and adequate service at just and reasonable rates, and is not in the public interest.

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[12] E.g., in recently approving large delivery rate increases for Central Hudson, the Commission stated that "55% of the electric rate increase and 47% of the gas rate increase - are attributable to pension and OPEB expenses." Central Hudson Rate Order, p. 64.

## II. THE COMMISSION SHOULD IMMEDIATELY DIRECT O&R TO SHOW CAUSE WHY ITS RATE PLAN SHOULD NOT BE MODIFIED AS IDENTIFIED ABOVE.

Upon the complaint in writing of the Consumer Protection Board regarding the rates charged for electricity service, the PSL specifies that "the commission shall investigate as to the cause for such complaint."[13] The CPB urges the Commission to commence that investigation expeditiously. The Company, and all interested parties, should be provided an opportunity, on an expedited schedule, to submit comments on this complaint and the relief we request. That comment period, however, should be very brief, and the notice and comment requirements of the State Administrative Procedure Act ("SAPA") Section 201(1), should be waived, pursuant to Section 202(6)(a) of SAPA, since an expedited inquiry is necessary for the preservation of health, safety and general welfare.[14]

After receiving comments regarding the need for, and scope of, the investigation requested by the CPB, we urge the Commission to promptly direct the Company to Show Cause why its Electric Rate Plan should not be immediately modified in the manner identified herein. We also urge the Commission to treat this issue as a priority, consistent with PSL §72, to help provide needed rate relief to O&R's electric delivery customers. Should the Commission conclude that the relief we request could not be in place within approximately 60 days, it should make O&R's rates temporary until it can ensure that the utility's electric delivery rates are just and reasonable.

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[13] PSL §71.

[14] As required by §3.5(j) of the Commission's rules, a statement regarding the need for the Commission to take action on an emergency basis is attached to this complaint.

## CONCLUSION

The New York State Consumer Protection Board respectfully requests that the Public Service Commission immediately commence a proceeding to reduce the electric delivery rates of Orange & Rockland Utilities, Inc. and make other changes to the Company's Electric Rate Plan as identified herein.

Respectfully submitted,

Teresa A. Santiago
Chairperson and Executive Director

Douglas W. Elfner
Director of Utility Intervention

John M. Walters
Intervenor Attorney

Dated: November 8, 2006
Albany, NY

ATTACHMENT

This complaint requests that the Commission take action on an emergency basis pursuant to SAPA §202(6). Accordingly, as required by §3.5(j) of the Commission's rules, we include the following statement concerning the need for such action:

> Orange & Rockland's earnings for its electric delivery operations far exceed the levels associated with just and reasonable rates. In addition, based on available information, these unreasonably high excess earnings are expected to continue in the future. The unnecessarily high prices for electric delivery service have an adverse impact on the utility's electric delivery customers, particularly low-income families for whom energy costs represent a substantial percentage of family budgets. The public health, safety and general welfare requires that this issue be investigated, and resolved, on an emergency basis pursuant to §202(6) of the State Administrative Procedures Act, and that the notice and comment requirements of §202(1) of the Act be waived.