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November 30, 2020

**Via Electronic Mail**

Ms. Aida Camacho-Welch, Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 9<sup>TH</sup> Floor  
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[Board.Secretary@bpu.nj.gov](mailto:Board.Secretary@bpu.nj.gov)

**Re: I/M/O the New Jersey Board of Public Utilities' Response to the  
COVID-19 Pandemic  
BPU Docket No. AO20060471**

Dear Secretary Camacho-Welch:

Please accept for filing in the above-referenced matter the comments of the New Jersey Division of Rate Counsel ("Rate Counsel"). Consistent with the March 19, 2020 Order of the New Jersey Board of Public Utilities ("Board") in 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, BPU Docket No. EO20030254, copies of this comment letter are being filed with the Secretary of the Board and provided electronically to each person on the service list by electronic mail only. No paper copies will follow. **Please acknowledge receipt of this comment letter.** Thank you for your consideration and attention to this matter.

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### **Introduction**

Rate Counsel thanks the Board for the opportunity to submit these comments. Rate Counsel supports the Board’s October 28 Procedural Order and Order Designating Commissioner (“October 28 Order”), expanding the scope of its regulatory asset proceeding “to examine all pandemic issues by way of a generic proceeding” and incorporating the Petition for Relief filed by Rate Counsel on October 2. (*Id.*, p. 6). The Board’s recognition that the COVID-19 crisis will affect both public utility companies and ratepayers is imperative. The discontinuance of utility service to customers who cannot pay their bills will exacerbate the already acute risks of the pandemic to public health. The financial impact of this crisis is already substantial and continues to grow. If left unaddressed, the impact on those in arrears, those still able to pay their bills and the utilities may jeopardize reliable service in our state. Rate Counsel anticipates that this expanded proceeding, with the recommendations below, can help to protect ratepayers and mitigate the widespread public health risk and financial toll from this pandemic.<sup>1</sup> Rate Counsel looks forward to continuing to work with the Board, regulated utilities and other interested parties to improve ratepayer protections during this global public health emergency.

As directed by the Board, Rate Counsel submits these comments on the appropriate scope of this proceeding, the issues to be addressed, and the timing for addressing the issues identified. (October 28 Order, p. 6). Many of Rate Counsel’s views on these issues are incorporated in the Petition it filed on October 2, which has been incorporated into this proceeding. Rate Counsel

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<sup>1</sup> According to the United States Centers for Disease Control and Prevention (“CDC”), as of November 15, 2020, more than 16,000 New Jerseyans have died as a result of COVID-19. CDC lists the total death count for NJ at 16,548, including 14,747 confirmed deaths and 1,801 probable deaths. UNITED STATES CENTERS FOR DISEASE CONTROL AND PREVENTION, *United States COVID-19 Cases and Deaths by State*, available at <https://covid.cdc.gov/covid-data-tracker/#cases> .

refers the Board to that pleading and will address here additional comments as requested in the Board's October 28, 2020 Order.

In summary, Rate Counsel recommends a broad scope for this proceeding. Public comments should be invited from the widest range of interested parties, to solicit facts and recommendations that reflect the widespread effects of the pandemic. Any financial solutions directed by the Board should share the costs among all parties, not just the ratepayers still able to pay their bills while holding the utilities harmless. Placing the burden on remaining ratepayers inappropriately increases their bills and risks further increasing the number of ratepayers unable to pay their utility bills. Rate Counsel recommends that this proceeding begin to implement remedial measures before the moratorium on utility service disconnections ends on March 15, 2021; that those measures include the collection of uniform data to evaluate their effectiveness; and that the measures should be sufficiently flexible that the Board may adjust them based on the data collected and other developments related to the COVID-19 pandemic.

### **Background**

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared 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.”<sup>2</sup> In response to the COVID-19 pandemic, on March 9,

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<sup>2</sup> World Health Organization, *COVID-19 Public Health Emergency of International Concern (PHEIC) Global Research and Innovation Forum: Towards a Research Roadmap*, February 12, 2020, available at [https://www.who.int/publications/m/item/covid-19-public-health-emergency-of-international-concern-\(pheic\)-global-research-and-innovation-forum](https://www.who.int/publications/m/item/covid-19-public-health-emergency-of-international-concern-(pheic)-global-research-and-innovation-forum)

2020, Governor Phil Murphy signed Executive Order No. 103 (“E.O. 103”),<sup>3</sup> declaring a State of Emergency and a Public Health Emergency. E.O. 103 authorized any State agency with rulemaking authority “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 the Executive Order.<sup>4</sup> (E.O. 103, p. 6).

