

**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**

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BPU DOCKET No. ER16060524

**REPLY BRIEF ON BEHALF OF THE
DIVISION OF RATE COUNSEL**

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Introduction & Summary

The Division of Rate Counsel (“Rate Counsel”) submits this reply brief in response to the initial briefs filed in this matter by Petitioner Rockland Electric Company (“RECO” or “Company”)¹ and intervenor Environmental Defense Fund (“EDF”). Participant Atlantic City Electric Company (“ACE”) submitted a short letter in support of the petition. The Staff of the Board of Public Utilities (“Board Staff”) did not submit an initial brief. Participant Public Service Electric & Gas Company also declined to submit a brief.

In its Initial Brief, Rate Counsel noted that Rockland’s petition is unnecessary. Rockland can make capital investment in Advanced Metering Infrastructure (“AMI”) if and when Rockland determines AMI to be a reasonable and prudent investment. If AMI is in fact a reasonable and prudent investment, Rockland will be able to recover its investment through the normal course in its next base rate case. Public utilities make capital investment decisions on a daily basis. The fact that Rockland seeks this pre-approval raises a red flag, indicating that the Company lacks confidence that AMI is a reasonable and prudent investment once the actual costs and benefits become known. Instead, Rockland asks the Board to guarantee its investment in advance, based purely on estimated, hypothetical costs and benefits, without any guarantees from Rockland on either in return.

Rockland failed to present a compelling business case that AMI is a reasonable and prudent investment. The cost/benefit analyses offered by the Company omitted a number of significant costs that ratepayers will be required to pay if AMI is approved. While ratepayers will pay the entire tab for AMI, the benefits of AMI inure primarily to Rockland’s shareholders

¹ Rockland’s Initial Brief will be cited as “RIB” and Environmental Defense Fund’s Initial Brief will be cited as “EDFIB.”

and to its business operations, without enhancing customer service to ratepayers. Moreover, none of these benefits are guaranteed.

Rate Counsel's Reply Brief will address several topics raised in the Company's Initial Brief. First, the Company errs in suggesting that its petition follows the policies set forth in New Jersey's 2011 Energy Master Plan and 2015 Energy Master Plan update ("EMP"). The single largest "benefit" of AMI results wholly from eliminating all of the Company's meter reading positions, as well as other labor cost reductions. The Company tries to brush over this fact as it is directly contradictory to the EMP's goal of job creation. Because its primary benefit can only be realized through job losses, Rockland's petition directly contradicts the vision of the EMP. The same is true of the unnecessary and unknown rate increases that will stem from AMI. One of the overarching goals of the EMP is a reduction in energy rates. All of Rockland's current meters are fully functional and are not in need of replacement, and replacing them prematurely will result in unnecessary rate increases.

Rockland's Initial Brief also fails to present a compelling case for why the extraordinary remedy of pre-approval should be granted. Rockland argues that pre-approval is appropriate because this is the first time that a utility will install AMI meters in New Jersey. Rockland also argues that AMI is a sizable investment. Yet Rockland fails to cite to any Board order, statute or regulation in support of this argument. There are many sizeable investments made by utilities, including innovative ones. This alone does not justify shifting the risk of those investments to ratepayers. There is simply no reason nor precedent for the Board to limit its future ability to review Rockland's decision to invest in AMI.

Along with pre-approval of its AMI program, Rockland seeks guaranteed recovery of the stranded costs of its current meters in this proceeding. The Board cannot grant this request

because doing so would be contrary to settled case law that items in rate base must be used and useful in the public service. If granted, Board Staff and Rate Counsel will also be prejudiced, because this request was first made six months after the petition was filed, without accompanying testimony or an amended petition, and after discovery was complete.

Finally, the brief submitted by EDF shows EDF's misunderstanding of the issues before the Board and the relief sought by RECO. The issue in this case concerns pre-approval, not the benefits of AMI. On this issue, EDF properly distinguishes prior Board approval of other programs, recognizing in those matters there was a significant safety or reliability need for the program, the costs were capped and the investment was subject to a full prudence review. No such circumstances are present here. There is no BPU order, public emergency or significant safety issue requiring an AMI program. The Company has explicitly rejected a cost cap and the Company clearly seeks to limit the scope of any future prudence review.

A. The Petition in this Matter Does Not Emanate From the Board's Storm Hardening Order or RECO's Petition in that Separate Matter.

