

November 30, 2020

VIA ELECTRONIC MAIL

Aida Camacho-Welch
Secretary of the Board
New Jersey Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Re: NJBPU's Response to the COVID-19 Pandemic
BPU Docket No. AO20060471

Dear Secretary Camacho-Welch,

By Order dated October 28, 2020 in the above-referenced proceeding ("October 2020 Order"), the Board of Public Utilities ("BPU" or "Board") invited the New Jersey 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 specifically requested comments regarding the scope of this proceeding, issues to be addressed, and the timing for addressing the issues identified. I write on behalf of member companies of the New Jersey Utilities Association ("NJUA") in response to the October 2020 Order; please accept these comments on behalf of NJUA's participating member companies.¹ NJUA is the statewide trade association for New Jersey's investor-owned utilities that provide essential electric, natural gas, telecommunications, water, and wastewater services to customers throughout the state. Each NJUA member participating in this letter reserves the right to submit comments on an individual basis in response to the October 2020 Order.

Pursuant to the Board's March 19, 2020 Order regarding the COVID-19 pandemic (Docket No. EO20030254), this filing is being electronically filed by email with the Board Secretary and served by email upon the service list; no paper copies will follow.

Issues

NJUA strongly believes that in this proceeding the Board should focus on issues directly related to the provision of safe, adequate, and reliable service and the State's economic recovery from the ongoing COVID-19 pandemic. Such issues would include but not be limited to:

¹ The NJUA member companies participating in this submission include: Aqua New Jersey, Inc. • Atlantic City Electric Company • Atlantic City Sewerage Company • Gordon's Corner Water Company • Middlesex Water Company • New Jersey American Water • New Jersey Natural Gas. • Public Service Electric & Gas Company • Rockland Electric Company • South Jersey Gas/Elizabethtown Gas • SUEZ • Verizon New Jersey

- Approval of cost recovery mechanisms to address stimulus projects and the approval thereof.
- Establishment of new uncollectible recovery mechanisms that provide full and timely cost recovery for certain electric, and all gas and water and wastewater companies that lack such mechanisms, including the consideration of a bad debt rider. This would provide those utilities the ability to better manage arrearages, which would put them in a stronger financial footing – thereby helping them meet their statutory obligations to provide safe, adequate, and reliable service. Financially strong utilities are better positioned to make investments in infrastructure (which will help put more people to work and provide economic stimulus that has benefits across the economy), and modernize distribution systems and internal process systems, particularly Information Technology, which would help provide better service for customers.
- Development of an arrearage forgiveness program with appropriate cost recovery mechanisms.
- Possible expansion of the Board’s Infrastructure Investments Program (“IIP”) to address issues specific to water companies.
- For electric distribution companies (“EDCs”) that do have a mechanism for cost recovery for uncollectables under the Social Programs component of the Societal Benefits Charge, enhancement of that mechanism to ensure full and timely recovery of costs, including, but not limited to, carrying charges and lost opportunity costs associated with growing arrearages associated with the pandemic. These same concepts should also be incorporated into the mechanism developed for other utilities.
- Any other cost recovery issues which might arise as a result of the Governor’s Executive Order 190 (“EO190”).
- Address challenges for telecommunications companies, such as Verizon, that are subject to the shutoff moratorium under EO 190 but lack recovery mechanisms to offset the cost of service to on unpaid accounts and administrative requirements associated with implementation of the EO 190 directives and other pandemic related directives.

The Division of Rate Counsel’s (“Rate Counsel”) Petition for Relief, filed October 2, 2020, touches upon the history of the utility shutoff moratorium and the announcements to extend the utilities’ voluntary shutoff moratorium through October 15, 2020. The member utilities of NJUA have voluntarily suspended residential utility shutoffs for non-payments since March 2020, reconnected customers and helped struggling customers with assistance programs and deferred payment arrangements. Since the beginning of October, NJUA members worked in coordination with Board Staff and the Governor’s Office to extend the moratorium even further. Governor Murphy’s EO 190 formalized these efforts by extending the utility shutoff moratorium through March 15, 2021. As such, and for additional reasons stated below, Rate Counsel’s proposal that the moratorium be extended is moot and therefore unnecessary. NJUA member companies have acted as good corporate citizens throughout the COVID-19 pandemic. Our members will continue to be good community partners in providing vital and essential services and believe there is more we can do to help the State recover through job creation and support of workforce development initiatives.

