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ALL UTILITIES

IN THE MATTER OF THE NEW JERSEY BOARD OF )  
PUBLIC UTILITIES' RESPONSE TO THE COVID-19 )  
PANDEMIC )  
)  
)  
) DOCKET NO. AO20060471

**Parties of Record:**

- Phillip J. Passanante, Esq.**, Atlantic City Electric Company
- Deborah Franco, Esq.**, Elizabethtown Gas Company and South Jersey Gas Company
- Joshua Eckert, Esq.**, Jersey Central Power and Light Company
- Andrew Dembia, Esq.**, New Jersey Natural Gas Company
- Matthew Weissman, Esq.**, Public Service Electric and Gas Company
- John L. Carley, Esq.**, Rockland Electric Company
- Debbie Albrecht**, New Jersey American Water Company
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- Tom Kavanaugh**, Atlantic City Sewer Company
- Steve Lubertozi**, Montague Water Company
- Jeffrey Fuller**, Lake Lenape Water Company
- Henryk Schwarz**, Mt. Olive Villages Water Company
- Robert H. Oostdyk, Jr., Esq. of Murphy McKeon P.C.**, on behalf of the Borough of Butler
- Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel

BY THE BOARD:

**BACKGROUND**

The New Jersey Board of Public Utilities ("Board") is empowered to ensure that regulated public utilities provide safe, adequate and proper service to the citizens of New Jersey. N.J.S.A. 48:2-23. Pursuant to N.J.S.A. 48:2-13, the Board has been vested by the Legislature with the general

supervision and regulation of and jurisdiction and control over all public utilities, "so far as may be necessary for the purpose of carrying out the provisions of [Title 48]." The courts of this State have held that the grant of power by the Legislature to the Board is to be read broadly, and that the provisions of the statute governing public utilities are to be construed liberally. See e.g. In re Public Service Electric and Gas Company, 35 N.J. 358, 371 (1961); Township of Deptford v. Woodbury Terrace Sewerage Corp., 54 N.J. 418, 424 (1969); Bergen County v. Dep't of Public Utilities, 117 N.J. Super. 304, 312 (App. Div. 1971). The Board is also vested with the authority, pursuant to N.J.S.A. 48:2-19, to investigate any public utility, and, pursuant to N.J.S.A. 48:2-16 and 48:2-40, to issue orders to public utilities.

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the coronavirus disease of 2019 ("COVID-19") a "public health emergency of international concern," which means "an extraordinary event which is determined to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response."

On March 9, 2020, Governor Phil Murphy signed Executive Order No. 103 ("EO 103")<sup>1</sup>, declaring a State of Emergency and a Public Health Emergency in response to the COVID-19 pandemic, in order to ensure the continuity of government services and protect the public. In EO 103, Governor Murphy stated:

I authorize and empower the executive head of any agency or instrumentality of the State government with authority to promulgate rules to waive, suspend, or modify any existing rule, where the enforcement of which would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary for the duration of this Executive Order, subject to my prior approval and in consultation with the State Director of Emergency Management and the Commissioner of [Department of Health] DOH. Any such waiver, modification, or suspension shall be promulgated in accordance with N.J.S.A. App. A:9-45.

EO 103 at page 6.

On March 13, 2020, the Board announced that the State's public electric and gas utilities had universally agreed to suspend service shutoffs given the statewide public health emergency and the effort currently underway in response to the COVID-19 pandemic.

In response to EO 103 and in order to prevent the potential spread of COVID-19, the Board issued an Order, which, among other things, ordered that all public utilities and regulated entities immediately cease any in-home or business visits unless there was an immediate risk to health and safety; and waived any and all requirements that entities file paper documents with the Board or with the New Jersey Division of Rate Counsel ("Rate Counsel"). See I/M/O the New Jersey Board of Public Utilities' Response to the Covid-19 Pandemic for a Temporary Waiver of Requirements For Certain Non-essential Obligations, Docket No. EO20030254 (March 19, 2020).

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<sup>1</sup> EO 103 and all other executive orders referenced in this Order are available online at <https://njgov/infobank/eo/056murphy/>.