In an attempt to bring this matter under the penumbra of the storm hardening dockets, RECO asserts that this matter originated in its storm hardening filing before the Board in Docket No. ER14030250. While it is true that AMI was part of the initial Company filing in that matter, the current case is wholly different from that matter. At no point did the Board order or request that the Company seek pre-approval of an AMI program. President Mroz, speaking on his own behalf, did state that companies look into deployment of AMI. RIB, p. 5. The words "pre-approval," however, are not to be found in the quoted language. Significantly, AMI was not part of the RECO storm hardening program stipulation approved by the Board.

The present matter does not emanate from the 2013 storm hardening proceeding. It was not filed pursuant to that docket, but rather as part of a base rate case filed in 2016. Recognizing that the proposed future roll out of AMI had nothing to do with rates for plant currently in service, the BPU severed that matter from the rate case for a separate determination. That order does not mention storm hardening at all. Moreover, in the Verified Petition in this matter the paragraph dealing with AMI makes no mention of storm hardening. (P-1, ¶¶ 6 & 7).

RECO attempts to now tie this matter to the Board's 2013 Storm Hardening generic order in order to justify its request for pre-approval. This AMI program was never meant to be a storm hardening program. Indeed, in listing the alleged benefits of the AMI program, RECO lists "outage management" as one of nine purported benefits, and sixth on that list. The largest "benefit" of this program is the elimination of jobs and associated labor costs. The program must stand on its own, which it cannot do. Therefore it should be rejected.

B. RECO's Cost Benefit Analysis is Completely Hypothetical and Does Not Support Pre-Approval of the Company's AMI Program.

Rate Counsel discussed extensively in its initial brief how the cost benefit analysis (“CBA”) provided by the Company was insufficient. The costs included were not complete and not capped. Conversely, the benefits are all estimates and not guaranteed. Indeed, in its brief, EDF refers to the “estimates” of costs and benefits. EDFIB, p. 7, 19. Thus the CBA is nothing more than a guess with no concrete assurances. Nonetheless, certain benefits raised in RECO's initial brief are addressed below.

The Company asserts that the MDMS and MAMS will provide additional benefits to customers. The Company attempts to quantify these benefits and includes them in its estimate of the benefits customers will receive. Yet the Company does not include the costs of MDMS or MAMS on the cost side of its analysis. This mismatch leads to a no-cost benefit for the Company and distorts the CBA. Similarly, the Company discusses customer access to data through a new web portal, counting this as a benefit of the program. Yet the cost of the new web portal is not included as a cost of AMI.

With regard to customer access, the Company discusses the benefits customers will obtain in accessing additional data through the web portal. The Company neglects to mention that in order to obtain the data, and more importantly in order to utilize the data for any beneficial purpose, the customer will need access to a computer or a smart phone. Moreover, the Company (RIB, p. 16) and EDF (EDFIB, p. 14) argues that a benefit of AMI is that customers will be able to manage costs associated with peak demands. New Jersey does not have time of

day pricing for residential customers, and there is no application to do so at this time. Thus the management of this data is costly to the customer and may be of limited value.²

C. Rockland’s Initial Brief Fails to Justify Why the Board Should Grant The Extraordinary Remedy of Pre-approval of a Routine Capital Investment.

The Company utilizes over half of its forty-three page initial brief extolling the benefits of its AMI program, yet it still seeks pre-approval before undertaking the program. If the Company was convinced the “substantial” benefits outweigh the costs, it would simply implement its program and seek recovery in its next base rate case. Rather, in this matter, the Company relies entirely on estimated, hypothetical data, that does not even include all the costs of its program. This lack of actual costs and benefits creates risk, risk the Company seeks to place squarely on ratepayers. As a former Commissioner of the Massachusetts Department of Public Utilities, Rate Counsel expert witness Tim Woolf testified that utility commissions “generally prefer to review costs after they have been spent...[t]his approach ensures that the costs involved are certain, and are not based on estimates, forecasts, or speculation.” RC-1 at 10. Pre-approval of something as routine a utility’s investment in meters is an extraordinary request. Rockland’s initial brief fails to justify why the Board should grant it.

For the first time in this proceeding, Rockland’s initial brief finally sheds light on the Company’s view of the meaning of pre-approval. Rockland states that it “contemplates that the Board in a future rate case will address whether the Company’s actual implementation of its AMI Program was conducted in a prudent manner, and will review the Company’s actual expenditures.” RIB at 33 (emphasis added). Rockland appears to envision a limited future review of its expenditures, while foreclosing the Board’s ability to review its decision to invest in

² Incredibly, the Company implies that this access will be especially useful to low income customers, who will be able to receive alerts on their smart phones, tablets and computers, without any analysis of how many low income customers even have access to those devices or the ability to limit their consumption if alerted.

