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RECEIVED  
CASE MANAGEMENT

AUG 24 2018

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

*Handwritten:* JWG  
8/29/18

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August 22, 2018

Aida Camacho-Welch, Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 10<sup>th</sup> Floor  
P.O. Box 350  
Trenton, New Jersey 08625-0350

RECEIVED  
MAIL ROOM  
AUG 24 2018  
BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

Re: I/M/O Proposed Amendment to N.J.A.C. 14:1-5.12 - Tariff Filings or Petitions  
Which Propose Increases in Charges to Customers  
BPU Docket No. AX17050468  
Proposal Number: PRN 2018-007

Dear Secretary Camacho-Welch:

Please accept this letter, written on behalf of the New Jersey Large Energy Users Coalition (“NJLEUC”), in response to Rate Counsel’s August 21, 2018 letter regarding this matter. Rate Counsel’s letter indicates that without Rate Counsel’s knowledge, this past February the Board proposed a second, materially different Consolidated Tax Adjustment (“CTA”) rule in this proceeding without affording Rate Counsel the required notice or opportunity to comment on the amended rule. Rate Counsel previously appealed the Board’s prior action regarding the CTA to the Appellate Division, which remanded the matter to the Board to conduct this rulemaking proceeding.

As the Board is aware, like Rate Counsel, NJLEUC has also consistently objected to the Board’s new CTA policies and was a party to the Appellate Division proceeding. One of the primary arguments advanced by Rate Counsel and NJLEUC in the appeal was the absence of a record to justify the new CTA policy’s significant departure from settled law and the Board’s longstanding formula for the calculation of the CTA. The effect of the proposed new CTA policy would be to significantly diminish the CTA benefit to ratepayers in future utility rate cases.

Like Rate Counsel, NJLEUC submitted comments on March 18, 2018 that addressed the CTA rule proposal published in the New Jersey Register on January 18, 2018. NJLEUC’s comments expressed appreciation that the proposed rule contained an amended sharing arrangement for the CTA, pursuant to which 75% of the CTA benefit would accrue to ratepayers, rather than the 25% share allocated to ratepayers in the prior formula from which the appeal was taken.

*Handwritten:* CMS  
J. Boyd, Esq.  
C. Vachon, Esq.  
D. Peterson

Rate Counsel's August 21, 2018 letter represents the first notice to NJLEUC that a second CTA rule proposal was published on February 5, 2018. Apparently the second CTA rule proposal changed the CTA allocation back to a 25% share for ratepayers, with the remaining 75% going to the utilities. Had NJLEUC been notified of the second rule proposal, NJLEUC would have offered comments critical of the changed allocation formula, consistent with NJLEUC's consistent arguments, grounded in longstanding appellate decisions, regarding the need for a fair and equitable sharing of CTA benefits between ratepayers and the utilities.

NJLEUC agrees with Rate Counsel's legal analysis that the Board was required to provide actual notice of the second rulemaking to Rate Counsel as an "interested person" and "person on the agency's electronic mailing list". See, N.J.A.C. 1:30-5.2(a)(3). In this respect, NJLEUC is similarly situated with Rate Counsel, given NJLEUC's active and continuing involvement in the proceedings convened by the Board and status as a party to the Appellate Division proceeding. The rules and Administrative Procedure Act are clear that NJLEUC should have been provided actual notice of the second proposed rulemaking. See, N.J.S.A. 52:14B-1 et seq.

Another deficiency in the rulemaking is that the Board has not posted or shared with Rate Counsel and NJLEUC the comments provided by other parties in response to the proposed rules. While it was represented that the comments received by the Board in response to the January rulemaking would be posted on the Board's website, apparently this has not occurred, either as to the January or February rule proposals. This is problematic because the Appellate Division remanded the matter to the Board for a rulemaking to afford the Board an opportunity to create a record that would provide a basis for its actions, a record that was clearly absent in the Appellate Division. As of this date, the state of any such official record remains uncertain at best. Any comments received by the Board have not been made public and interested parties have not been afforded an opportunity to respond to any such comments, a clear denial of due process that ironically denies the Board the fully developed record that is required for the Board to act.

In proceeding in this manner, the Board has, in essence, conducted a secret, result-driven rulemaking in which the comments of the parties known to be opposed the proposed CTA rule were not solicited, and the comments of supporters have not been publicly shared. As it now stands, Rate Counsel and NJLEUC have been denied the ability to offer critical comments regarding the latest proposed rule and no disclosure has been made regarding the record developed to support the rule. The rulemaking is therefore flawed both procedurally and substantively and cannot stand. NJLEUC joins in Rate Counsel's argument that these deficiencies must be cured before a final rule can properly be adopted.

Respectfully submitted,

Steven S. Goldenberg

SSG:ssg  
Encl. – Distribution List

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TRENTON, NJ

I/M/O Proposed Amendment to  
N.J.A.C. 14:1-5.12- Tariff Filings or  
Petitions Which Propose Increases in  
Charges to Customers

BPU Docket No. AX17050468  
Service List

BOARD OF PUBLIC UTILITIES

AUG 24 2018

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