Additionally on March 20, 2020, New Jersey Lieutenant Governor and Department of Community Affairs Commissioner Sheila Y. Oliver, New Jersey Department of Environmental Protection Commissioner Catherine R. McCabe, and Board President Joseph L. Fiordaliso issued a joint statement which asked, among other thing, “that every water system, private or public, including those operated by our municipal governments, commit to a suspension of any water shut offs for reasons of non-payment, safe reconnection of anyone previously shut off, and a suspension of the use of liens as a collection practice until the outbreak of COVID-19 has subsided.”<sup>2</sup> The moratoria were voluntarily extended by the utilities until October 15, 2020.

Thereafter, Governor Murphy issued several Executive Orders, including but not limited to Executive Order No. 104 and Executive Order No. 107 (“EO 107”), which were intended to protect the public health and limit the spread of COVID-19. Specifically, in EO 107 Governor Murphy stated:

All businesses or non-profits in the State, whether closed or open to the public, must accommodate their workforce, wherever practicable, for telework or work-from-home arrangements. For purposes of this order, “telework” means the practice of working from home or alternative locations closer to home through the use of technology that equips the individual to access necessary materials.

EO 107 at page 10.

On May 13, 2020, Governor Murphy signed Executive Order No. 142 (“EO 142”), which served to modify Executive Order No. 122 (“EO 122”) in response to the COVID-19 pandemic. EO 122 prohibited all non-essential construction projects from continuing in the State. In EO 142, Governor Murphy directed that non-essential construction activities could restart, subject to certain safety and social distancing requirements. Accordingly, EO 142 lifted the restrictions on non-essential construction projects subject to certain conditions found in paragraph 2 of EO 142. In response to EO 103, EO 122, and EO 142, the Board issued an Order on May 20, 2020 finding that the guidance to the utilities concerning construction activities including in-home visits, had been superseded by EO 142, and that all regulated entities could commence or resume non-essential construction projects in accordance with the specific mitigation requirements set forth in EO 142. See I/M/O the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic for a Temporary Waiver of Requirements for Certain Non-Essential Obligations, Docket No. EO 20030254 (May 20, 2020).

Acknowledging that the regulated utilities’ response to the COVID-19 pandemic, including but not limited to, complying with the Governor’s COVID-19-related Executive Orders, could cause the State’s regulated utilities to incur significant and extraordinary COVID-19-related expenditures that could have a negative financial impact on the State’s utilities, the Board issued an Order on July 2, 2020 (“July 2 Order”). The July 2 Order authorizes each of the State’s utilities to create a COVID-19 related regulatory asset by deferring on their books and records the prudently incurred incremental costs related to COVID-19 beginning on March 9, 2020 through September 30, 2021 or 60 days after Governor Murphy issues an order, declaration, proclamation, or similar announcement that the Public Health Emergency is no longer in effect or, in the absence of such an order, declaration, proclamation or similar announcement, 60 days from the time the Public

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<sup>2</sup> The joint statement referenced in this Order is available online at <https://www.state.nj.us/dep/watersupply/pdf/dep-dca-bpu-ask-water-suppliers.pdf>.

Health Emergency automatically terminates pursuant to N.J.S.A. 26:13-3(b), whichever is later. The Board found that deferral of such costs is appropriate because the current catastrophic health emergency is outside the control of the utilities and is a non-recurring event. The Board ordered all deferred incremental COVID-19 related costs be offset by any federal or state assistance that the utility may receive as a direct result of the COVID-19 pandemic. The Board further ordered that all affected utilities maintain detailed records of the incremental COVID-19 related costs and savings during the COVID-19 pandemic.

Each utility that establishes a COVID-19 regulatory asset account pursuant to the July 2 Order is required to file quarterly reports of the COVID-19 related costs incurred and offsets, together with a verification by an authorized representative. The first quarterly report was due August 1, 2020 for the period ending June 30, 2020, and each subsequent quarterly report must be filed no later than 30 days after the end of the calendared quarter. The July 2 Order authorized Board Staff and Rate Counsel to request further information from a utility in connection with the utility's quarterly reports, and the utility is required to serve and file verified responses within 15 days following the receipt of such requests. The July 2 Order did not affect or in any way limit the exercise of the authority of the Board or the State of New Jersey in any future petition or in any proceeding regarding rates, costs of service, franchises, service, financing, accounting, capitalization, depreciation or any other matters affecting the utilities.