AMI at all. The ability to review a utility's investment decision is a fundamental aspect of any legitimate prudency review. The Board should not relinquish this important aspect of regulatory oversight, particularly when Rockland has not agreed to a cap on costs, or a guarantee that the claimed benefits will be realized and passed on to ratepayers, or to reduce the return on equity to reflect its reduced risk.

Rockland offers several reasons why it believes pre-approval to be necessary and appropriate. Among them is the claim that "the AMI program involves a major financial and operational commitment on the part of the Company." RIB at 31. Rockland also claims that its proposed AMI investment is "unprecedented in the history of New Jersey." *Id.* Neither of these arguments provides a sufficient basis for the Board to authorize pre-approval. Indeed, Rockland does not cite to a single Board order, statute or regulation stating that pre-approval is appropriate because an investment is sizable or novel. Such a standard could lead to uncertain, "novel" investments being made at the risk of ratepayers. Rockland earns a generous 9.6% return on equity in exchange for running its system in a responsible manner. Prudent capital investment decisions are integral to that responsibility. If Rockland seeks to shift its risk to ratepayers, its return should reflect that fundamental change in which party bears the risk of this program. The fact that an investment may be sizable or novel does not alter the fact that these decisions are at the core of running a regulated utility.

It is also worth noting that, at a cost of \$16.5 million, AMI is not an unusually sizable investment for an electric utility such as Rockland. Rockland intends to implement AMI over a three year period, translating into an annual capital investment of \$5.5 million. By comparison, Rockland recently received Board approval to implement new base rates. In that rate case, Rockland made capital investments of at least \$48.4 million since its last rate case 2.5 years

before. I/M/O Rockland Electric Co. for Approval of Changes in Electric Rates, BPU Docket No. ER16050428, Board Order dated 2/22/17 (see also Exhibit P-3, schedule 12). While some of these investments stemmed from its storm hardening proceeding, the majority were made in the normal course of business. Indeed, Rockland recently invested \$18 million in the Summit Avenue substation. Id. There is nothing extraordinary about the capital investment of \$5.5 million annually that AMI would require.

Rockland cites to several Board orders in support of its request for pre-approval. RIB at 32-33. However, all of those cases are distinguishable. For instance, Rockland cites to the recent storm hardening cases. Those cases were filed pursuant to a Board order inviting utilities to make filings to upgrade infrastructure to protect from future storms. I/M/O the Board's Establishment of a Generic Proceeding to Review Costs, Benefits and Reliability Impacts of Major Storm Event Mitigation Efforts, supra. The Board's Order followed a truly extraordinary series of storms that affected large portions of the State's utility infrastructure, left ratepayers without power for days or weeks and caused unprecedented levels of damage. The Order sought to preserve the utilities' ability to maintain safe, adequate and proper service during major storms, something that is a basic obligation of a utility. Furthermore, the Board orders approving the storm hardening programs always contained a cap on the amount of money the utilities could spend and a clear statement that a full prudence review would be conducted in the next base rate case, as well as filing deadlines for those rate cases. Id. See also, EDFIB, p. 21. In contrast, Rockland is unwilling to commit to a cap on costs, instead wanting open-ended pre-approval to spend unlimited funds. RECO also seeks to preclude a full prudence review of its program after the actual costs and actual benefits are known.

Rockland also cites to the gas utilities' main replacement filings. 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, and to respond to the clear safety issue of natural gas infrastructure at risk for leaks. 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. Here, Rockland wants pre-approval to replace 73,000 fully functional meters. Rockland has never claimed that these meters are incapable of providing safe, adequate and proper service to customers or pose any danger to those customers. Moreover, similar to the storm hardening orders, the gas main replacement orders include a cap on the Company's total expenditure and a prudence review, which is not the case here. EDFRIB, p. 24.