In response to the statewide public health emergency due to the COVID-19 pandemic, the Board commenced a series of actions to address matters of concern to the public health and welfare within the scope of its jurisdiction. On March 13, 2020, the Board announced that all regulated electric and gas utilities in New Jersey had agreed to suspend service disconnections. On March 19, 2020, in response to E.O. 103 and in order to prevent the potential spread of COVID-19, the Board issued an Order directing all public utilities and regulated entities to immediately cease any in-home or business visits unless there was an immediate risk to health and safety, and waived all requirements to file paper documents with the Board or Rate Counsel.<sup>5</sup> On May 20, 2020, the Board issued a further Order under that same docket, allowing all regulated entities to commence or resume non-essential construction projects in accordance with the specific mitigation requirements set forth in Executive Order No. 142.

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<sup>3</sup> E.O. 103 and all other executive orders are available online at <https://nj.gov/infobank/eo/056murphy/>

<sup>4</sup> However, “any such waiver, modification, or suspension shall be promulgated in accordance with N.J.S.A. App. A:9-45.” (E.O. 103, p. 6).

<sup>5</sup> 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, BPU Docket No. EO20030254 (March 19, 2020).

On July 2, 2020, the Board issued an Order in the current, then-new proceeding,<sup>6</sup> (“July 2 Order”) that authorized each utility in New Jersey to create a COVID-19-related regulatory asset by deferring on their books and records their prudently incurred incremental costs related to COVID-19 from March 9, 2020 through either 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 order, declaration, proclamation or similar announcement, 60 days from the time the Public 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. (July 2 Order, p. 4). Each utility that establishes a COVID-19 regulatory asset account pursuant to the July 2 Order is required to file quarterly reports of its COVID-19 related costs incurred and any offsets, 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 calendar 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. (July 2 Order, p. 4).

The July 2 Order requires all affected utilities to 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 prudency determinations and the appropriate

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<sup>6</sup> I/M/O the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic, Docket No. AO20060471.

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 to a future rate case. All costs remain subject to audit by the Board. (July 2 Order, p. 4).

On October 2, 2020, Rate Counsel filed a Petition for Relief with the Board, initiating the matter entitled I/M/O the Matter of COVID-19 Related Arrearages, BPU Docket No. EO20100629U, (“Rate Counsel COVID-19 Petition”) asking 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. (October 28 Order, p. 5). The Petition noted that the COVID-19 crisis has caused extensive economic harm to New Jersey residents and businesses; that increased utility shutoffs and possible evictions would threaten public health; and that recovering from remaining ratepayers the full cost of increased uncollectibles may further harm those who remain able to pay their bills. (See October 28 Order, p. 5).

On October 15, 2020, Governor Murphy issued E.O. 190, providing several measures of relief to ratepayers and authorizing the Board to take further measures.<sup>7</sup> Among other measures, E.O. 190 required any residential gas, electric or water service that was disconnected due to nonpayment after “social distancing measures went into effect,” including where the disconnection was for unpaid bills incurred prior to the current health emergency, be reconnected at any occupied residence at no cost to the customer. (E.O. 190, pp. 5-10).

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<sup>7</sup> Available at <https://nj.gov/infobank/eo/056murphy/pdf/EO-190.pdf> .

The Board considered Rate Counsel's COVID-19 Petition and the regulatory asset proceeding at its October 28, 2020 Agenda Meeting. The October 28 Order noted that Rate Counsel's COVID-19 Petition asked the Board to open a formal proceeding to take stock of late payments, unpaid bills and enrollment in payment assistance programs related to hardships New Jerseyans have faced as a result of the pandemic. The Board reported that its Staff, along with the Department of Community Affairs, has been monitoring the number of customers who have fallen behind on their utility bills and the amount of the arrearages. (October 28 Order, p. 4). Nevertheless, the Board noted that customer advocates have argued that, without understanding the scope of how many customers are in arrears and for how much money, policymakers cannot address the problem. Specifically, after recognizing the issues raised in Rate Counsel's Petition, the Board cited the October 14 letter of support for the Rate Counsel Petition filed with the Board by AARP New Jersey, Anti-Poverty Network of New Jersey, Food and Water Action, Natural Resources Defense Council and New Jersey Citizen Action. (October 28 Order, p. 5).