Lastly, the July 2 Order required that all affected utilities file a petition with the Board by December 31, 2021 or within 60 days of the close of the regulatory asset period, whichever is later. Any potential rate recovery, including any prudence determinations and the appropriate period of recovery for any approved amount of the regulatory asset and any associated savings, is to be addressed in this COVID-19 regulatory asset filing or, in the alternative, a utility may request that the Board defer consideration of rate recovery in a future rate case. All costs remain subject to audit by the Board.

Board Staff has continued to study the impact of the pandemic on customers, employees, vendors and utility operations, including the impact of the pandemic on the utilities' storm response. The BPU and Department of Consumer Affairs ("DCA") have been very closely monitoring the number of customers who have fallen behind on their utility bills and the amount of the arrearages in all sectors. As the data through August 2020 came in and the end of the voluntarily extended moratorium period approached, Board Staff commenced discussions with all the utility sectors about extending the moratorium period. The moratorium period was ultimately extended on October 15, 2020 through Executive Order 190 ("EO 190") to March 15, 2021, which prohibited the gas, electric, and water utilities from discontinuing any gas, electric, or water service to New Jersey residents due to nonpayment or from collecting any fee or charge imposed for late or otherwise untimely payments or service reconnections that have accrued, and will continue to accrue, during the public health emergency. EO 190, also required that any gas, electric, or water service that was discontinued due to nonpayment after the social distancing measures went into effect, including where the disconnection was for unpaid bills incurred prior to the current public health emergency, be reconnected at any occupied residence at no cost to the customer. Due to the complexity of the issues, the growing size and number of arrearages, and the necessity of formally addressing the potential rate impacts of the extended moratoria, Board Staff believes it will be necessary to expand the scope of this docket to address these issues.

### **Rate Counsel Petition for Relief**

On October 2, 2020, Rate Counsel filed a Petition for Relief initiating the matter entitled "In the Matter of COVID-19 Related Arrearages," which was assigned Docket No. EO20100629U ("Rate Counsel Petition"). The Rate Counsel Petition asks the Board to order a formal investigation into the scope of the COVID-19 public health emergency's impact on ratepayers' making of timely payments, a moratorium on the discontinuance of service for non-payment, and the development of appropriate arrearage and bill payment assistance plans.

The Rate Counsel Petition argues that the COVID-19 public health emergency has caused severe financial hardship in New Jersey, which is evidenced by the application by 1.56 million New Jersey residents for unemployment since mid-March.<sup>3</sup> Rate Counsel quotes Governor Murphy's statement that the economic crisis in New Jersey "can only be rivaled by two other times in our state's entire 244-year history – the Great Depression and the Civil War." Rate Counsel further provided studies indicating that New Jersey's gross domestic product took an economic loss at an annualized rate of 34.6% in the second quarter of the year and that the number of jobs lost is double that of the Great Recession of December 2007 – June 2009, with much of the job loss coming from the lowest paying industries.<sup>4</sup>

Rate Counsel argues that the widespread economic damage will affect customers' ability to pay their utility bills, causing further economic dislocation and public health risks. Rate Counsel claims there is a significant risk that if the Board does not investigate and attempt to address these issues, the problem will have a snowball effect. Furthermore, Rate Counsel suggests that if a solution beyond asking other ratepayers to make up the difference for those who cannot pay their bills is not arrived at, then bills will go up even more and additional ratepayers will be at risk of falling into arrears. Rate Counsel points out that ratepayers impacted would include small businesses, whose ability to continue employing New Jersey residents may be compromised. Rate Counsel also claims that individuals and families who lose utility service will face health and safety risks, and in some instances, the loss of utility service constitutes a breach of a lease which carries a risk of eviction. For all of these reasons, Rate Counsel, therefore, requests the Board issue an order granting relief relating to various aspects of the following COVID-19 impacted issues: disconnection and restoration of utility services, data collection and reporting, rate increases, resources for repayment assistance, municipal utility authorities for water service, and payment assistance funding.<sup>5</sup>

On October 14, 2020, BPU received a letter signed by AARP New Jersey, Anti-Poverty Network of New Jersey, Food and Water Action, Natural Resources Defense Counsel and New Jersey Citizen Action expressing their collective support for the Rate Counsel Petition.