Rockland also points to several water orders, one of them being Hackensack Water's construction of the Two Bridges/Ramapo Water diversion project. Rockland omits the fact that the Two Bridges/Ramapo matter was filed following an Executive Order issued by Governor Brendan Byrne declaring a state of emergency due to severe drought conditions. I/M/O the Implementation of the Two Bridges/Ramapo Water Diversion Project, BPU Docket No. 8011-870, Procedural Interim Emergency Order. The Board concluded that "the relationship between the recognized water crisis and the need for this project [is] certain and undisputed...." Id. at 4. In her Initial Decision on a different matter, Judge Irene Jones noted that the Two Bridges project "double[d] Hackensack's Water Company's rate base in five years and increase its rates by 45 percent over that same period. It was the largest water project ever undertaken by a New

Jersey utility.” I/M/O N.J. American Water Co. for an Increase in Rates for Water & Sewer Service, BPU Docket No. WR920908J, Initial Decision, 94 N.J.A.R.2d 60.

In contrast to the facts surrounding the Two Bridges case, 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. There is no extraordinary danger or problem that the utility is trying to solve via this program. It simply seeks assurance that it will get paid no matter what the cost or benefits turn out to be. Rockland has failed to persuade that a decision to replace meters should be singled out by the Board for pre-approval.

Finally, the Company presents the fiction that “it is a matter of public record that Rate Counsel has historically opposed AMI investments. Against this backdrop, it is appropriate for the Board to consider and rule on RECO’s AMI Program before the Company proceeds.” RIB at 31-32. This argument is nonsensical. Surely the Company is not suggesting that Rate Counsel’s potential opposition to a petition is enough to justify dispensing with the usual course of having a utility determine its investments. In addition, no utility in this State has implemented AMI in the normal course of business and filed for rate recovery in a base rate case. Rate Counsel has never had the opportunity to review the prudence of an investment in AMI that is used and useful and in service during a base rate filing. What Rate Counsel has opposed is pre-approval of an AMI program with the commiserate shift of risk to ratepayers. If a utility can prove that it has invested in AMI in a reasonable, prudent and cost-effective manner, Rate Counsel would support rate recovery as it does with any other prudent investment a utility seeks to recover in a base rate case. Rate Counsel does not have a philosophical objection to AMI. Rate Counsel does have an objection to a fundamental shift in the regulatory construct where ratepayers, not the utilities, bear the risk of utility investment.

D. The Board Must Deny Rockland’s Request for Stranded Costs, as Such a Guarantee Would Be Unprecedented, Contrary to New Jersey Law & Prejudicial to Rate Counsel & Board Staff.

Rockland’s initial brief asks the Board to “confirm that RECO is entitled to continue to recover the costs of legacy meters.” RIB at 34. Rockland offers no justification for this request. Instead, Rockland simply states that “the Company’s ability to continue to recover legacy meter costs is integral to its AMI proposal.” RIB at 34. Notably absent from the Company’s argument is a proffer of precedent to support such a request. The Board does not have a history of pre-approving rate recovery of stranded costs.³

Rockland’s request is also contrary to well-settled New Jersey case law. The New Jersey Supreme Court has long held that in a rate proceeding, “[t]he rate base is the fair value of the property of the public utility that is used and useful in the public service.” I/M/O Public Serv. Coordinated Transport, 5 N.J. 196, 217 (1950) (emphasis added); accord In re New Jersey Power & Light Co., 9 N.J. 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.”) Rockland’s desire for the Board to guarantee rate recovery of retired meters is clearly contrary to this well established case law. In order for a utility’s property to be recoverable in rates, it must be used and useful in the public service. Once the legacy meters are no longer serving customers, they will not be used and useful or in the public service, and cannot be recovered in rates.

Rockland’s request must also be denied because it is untimely. Beginning with the filing of its Petition, Rockland claimed that there were no issues regarding rate recovery in this

³ While the Board permitted stranded cost recovery during deregulation, this was done pursuant to statute.

proceeding. In its Petition, the Company stated 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).

In its Initial Brief, Rockland claims that stranded costs for the legacy meters have been an issue since it first filed its petition. RIB at 34. While Rate Counsel was aware that stranded costs were an issue, Rate Counsel relied on the Company’s representation that this issue would be deferred to a future base rate proceeding. The fact is, the Company never requested the Board to find that it is entitled to stranded costs as part of this proceeding until six months into this proceeding and after discovery was complete. Many questions remain because Rate Counsel and Board Staff never had the opportunity to ask discovery. For example, does the Company intend to remove the legacy meters from Utility Plant in Service (“UPIS”) because

they are no longer used and useful? If they do, what account would these meters go into? If not, what is the Company's justification for keeping these meters in UPIS if they are no longer used and useful? These are relevant questions that the Board simply does not have answers to because RECO never provided the opportunity to ask them by its insistence that this issue would be resolved in the next base rate case. For all of these reasons, the only proper forum for consideration of stranded costs is a rate case. Rockland's request for guaranteed pre-approval of stranded costs must be denied.

