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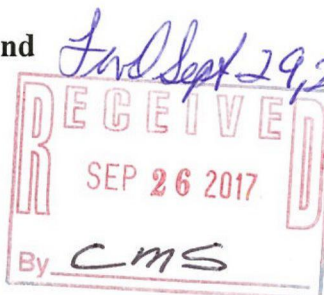
atlanticcityelectric.com

September 25, 2017

**VIA FEDERAL EXPRESS and
ELECTRONIC MAIL**

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rule.comments@bpu.nj.gov

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



SEP 26 2017

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RE: Comments of Atlantic City Electric Company - Provisional Rate Regulations
BPU Docket No. AX17050468

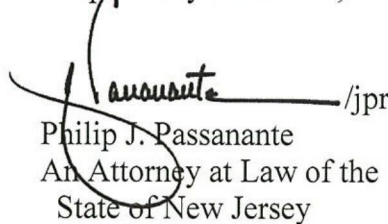
Dear Secretary Asbury:

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 the implementation of provisional rates 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 communication 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
Legal
a. mooney
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Philip J. Passanante
An Attorney at Law of the
State of New Jersey

Enclosures

¹ Please note that ACE has separately filed Comments on proposed regulations concerning Infrastructure Investment and Recovery.

**Comments of Atlantic City Electric Company
Regarding the Proposed Amendments to N.J.A.C. 14:1-5.12(e)-(k)
Provisional Rate Increase Implementation**

Overview

Atlantic City Electric Company (“ACE”) fully supports the efforts of the Board of Public Utilities (the “Board”) to draft regulations setting out a clear, consistent process for the implementation of provisional rates when a base rate case has not been finally decided within nine months. While the authority of utilities to institute interim rates has long been clear,¹ the process to be employed to implement provisional rates has not. With the publication of these proposed regulations, the Board has taken an important step toward providing needed regulatory certainty, along with implementing vital customer safeguards.

The Board’s regulations were developed with significant input garnered through a stakeholder process that enabled all interested parties to share their views and concerns. The Board has fully respected the concerns of all interested parties by the careful and thoughtful manner in which it has proceeded in this rulemaking. ACE believes the proposed regulations have benefitted from the stakeholder process, and appreciates the opportunity to provide additional input on these proposed regulations.

The issue of provisional rates is not new in New Jersey. For nearly four decades, it has been a matter of well settled law that utilities have the ability to unilaterally implement provisional rates after a base rate case has been pending for nine months.² Indeed, language reserving the right to utilize this authority is ubiquitous as it has been included for decades in nearly every petition initiating a base rate proceeding before the Board. What has been missing, however, is a clear process that utilities must follow when implementing provisional rates.³ ACE appreciates the efforts of the Board and its Staff to provide that much-needed clarity and specificity through the proposed regulations. ACE is of the view that the Board’s proposed regulations are a balanced framework that protects the interests of both utilities and their customers. Contrary to the assertion that these regulations are an unnecessary “solution in search of a problem,” the proposed regulations provide a predictable regulatory process and important

¹ See *N.J.S.A.* 48:2-21(d).

² The New Jersey Supreme Court has held that the ability to implement interim rates is a remedy for regulatory lag, concluding that “at the end of a suspension period, in the absence of a stipulated extension or waiver, the utility’s proposed rates may immediately become effective subject to conditions, such as refund, dependent upon the Board’s final determination.” See *In re Revision of Rates Toms River Water Company*, 82 *N.J.* 201, 211 (1980).

³ The Court also held that “the Board must devise appropriate administrative mechanisms for regulating utilities which elect to implement proposed tariffs at the end of a suspension period.” See *In re Revision of Rates Toms River Water Company*, 82 *N.J.* 201, 212 (1980). Thus, the Court explicitly recognized the need for regulations to provide certainty and appropriate safeguards. That effort was not completed until the current proposed regulations.

customer safeguards—which would not exist but-for the proposed regulations. Moreover, opposing the regulations because provisional rates have been used infrequently in the past misses the point entirely. Provisional rates have been implemented and will continue to be implemented in the future: all parties are entitled to understand what process must be followed and what safeguards are in place.

Specific Comments

1. Proposed N.J.A.C. 14:1-5.12(e)(2) requires that the provisional rate increase be applied to all rate classes using the existing rate design approved by the Board in the company's most recent rate case. ACE agrees with this concept generally; however, provision should be made in the regulation clarifying that rate classes that are not proposed to receive a rate increase in the pending case should not be subject to a provisional rate increase. This clarification is necessary to prevent a situation in which the utility has proposed no rate change for a class of customers in the pending rate case, but those same customers would be subject to an increase in provisional rates which must then be refunded in their entirety. ACE believes that the customer classes that would be most likely to be impacted by this scenario are commercial and industrial customers for whom this could have an adverse economic impact. Therefore, ACE requests that the language of the regulation be clarified in the following manner:

(e)2. Shall apply an equal percentage provisional rate increase to all rate classes for whom the utility has proposed a rate increase in the pending base rate case using the existing rate design for the utility approved by the Board.