After considering the Rate Counsel COVID-19 Petition and letters in support, the Board expanded the scope of the regulatory asset proceeding,<sup>8</sup> incorporating Rate Counsel's Petition and initiating a generic proceeding to examine all issues related to the COVID-19 pandemic. The Board directed all interested stakeholders, including Rate Counsel, utilities and other interested parties, to file comments with the Board by November 30, 2020 addressing the appropriate scope of the consolidated proceeding, the issues that should be addressed, and the timing for addressing those issues. The comments received and responses thereto will be incorporated into the expanded proceeding. (October 28 Order, p. 6).

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<sup>8</sup> I/M/O the New Jersey Board of Public Utilities' Response to the COVID-19 Pandemic, BPU Docket No. AO20060471.

In the consolidated proceeding, the Board seeks public comments on a wide variety of COVID-19-related issues, including but not 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. (October 28 Order, p. 6). The Board also will 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. (*Id.*). The October 28 Order designated Board President Fiordaliso as the presiding hearing officer for the consolidated proceeding. (*Id.*). Rate Counsel respectfully submits the following comments to the Board.

### **Rate Counsel Comments**

The goal of this proceeding must be to reduce the financial harm to New Jersey ratepayers and public utilities resulting from the COVID-19 pandemic. The Board has jurisdiction to take effective actions, consistent with those already implemented by Governor Murphy's Executive Orders, to prevent the loss of essential public utility services and avoid additional financial harm. These comments will address the appropriate scope and timing of this consolidated proceeding, as well as the issues that should be addressed.

### **Scope and Timing of This Proceeding**

Rate Counsel recommends a broad scope for this proceeding. The Board should seek public comments from the widest range of interested parties, soliciting facts and recommendations on a wide range of issues reflecting the widespread effects of the pandemic on



all interested parties. Whereas the regulatory asset proceeding will consider the economic effects of the COVID-19 pandemic on the utilities, this consolidated proceeding should focus on the full range of impacts on customers, including but not limited to the number of ratepayers with overdue bills and the total amount of arrearages.

Rate Counsel has obtained from BPU some preliminary data as of August, 2020, reflecting the total arrearage numbers for the gas and electric companies. That data shows that as of August, arrearages have reached alarming proportions. Total arrearages through August are approximately \$442,000,000. Arrearages on the residential side are up between 39% and 63% over last year's numbers, and on commercial accounts arrearages are up between 63% and 99% over last year.<sup>9</sup>

As part of this proceeding, full up-to-date arrearage information should be obtained from the utilities, including not only gas and electric, but water utilities as well. Quantifying the full scope of the problem will allow reasoned consideration of funding and other remedial measures. Given the scope of the problem that we already know, it is clear this level of arrearages cannot simply be absorbed by other ratepayers through normal ratemaking processes. It is also unlikely that the issue can simply be addressed through deferred payment agreements ("DPAs") in which the arrearages are paid off over time by adding to the bills of those who are already struggling to pay. Any measures directed by the Board must seek contributions from all sectors of the industry, and should explore other sources of funding as well. Placing the entire financial responsibility on non-delinquent ratepayers would increase their burden and risk further

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<sup>9</sup> Significantly, these numbers do not include water customers. It can only be assumed that those utilities face comparable arrearages. It is also important to recognize that each ratepayer may have arrearages in all three areas: gas, electric and water, making their ability to repay their bills all the more daunting.

increasing the number of ratepayers unable to pay their utility bills. Accordingly, this proceeding should consider all potential sources of funding as well as measures to reduce rate increases in the near term.

Rate Counsel recommends that this proceeding be conducted quickly. Implementation of remedial measures should begin before the moratorium on utility service disconnections ends on March 15, 2021. Any relief should require continued reporting to evaluate the effectiveness of the measures taken; and the remedies should be sufficiently flexible to allow the Board to adjust them based on the data collected and other developments related to the COVID-19 pandemic going forward.