E. The Company's Petition is Contrary to Two Fundamental Objectives of the Energy Master Plan: Job Creation and Lower Energy Costs.

Rockland's Initial Brief attempts to argue that its AMI proposal serves the goals of New Jersey's EMP. RIB at 19. Rockland asserts that AMI is consistent with technologies mentioned in the EMP, such as smart grid, and the goal of "increase[d] response and restoration times to damage to the State's critical energy infrastructure." *Id.* at 20 (quoting EMP, 2015 Update, p. 47). However, Rockland's brief omits significant portions of the EMP its AMI program actually contradicts.

Rockland's AMI proposal is inconsistent with the EMP's goal to create jobs. The Introduction section of the EMP states that "[t]he Administration will manage energy in a manner which saves money, stimulates the economy, creates jobs, protects the environment, mitigates long-term cumulative impacts, and is consistent with the goals of the State Strategic Plan." N.J. EMP at 1. The Executive Summary reiterates that "[t]he Christie Administration is committed to continuing by example the Garden State's national leadership in furthering environmental objectives in a manner that saves money, stimulates the economy, and creates jobs." *Id.* at 3. The EMP also emphasizes that in achieving environmental objectives such as the State's Renewable Portfolio Standards, "[e]mphasis should be placed on resources that provide a

net economic benefit to the State by providing jobs and investment, in addition to clean energy.”
Id. at 76.

Job creation is clearly a major objective of the State’s energy policy as set forth in the EMP. From this perspective, the Company’s proposal is a failure. It is undisputed that if AMI is implemented, Rockland will shed jobs. Almost half of Rockland’s claimed “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. While the Company represents that no individual meter readers will lose their jobs, 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. Rockland concedes in its brief that other positions will be eliminated or reduced as additional “benefits” of its AMI program. RIB, p. 19 (cost savings include “reduced labor costs for meter reading, field services, billing and call center.”)

This reduction in jobs is clearly contrary to the goal of the EMP. If the Board wishes to support the EMP’s objectives, it should deny Rockland’s petition. Indeed, if the Board approves Rockland’s petition, other utilities statewide will surely file similar petitions, leading to additional job losses.

Rockland’s proposal is also contrary to the EMP’s goal to lower the cost of energy for customers. The EMP notes that “New Jersey’s energy prices are among the highest in the nation.” Id. Indeed, “driving down the cost of energy for all customers” is listed as one of the five “overarching goals” of the EMP. EMP at 1. Rather than meeting the EMP’s goal to lower energy costs, Rockland’s proposal will instead result in unnecessary rate increases. The benefits of AMI will not outweigh the costs of the program for many years, if ever. We do not know how

long because the cost/benefit analyses submitted by the Company omitted many costs that ratepayers will be expected to pay. If the Board wishes to lower energy costs consistent with the “overarching goals” of the EMP, it must deny Rockland’s petition. Rockland currently has 73,000 meters in service and being recovered in rates. These meters are fully functional, providing safe, adequate and proper service to customers. There is no reason to raise electric rates unnecessarily by an uncapped amount when the Company is currently capable of providing safe, adequate and proper service to customers.

F. The EMP Does Not Endorse AMI.

The Company asserts that the EMP endorses AMI. RIB, p. 20. While the EMP does mention smart grid technology, the EMP never advocates for implementation of AMI. In fact, the EMP specifically notes reservations with smart meters (a/k/a AMI). The EMP states that:

There are a number of barriers to smart meter implementation. Smart meters are more expensive than traditional meters, as are two-way communication costs. There has been a lack of standardized communications protocols, but some progress is being made. Of critical importance, smart meters must be able to communicate not only with the EDC, but also with evolving technologies, equipment, the smart grid, and the computer chips in future smart appliances. The installation of smart meters prior to standardized communication protocols has exposed ratepayers to stranded costs resulting from obsolete equipment. N.J. EMP at 127.

