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VIA FEDERAL EXPRESS and
ELECTRONIC MAIL
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SEP 26 2017

MAIL RECEIVED

Irene Kim Asbury, Esquire
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
Trenton, New Jersey 08625-0350

RE: Comments of Atlantic City Electric Company – Infrastructure Regulations
BPU Docket No. AX17050469

Dear Secretary Asbury:

The undersigned is Assistant General Counsel to Atlantic City Electric Company (“ACE”). Attached are eleven copies of ACE’s Comments in connection with the Board of Public Utilities’ proposed regulations regarding Infrastructure Investment and Recovery which were published in the New Jersey Register on August 7, 2017.¹ ACE appreciates the effort that has gone into the development and drafting of these proposed regulations.

Kindly accept this submission for filing and return one date-stamped and “filed” copy of this letter and its attachment in the pre-addressed, postage-prepaid envelope provided. Thank you for your cooperation and courtesies. Feel free to contact me with any questions or if I can be of further assistance.

Respectfully submitted,

*Case mgmt
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a. Moran
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Enclosures

¹ ACE has separately filed Comments on the proposed regulations regarding the implementation of provisional rates.

Comments of Atlantic City Electric Company
Regarding the Proposed New Regulation N.J.A.C. 14:3-2A.1 et seq.
Infrastructure Investment Program

Overview

Atlantic City Electric Company (“ACE” or the “Company”) appreciates the opportunity to comment on draft regulations implementing the Board of Public Utilities’ (the “Board”) Infrastructure Investment Program. These regulations codify an important process the Board began several years ago when it sought to encourage infrastructure investment in the State initially in response to broad economic challenges, and later to address the need for increased distribution system resiliency and storm hardening. The proposed regulations build on the Board’s decisions approving efforts such as ACE’s PowerAhead program, and the stakeholder process and straw proposal initiated by Board Staff. Promulgation of the draft regulations is the next logical step in facilitating needed infrastructure investment in the State by providing a flexible framework that creates incentives for infrastructure investment while providing clear guidance on how such programs should be structured and administered, along with customer safeguards.

ACE strongly supports the efforts of Board Staff in crafting these regulations and addressing the concerns raised during the stakeholder and straw proposal processes. Thus, when parties speculated that utilities might be permitted to recover costs related to facilities that were not “used and useful,” the draft regulations now make clear that only facilities that are in-service may be included for cost recovery. The draft regulations also include numerous specific minimum filing requirements that will insure the Board has more comprehensive and detailed information on facilities installed under this regulation than it does for most rate base additions. And the Board will have this information prior to the investment in plant—not after the fact as is the case in “traditional” ratemaking. Semi-annual reporting requirements also insure the Board has timely, not stale, information as some parties speculated. As for suggestions that shareholders would receive a windfall, the earnings test included in the regulations provides important protections against such an occurrence.

Finally, much was made during the stakeholder and straw proposal process of the need for a “legal umbilical cord” between interim rates and the final adjudication of a base rate case. Proponents of this argument cite to *In re Intrastate Industrial Sand Rates*, 66 N.J. 12 (1974), for the proposition that no more than three years may elapse between the time interim rates become effective and when those interim rates are reviewed and made final in a base rate case. A reading of *Industrial Sands*, however, reveals no such three year limitation. Indeed, no New Jersey case law imposes a three year restriction or any other specific time period. Thus, the Board is free to authorize periods greater or lesser than three years as it sees fit to meet the specific needs the Board seeks to address. The critical requirement is that rates remain interim, subject to refund, until they are finally reviewed in a base rate case. That important requirement is fully respected and followed in the proposed regulations. Moreover, suggestions that the use of a five year period here amounts to a wholesale repudiation of existing Board policy are incorrect and overstated. The five year period utilized in these draft regulations applies only to these infrastructure regulations and no others.

Specific Comments

1. Proposed N.J.A.C. 14:3-2A.2(b) should be revised to clarify that the list of eligible projects is illustrative and that eligibility is not limited to only the enumerated projects. ACE believes this is entirely consistent with the Board's intent. Therefore, ACE requests that the language of the regulation be clarified in the following manner:

(b) Projects within an Infrastructure Investment Program may include, but are not limited to:

2. Proposed N.J.A.C. 14:3-2A.5(d) should be revised to reflect that the Board is required to conduct a public comment hearing, as opposed to an evidentiary hearing or legislative hearing, and that notice of the public comment hearing shall be provided consistent with the notice provisions applied when a utility seeks to increase customer rates. ACE believes this proposed revision is consistent with the Board's intent and simply provides an additional level of specificity regarding the type of hearing to be held and the notice requirements to be applied. Therefore, ACE requests that the language of the regulation be clarified in the following manner:

(d) Before the Board approves an Infrastructure Investment Program, the Board shall conduct a public comment hearing. Notice of the public comment hearing shall contain the maximum dollar amount the utility seeks to recover through its Infrastructure Investment Program and the utility's estimated rate impact. Notice of the public comment hearing shall be provided consistent with the notice requirements set out in N.J.A.C. 14:1-5.12(b), (c), and (d).

3. Proposed N.J.A.C. 14:3-2A.6(b) should be revised to lower the minimum expenditure limit from "at least ten (10) percent" to "at least eight (8) percent." As the Board is well aware, construction projects and construction season spending are not directly linear in nature. For utilities that elect to make annual filings, the ten percent threshold should pose no difficulty. For those companies that elect semi-annual rate recovery, a ten percent semi-annual spending requirement would almost certainly result in one or more periods during which cost recovery would not be permitted due to failure to reach the ten percent investment level in the six month period. To be consistent with the stated purpose of accelerating cost recovery, the threshold for being able to obtain cost recovery should be set at a level that is reasonable and likely to be achieved by those companies electing semi-annual cost recovery.

4. Proposed N.J.A.C. 14:3-2A.6 would be improved with the addition of an illustrative calculation demonstrating how the Infrastructure Improvement Program recovery charge would be derived. Inclusion of an illustrative calculation has been employed successfully by the Board in other regulations implementing infrastructure investment mechanisms such as the Distribution System Improvement Charge, and it would be helpful here as well.

5. Proposed N.J.A.C. 14:3-2A.6(d) is somewhat confusing as drafted. Specifically, the phrase "recovered through a separate clause of the utility's Board-approved tariff" is unclear as

to what is intended. ACE believes the Board's intent is to require an Infrastructure Investment Program tariff, much as the Board currently requires separate tariffs for Purchased Water Adjustment Clause recoveries or Distribution System Improvement Charges. Therefore, ACE requests the language of the regulation be revised in the following manner:

(d) Rates approved by the Board for recovery of expenditures under an Infrastructure Investment Program shall be accelerated, and recovered through a separate ~~clause~~ provision of the utility's Board-approved tariff.

ACE appreciates the efforts of the Board and its Staff to address the infrastructure investment needs of this State through the promulgation of a detailed regulation. ACE looks forward to working with the Board on this important initiative.