2. Proposed N.J.A.C. 14:1-5.12(f)(1)(ix) requires notice to customers by “bill insert.” ACE supports providing notice to customers but urges the Board to consider additional approaches to notice that are practical, cost-effective and reach customers. The Board should clarify that acceptable forms of customer notice also include bill messages and publication in newspapers of general circulation in the service territory, as both of these methods have a long history of successfully providing notice to New Jersey customers.

(f)(1)(ix) all customers who are billed on a recurring basis and who will be affected by the rate increase, where such notice may be made by bill insert, bill message or publication in newspapers of general circulation in the service territory.

3. Proposed N.J.A.C. 14:1-5.12(g) requires Board Staff to provide any objections to the utility's certification of compliance with the requirements of N.J.A.C. 14:1-5.12(f) no less than five days in advance of the implementation of the provisional rate increase. ACE supports this requirement but requests that the regulation be clarified to provide 5 business days of notice, and to require that Staff set out its specific objections along with corrections which, when completed, would allow for the implementation of provisional rates.

(g) After filing the certification required under (f)4 above, a utility may implement the provisional rate increase permitted by this section on the date noticed by the utility, unless Board staff transmits written objections to the utility. Any such objections shall address only the utility's compliance with

(f) above, and shall be transmitted to the utility no later than five business days in advance of the provisional rate increase, along with an explanation of the acceptable corrections to be made which, when completed, will permit the implementation of the provisional rate increase.

4. Proposed **N.J.A.C. 14:1-5.12(h)** should be clarified to indicate that refunds to customers should begin within 30 days of the effective date of a Final Order of the Board approving the utility's revenue requirement and final tariffs. ACE's concern with the current language of the regulation is practical in nature. ACE customers are billed throughout the month, with multiple billing cycles being used. As currently drafted, the provision could be read to require ACE to provide refunds to customers on a billing cycle that begins one day after the Board's Final Order is effective. Given the nature of the refund process, this is not sufficient time to calculate and process customer refunds. Moreover, ACE does not believe it was the Board's intent to impose such timing. Therefore, ACE requests that the language of the regulation be clarified in the following manner:

(h) Upon conclusion of a rate case, a utility shall determine whether it owes interest to customers due to excess funds recovered through provisional rates pursuant to this subchapter. The utility shall return any over-recovery, plus interest, to customers in the next billing cycle beginning 30 days from the effective date of the Board's Final Order approving new rates. In determining interest owed under this subchapter:

5. Proposed **N.J.A.C. 14:1-5.12(h)(2)** should be clarified to reflect that refunds and interest calculations are performed on an individual customer basis, which ACE believes was the Board's intent. Therefore, ACE would propose that the phrase "**For each customer,**" be added to the beginning of **N.J.A.C. 14:1-5.12(h)(2)**.

6. Proposed **N.J.A.C. 14:1-5.12(h)(3)** should be revised to begin with the phrase "**For each customer,**" consistent with the comment in Paragraph 5 above. In addition, ACE would suggest that the specific statutory citation be added to this provision so that there is no doubt as to which calculation is being referenced. ACE believes the Board may be making reference to **N.J.A.C. 14:3-13.3(d)** in this provision; however, ACE does not believe that is the appropriate methodology to use to calculate interest in this circumstance. Instead, ACE believes the short-term interest rate, as calculated pursuant to **N.J.A.C. 14:3-3.5(d)**, should be used as any provisional rates will be in place for a short-time only. This change should apply to the interest calculation used by all utilities. Use of an interest rate tied to the costs of long-term debt and equity is not appropriate as a yardstick for short-term interest cost. Moreover, use of this inflated interest rate is punitive given that the only reason that provisional rates may be implemented is that the case has not been resolved within the nine month statutory period. Therefore, ACE requests that the language of the regulation be clarified in the following manner:

3. For each customer, An electric utility shall calculate the amount of interest owed in the manner prescribed for a gas utility pursuant to N.J.A.C. 14:3-3.5(d); and

In conclusion, ACE appreciates and supports the important efforts of this Board and its Staff to clearly codify the process utilities must use to implement provisional rates upon the expiration of the statutory suspension period.