The EMP shares Rate Counsel’s concerns with the costs of AMI, including all of the potential stranded costs. Furthermore, while the EMP does mention smart grid, smart grid does not necessarily equate to implementation of AMI. Some smart grid technologies may be more cost effective than AMI, and more properly align with the goals of the EMP.⁴ In sum, the EMP

⁴ An example of this is Rockland’s recent storm hardening petition. Pursuant to the Board’s generic order encouraging utilities to make storm hardening filings, in 2016 Rockland received approval from the BPU to invest \$8 million in the expansion of its distribution automation/smart grid. The Board approved a stipulation among the parties, including Rate Counsel. I/M/O Rockland Electric Co. for Establishment of a Storm Hardening Surcharge, BPU Docket Nos. AX13030197/ER14030250, Board Order dated January 27, 2016.

does not endorse AMI. To the contrary, the extraordinary relief sought here may contradict some of the important goals of the EMP.

G. EDF's Initial Brief Supports a Program Substantially Different Than the One Sought by RECO.

Shortly before the evidentiary hearings, Rockland and EDF entered into a stipulation. Rockland agreed to reporting requirements and metrics and a Green Button Connect data sharing policy. In exchange, EDF agreed to support pre-approval of Rockland's AMI program and stranded costs. In its brief, however, EDF demonstrates that it did not fully understand the scope of this proceeding nor what relief RECO actually seeks.

EDF argues in its brief the benefits it anticipates from AMI. However, EDF misconstrues the purpose of this proceeding. This is not a referendum on AMI. It is a proceeding to determine if pre-approval is appropriate. This is extraordinary relief that is not the norm in New Jersey. It is because of the novelty of pre-approval that this issue was explicitly listed in the prehearing order in this matter. While there may indeed be benefits to the implementation of AMI, those benefits are currently unknown. In fact, EDF concedes they are estimates. EDFIB, at 7, 19. The metrics sought by EDF in its stipulation with the Company seek to track and ultimately quantify the benefits. Assuming that the benefits come to pass and that they outweigh the actual and total costs of the implementation of the program, the Company could and should seek recovery of its investment at that time. That is not the case currently before the Board.

EDF asserts that in the storm hardening cases, the "BPU has granted pre-approval for reliability and resiliency projects responsive to a BPU Order." EDFIB, p. 20. EDF also cites to pipeline replacement projects. As noted above, in both instances the programs resulted from Board orders that were in response to specific concerns related to safety and the provision of service by the utilities; first in response to major storm events disrupting significant portions of

the State's utility service and second to potential natural gas pipeline safety and leaks. No such safety or service concerns are present here.

Moreover, EDF's review of the actual cases demonstrates their inapplicability here. In the storm hardening cases, EDF noted that the companies were required to provide a "detailed cost-benefit analysis." EDFIB, p. 20. EDF further notes that "in all five cases, BPU pre-approved the infrastructure upgrades, but required post-investment prudence review, reserved the right to order customer refunds for imprudent expenditures, and capped total recovery." Id. at .p. 21. EDF goes so far as to say that BPU can ensure a thorough review of the program, "reserving the right to deny recovery for imprudent expenditures, capping total recovery, requiring tracking of performance metrics, and tying cost recovery to specific metrics." Id. at 23. None of these elements are present in the current filing. In fact RECO explicitly rejects full post-investment prudence review, any cap on total recovery or tying cost recovery to specific metrics. Indeed, the initial filing contained no metrics, and RECO only agreed to report metrics to gain EDF's support for the program.

Similarly, in the pipeline replacement programs, EDF recognized that "BPU placed a cap on total recovery, required the utility to track a performance metric (reduction of active leak inventory), and made cost recovery partially contingent on that metric." Id. at p. 24. Again, EDF asserts "BPU can ensure thorough post-investment prudence review by capping total recovery, requiring tracking of performance metrics, and tying cost recovery to specific metrics." Id. at p. 25. As explained above, these limits are not part of RECO's program, and RECO has in fact explicitly rejected them.

Simply, the program EDF thinks it agreed to is not the program RECO intends to implement. None of the review procedures EDF relies upon from prior matters are present here.

There is no protection for ratepayers. Indeed, other than recording metrics, it does not appear RECO made any promises of actually meeting any specific metric or that RECO will face any consequence if it does not meet a specific goal. Rather, RECO will track metrics to see if the promised benefits occur. If the benefits do not occur (or if the costs are higher than initially estimated), RECO still intends to fully recover its investment. EDF's brief supports a program substantially different than the one sought by RECO.

Conclusion

For all of the reasons stated above and in Rate Counsel's Initial Brief, 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 recovery of the AMI costs (\$16.5 million).
2. A reduced return on equity for the AMI investment to reflect the reduced risk borne by the Company's shareholders as a result of pre-approval.
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 prudence of the Company's decision to invest in AMI, and the prudence 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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