### **Issues To Be Addressed**

#### **1. Regulatory Compliance, Collections and Termination of Service**

Rate Counsel recommends that the Board formally investigate in this proceeding the full scope of ratepayer affordability issues arising from the COVID-19 pandemic. This would include data such as the number of ratepayers with overdue bills and the total amount of their arrearages, as well as their distribution geographically and among the various utility companies. Rate Counsel recommends collecting data from all utilities, including electric, gas, cable, water and wastewater service providers, whether or not regulated by the Board. Follow up discovery should also be permitted, as it will allow exploration of the diversity of affordability issues facing ratepayers at this time. Wide-ranging data collection is necessary to quantify the full scope of ratepayers' payment difficulties and assist in selecting effective remedial measures. Data also will enable evaluation of current utility policies and compliance with Board customer protection rules.

Rate Counsel respectfully asks that the Board direct each utility to record and publicly report certain uniform baseline data from before the pandemic, in addition to timely answering questions from the other parties. Baseline data should include each utility's aggregate level of late payments, payment arrearages, collection activities and shutoffs by customer service class and geographic area (e.g. by zip code or county if available) for at least the last two full calendar years (i.e., calendar years 2018 and 2019) to present, and continuing after the shutoff moratorium ends. Data collection should include, among other criteria, the number of customers who are past due on their payments; the total amount of arrearages; the length of time arrearages are overdue; the number of customers who would be disconnected but for the shutoff moratorium; the number of known medically vulnerable or elderly customers facing disconnection and, if available, the number of customers obtaining payment assistance by program and the amounts received from each payment assistance program

The Board also should ask each utility to report its policies and data on measures to prevent arrearages and disconnections, such as enabling customer enrollments in DPAs and payment assistance programs. DPA data should include total number of customers enrolled in a DPA, number of new customers with a DPA, dollar amounts subject to a DPA, number of customers who successfully completed a DPA and number of unsuccessful DPAs. Payment assistance data should include the number of customers who participate in each program, the amount of money the utility receives from each program, and the number of customers who may be eligible for each program.<sup>10</sup> The Board also should request information from each utility on its collection practices, such as sending disconnection notices, decisions to shut off service and reporting ratepayers with arrearages to credit agencies when allowed.

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<sup>10</sup> We understand that each utility may not collect all material data or in a uniform manner.

Data should also be collected in order to assess barriers that may be keeping customers from taking advantage of assistance programs. Information should be obtained from the entities that administer those programs regarding the number of customers applying, the number obtaining assistance, and efforts that can be made to increase the number of customers taking advantage of those programs. Anecdotally, Rate Counsel has been informed that some of the eligibility criteria are cumbersome and may be creating unnecessary barriers to participation. Those issues should be explored and the data necessary to do so should be collected.

Such data will allow the Board to select remedial measures directed to the problems of each utility and its customers. Absent such information, it will be difficult to ensure the continued provision of safe and adequate service at just and reasonable rates.

## **2. Impacts on Rate Setting, Rate Design and Utility Financial Strength.**

The Board must balance the need to help customers who are having difficulty paying their bills with the need to ensure that utilities have sufficient revenues to continue to provide safe, adequate and proper service. While the regulatory asset order is designed to keep track of the utilities' additional COVID-19-related costs, this proceeding should also look at the effect of arrearages on the utilities' financial strength.

## **3. Low Income and Other Utility Bill Payment Assistance Programs**

Rate Counsel recommends that the Board develop a comprehensive plan to prevent the widespread loss of utility service when the shutoff moratorium expires. Such a plan would involve both the reallocation of public funds and actions by the utilities. Developing a comprehensive plan should begin, as noted above, with quantifying the nature and scope of the

problem and the funding available from each payment assistance program and other sources such as the CARES Act<sup>11</sup> or any future stimulus legislation. Contributions from utility shareholders should also be considered. Rate Counsel also recommends that the Board consider extending the shutoff moratorium, if necessary, if a comprehensive shutoff mitigation plan is not yet in place by March 15, 2021.