Economic Stimulus

In scoping this proceeding, and framing the issues, it is important that the Board not undertake any action that would negatively impact the recognized economic stimulus provided by utility employment and investment. Collectively, the members of NJUA directly employ 38,000 full-time employees and would welcome the opportunity to create additional jobs to help bolster the economy. Utility projects produce a

significant number of jobs and spur economic activity both directly and indirectly, and utility infrastructure projects will aid the State in its economic recovery. NJUA member companies participating on the Governor's Restart and Recovery Advisory Council have shared that their companies are in a position to undertake various capital projects to improve reliability, resiliency, and the environment, while adding up to 19,000 jobs per year across the economy over the next five years. According to the Board's Jobs Impact Statement calculus from the Board's IIP Rule Proposal² which was based on a Rutgers University report, for every \$1 million of utility project spending, a total of 6.5 to 7.9 jobs could be created (assuming key materials are manufactured in state). For the water sector, a Water Research Foundation report indicated every \$1million spent on water and wastewater projects supports the creation of approximately 15 jobs across the economy.³ In addition, we note that a Rutgers Economic Advisory Input-Output model estimated \$574,000 in income dollars and \$767,000 in gross state product per million dollars spent on utility projects.⁴ Importantly, these projects will enhance the long-term safety, reliability, and resiliency of utility systems and support the continued provision of safe, reliable, and resilient utility service that is a key component of New Jersey's economy and enables the high quality of life we enjoy in New Jersey.

Response to Division of Rate Counsel's Petition

Rate Counsel raised various issues in its Petition related to disconnection and restoration of utility service, and data collection and reporting, that are now moot. With that, we propose outstanding issues related to these subjects continue to be addressed through discussions between the Board and the regulated utilities, with Rate Counsel's input, as appropriate. As noted above, the utilities are under a shutoff moratorium through March 15, 2021 for residential customers via EO 190. This Order stipulates that if any residential customer has been disconnected since the issuance of EO 104, they are to be reconnected with no cost and no penalties, or late fees. It should be noted that the member companies had voluntarily done this prior to EO 190. Our member utilities are also offering Deferred Payment Arrangements ("DPAs") for a minimum of 12 months and communicating with customers through various methods to educate them on assistance program such as USF, LIHEAP, Lifeline, NJ Shares, PAGE, Fresh Start, and other financial assistance programs offered by the companies. We also note that the State has allocated \$15 million in Coronavirus Relief Funding ("CRF") to reduce utility arrearages for low income households in New Jersey. The State should consider putting additional dollars into customer assistance programs. The utilities are well positioned to educate their customers about such programs, but additional State dollars are necessary. Likewise, riders such as the USF can be expanded to provide additional assistance to ratepayers in need.

In addition, our members are tracking direct and/or indirect COVID-19 related expenses, receipt of available financial assistance funds, statistics regarding DPAs, etc., and will report such as required by the Board in this proceeding. It is important to note that the regulated utilities have been tracking arrearages and will continue to do so in order to provide relevant information to the Board as part of our ongoing discussions. Utility companies have promptly increased their outreach to customers, and have provided information directly to customers regarding payment options and assistance programs through various mechanisms such as emails, phone calls, mailed letters, door hangers, listing it on their websites, conducting social media campaigns and sharing those efforts with the Board's communication team to continue partnering in these efforts. NJUA member companies will continue communicating with

² [49 N.J.R. 2489\(a\), 2490 IIP Rule Proposal \(Jobs Impact Statement\), August 7, 2017.](#)

³ http://thevalueofwater.org/sites/default/files/Economic%20Impact%20of%20Investing%20in%20Water%20Infrastructure_VOW_FINAL_pages.pdf

⁴ http://cecep.rutgers.edu/wp-content/uploads/2013/11/2010NJNG_Economic_Impact_Report.pdf

customers through these various mechanisms to promote customer awareness of the shutoff moratorium extension and encourage customers to work with their utilities on DPAs, and additional payment assistance programs.