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<sup>3</sup> Rate Counsel Petition at page 6, n. 17 (citing Press Release, NEW JERSEY DEPT. OF LABOR and WORKFORCE DEVELOPMENT, *New Unemployment Claims Tick Up Slightly to 22,700 Last Week*, Sept. 10, 2020, available at [https://www.nj.gov/labor/lwdhome/press/2020/20200910\\_paymentsupdate.shtml](https://www.nj.gov/labor/lwdhome/press/2020/20200910_paymentsupdate.shtml)).

<sup>4</sup> Rate Counsel Petition at pages 7-8, n.22 (citing Michael Ettlinger and Jordan Hensley, *COVID-19 Economic Crises: By State*, UNIV. OF NEW HAMPSHIRE CARSEY SCHOOL OF PUBLIC POLICY (Sept. 10, 2020), available at <https://carsey.unh.edu/COVID-19-Economic-Impact-By-State>).

<sup>5</sup> Rate Counsel Petition at pages 14-17.

## **DISCUSSION AND FINDINGS**

To date, the Board has acted to address COVID-19 related issues and impacts as they emerged on a case-by-case basis, consistent with the approach the State has taken through the issuance of Executive Orders. As the State gradually re-opens, there will likely be a need to continue to respond in a timely manner on case-specific issues that require such a response. Simultaneously, the Board intends to address the ramifications of the ongoing pandemic in a more comprehensive manner as it develops policies that will guide affected utilities subject to the Board's oversight and their customers through the current crisis.

Based on the foregoing, Board Staff recommendations, and the arguments presented by Rate Counsel, the Board agrees that it is necessary to expand the scope of the regulatory asset proceeding to examine all pandemic issues by way of a generic proceeding initiated through this Order to include submission of public comments. Accordingly, the Rate Counsel Petition is incorporated herein and will be made part of this proceeding which will include, but not be limited to: impacts on rate setting, rate design, and utility financial strength; low income and other utility bill assistance programs; regulatory compliance; collections and termination of service; and ensuring the continued provision of safe and adequate service at just and reasonable rates, while recognizing the ramifications from the COVID-19 pandemic. The Board shall also consider other regulatory priorities such as whether, and to what extent, if any, the current or planned clean energy programs or other utility filings or mechanisms should be modified, maintained, curtailed or accelerated.

The Board invites utilities and other interested parties to provide comments on any issues related to the ramifications of COVID-19 on Board adopted tariffs, regulations, policies and programs, as well as on Board regulated entities, utility ratepayers, and Board adopted programs. The Board seeks comments from all types of ratepayers including residential, commercial, and not-for-profit entities.

Therefore, the Board **HEREBY DIRECTS** any interested party, Rate Counsel, utilities, and other stakeholders to file comments by November 30, 2020<sup>6</sup> to address the scope of the proceeding, issues to be addressed, and the timing for addressing the issues identified.

Further, the Board has determined that this matter should be retained by the Board for hearing. As authorized by N.J.S.A. 48:2-32, the Board **HEREBY DESIGNATES** President Fiordaliso or his designee as the presiding commissioner over this matter who is authorized to rule on all motions that arise during the proceedings and modify any schedules that may be set as necessary to secure just and expeditious determination of the issues.

Lastly, in compliance with the Board's Order in Docket No. EO20030254, all parties are **HEREBY DIRECTED** to serve all documents electronically. No hard copies shall be filed until the Board lifts the restrictions imposed in that Order.

I **HEREBY DIRECT** that this Order be posted on the Board's website.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

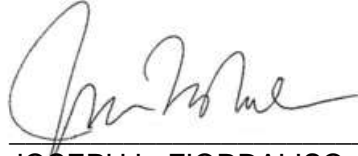
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<sup>6</sup> On October 21, 2020, a Secretary's Letter was issued to Rate Counsel extending the time period for comments to November 30, 2020 pursuant to the Board's authority under N.J.A.C. 14: 1-6.2(c).

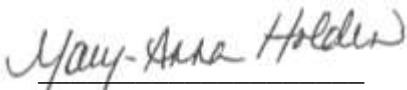
This Order shall be effective on November 8, 2020.

DATED: October 28, 2020

BOARD OF PUBLIC UTILITIES  
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PRESIDENT



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COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER



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AIDA CAMACHO-WELCH  
SECRETARY

IN THE MATTER OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES' RESPONSE TO  
THE COVID-19 PANDEMIC

DOCKET NO. AO20060471

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