Rate Counsel recommends that the Board explore whether it may, along with other State agencies having jurisdiction, expand eligibility for payment assistance programs for low-income and fixed-income customers; change eligibility requirements for payment assistance programs; cap eligible customers' utility bills at a percentage of their income; establish funding sources beyond charging ratepayers through the Societal Benefits Charge ("SBC"); and increase funds allocated to financial assistance programs from federal CARES Act or other federal funds. The COVID-19 pandemic has harmed the finances and health of otherwise ineligible middle-income ratepayers who now have difficulty paying their bills. The modifications necessary to assist them is worth exploring in this proceeding.

The utilities themselves can take certain customer protection measures, irrespective of payment assistance funding from government or the SBC. This proceeding can inquire into the practicality and cost of such measures. Regulated utilities in New Jersey have agreed to offer DPAs of at least 12 months and up to 24 months with no down payment, and those DPA terms may require extensions for a period of time after the shutoff moratorium. Another measure used in other states grants forgiveness of a portion of a customer's debt when the customer makes

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<sup>11</sup> Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, H.R. 748, 116<sup>th</sup> Cong. (2020).

timely installments on their repayment plans.<sup>12</sup> This would involve establishing a debt forgiveness program and a source of funding to cover the arrearages outside of the SBC or other ratepayer funded programs. Utilities could be required to offer to enroll customers with payment difficulties in all applicable payment assistance programs, such as LIHEAP, and then actually help to enroll those who are interested. Utilities could change how they use the funds they receive from payment assistance programs, for example by applying funding received first to participants' current monthly bills rather than to retiring arrearages. As noted above, this proceeding can inquire into the anticipated effects of requiring such measures on each utility's finances. In order to assess these measures, the Board should survey measures taken in other states to determine their effectiveness.

While municipal utility authority ("MUA") service falls outside the Board's statutory jurisdiction, thousands of MUA customers are at risk of losing service following the end of the shutoff moratorium. The Board should engage with the Department of Community Affairs, which oversees the budgets of municipal utilities authorities, to explore possible solutions for those customers and the anticipated effects on the MUAs.

The inquiries recommended above are essential to explore these and many other practices that can make utility bills more affordable and assist those requiring payment assistance.

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<sup>12</sup> For example, Illinois gives residential customers financial assistance as long as they consistently pay a percentage of their energy bill. Illinois Commerce Commission, On Its Own Motion, I/M/O Moratorium on Disconnection of Utility Services during the Public Health Emergency Declared on March 9, 2020 pursuant to Sections 4 and 7 of the Illinois Emergency Management Agency Act, Docket No. 20-0309, Stipulation of Large Utility Group and Joint Consumer Parties, filed June 10, 2020, available at <https://www.icc.illinois.gov/docket/P2020-0309/documents/300399>.

Massachusetts has instituted an arrearage forgiveness program for small commercial customers. Massachusetts Department of Public Utilities, Order on Small Commercial Arrearage Forgiveness Program, (adopting and approving the proposal by the Customer Assistance and Ratemaking Working Group), D.P.U. 20-58-C, Sept. 3, 2020, available at <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/12631784>.

#### **4. Board Actions on Current and Planned Utility Filings**

The October 28 Order stated that the Board will 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. Rate Counsel recommends requesting data on the amount of bill increases for each customer class from each program that the Board either has approved since the beginning of the COVID-19 State of Emergency or is currently reviewing, as well as a summary of the anticipated effects of curtailing, suspending or accelerating each such program. Rate Counsel further recommends that the Board use that data to consider which of these programs can be delayed or suspended during the State of Emergency.

In addition, this proceeding should explore the implications of suspending the filing of new base rate cases and infrastructure programs or the effective date of any rate increases during the current public health emergency. Rate Counsel further recommends that any utility filing with a proposed rate increase include an analysis of the impacts on arrearages and service disconnections.

**Conclusion**

Rate Counsel appreciates the opportunity to comment and anticipates that, by examining all COVID-19 pandemic issues, this proceeding will develop fair and balanced measures to protect ratepayers and mitigate the already widespread public health risk and financial toll from this pandemic.

Respectfully submitted,

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By: /s/ Brian Weeks \_\_\_\_\_  
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cc: Electronic Mailing List