Rate Counsel's petition calling for a moratorium on rate cases and infrastructure filings is counterproductive and contrary to the Murphy Administration's policies articulated in the Energy Master Plan and counter to the purpose of and discussions related to the Restart and Recovery Advisory Council. Utilities are best positioned to keep people employed and to stimulate the economy through infrastructure investments. These infrastructure investment activities help to modernize our systems, leading to safer utility delivery and more resilient delivery systems. Moreover, rate cases help keep utilities financially sound by providing a mechanism for the recovery of prudent investments. A financially strong utility industry has many benefits for the State – especially during an economic downturn. Many of the proposed project filings will support the Administration's clean energy and environmental justice priorities by cost-effectively enabling integration of renewable energy sources, while furthering energy efficiency and conservation measures. Aside from the economic benefits, certain of the noted filings will produce more reliable and modern infrastructure as the State will continue to face stronger storms. It is our members' intention to provide quality service to their customers, and with many of these filings, the benefits realized by customers will be significant. It is also important to note that all accelerated infrastructure approvals come with the understanding that the Board has an obligation to undertake a prudence review process. Base rate filings are a vehicle whereby utilities can recover the costs of their investments that support the continued provision of safe, adequate and reliable service. The Board only authorizes such recovery, however, after a thorough review of the prudence of those investments. Suspending filings of new base rate cases and infrastructure programs would be counterproductive to the State's intention of rebuilding the economy through the Governor's Restart and Recovery Advisory Council, as well as the New Jersey Economic Advisory Council's report that calls for investment in major infrastructure projects. The final report even notes NJUA's submitted comments that infrastructure and utility projects result in a significant number of jobs and can spur economic activity both directly and indirectly. With support from both the public and private sector for economic stimulus, it is imperative that the Board does not preemptively dismiss proposals that could improve infrastructure and create jobs.

Finally, it is important to note that NJUA's member utilities are statutorily obligated to provide safe, adequate, and proper services at reasonable rates. Preemptive curtailment of all proposals constitutes a blunt instrument that will necessarily inhibit investment and project proposals required for the utilities to uphold their obligations under the law. Such action also will conflict with the Company's statutory right to file base rate cases to recover the costs of rate base additions and regulatory right⁵ to file proposals for

⁵ We note that regulated utilities are entitled to a reasonable opportunity to recover on prudently-incurred costs. This well-settled principle was established in the landmark U.S. Supreme Court case, *Federal Power Commission et al v. Hope Natural Gas Co.* ("Hope"), 320 U.S. 591, 603 (1944). Further, regulated utilities are entitled to earn a fair and reasonable rate of return on costs incurred in relation to capital investments. This principle was established in another landmark U.S. Supreme Court case, *Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia* ("Bluefield"), 262 U.S. 679 (1923). We also note that the Fifth Amendment of the United States provides that "nor shall private property be taken for public use without just compensation[.]" U.S. Const. Amend. V. Additionally, see *Petition of Valley Rd. Sewerage Co. for Approval of an Increase in its Rates for Sewer Serv.*, 285 N.J. Super. 202, 208 (App. Div. 1995) ("[a] public utility has the constitutional and statutory right to a reasonable rate of return"). Lastly, the New Jersey Supreme Court has similarly held that, "to avoid confiscatory results under the takings clause [with respect to regulated entities such as public utilities], 'the return should be one which is generally commensurate with returns on investments in other enterprises having comparable risks.'" *State Farm Mut. Auto. Ins. Co. v. State*, 124 N.J. 32, 48 (1991)

accelerated investments that are encouraged by the Board's IIP rules.⁶ For this reason we assert that Rate Counsel's proposal presents an inherent conflict with the law and would serve only to undermine our members' ability to serve customers, as well as undermine the Board's statutory authority to adjudicate utility proposals that benefit customers.

Timing

NJBPU President Fiordaliso and Staff have acknowledged that the shutoff moratorium cannot go on indefinitely. President Fiordaliso, along with Lt. Governor Sheila Oliver have publicly stated that it is imperative that customers "act now" to contact utilities about payment assistance "before [the March 15 deadline]."⁷ Therefore, mechanisms need to be in place so the regulated utilities can be prepared to address issues within a reasonable timeframe before the end of the shutoff moratorium. As has been the case throughout the pandemic, we trust that the Board will be open to continued dialogue relative to assisting customers during this crisis and development of cost recovery mechanisms to offset accumulated arrearages and to provide for arrearage forgiveness programs.

Thank you for providing the opportunity to submit these comments.

Respectfully,



Thomas R. Churchelow, Esq.
President
New Jersey Utilities Association

⁶ See N.J.S.A.48:2-23

⁷ <https://www.nj.com/opinion/2020/11/if-you-cant-afford-to-pay-your-utility-bill-new-jersey-can-help-opinion.html>