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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

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**BY PRESIDENT JOSEPH L. FIORDALISO:**

**BACKGROUND**

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 things, “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).<sup>3</sup>

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,

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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>.

<sup>3</sup> The public health emergency was most recently extended by Governor Murphy on January 19, 2021 via EO 215.

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 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 and to file quarterly reports.

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 prudency 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.

On October 2, 2020, Rate Counsel filed a petition for relief 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 ("Rate Counsel Petition"). The Rate Counsel Petition raised a number of other issues relating to COVID-19, including: its 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.

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

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, the Board issued an Order on October 28, 2020 expanding the scope of this docket to address these issues, which allowed for a public comment period through November 30, 2020<sup>4</sup>. The Order also designated 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.

### **MOTION TO INTERVENE OF AARP**

On January 11, 2021, a motion to intervene in this matter was received from AARP.

In its motion, AARP pointed out that it is a non-governmental, non-profit, and non-partisan organization whose interest is to protect the affordability, reliability, efficiency, and safety of utility services for its nearly 1.2 million NJ members aged 50 and over (“50+ adults”), many of whom are low, moderate, and fixed-income ratepayers of electric, natural gas, water, sewer, and telecommunications services. AARP noted that in 2011, a survey it commissioned to gather information in New Jersey on the needs, interests, and concerns of 50+ Adults determined that over two-thirds of these adults have experienced a problem paying their household utilities. Additionally, AARP found that 50+ Adults are particularly vulnerable to high utility prices partly because those adults spend a greater proportion of income on home energy costs than that of younger households. Further, 50+ Adults sacrifice food, medical services, and prescription medicine in order to pay higher energy bills. AARP stated that based on the impact of higher rates and tariffs and mechanisms to recover other costs from 50+ Adults – who are unlikely to have the ability to increase their income to meet higher rates of service and costs – it has a significant interest in the outcome of this proceeding.

AARP stated that its purpose in intervening in this proceeding is to represent the interest of its members who purchase utility services and who will directly and significantly be affected monetarily by the COVID-19 pandemic’s impact on the affordability of services. AARP stated that its members are at risk of shut-offs and in need of arrearage and bill payment plans. AARP asserted that the substantial, direct, and specific interest in the outcome of this proceeding is not currently represented by any other party to this proceeding, in that, its interests are different from and not adequately or sufficiently represented by the Division of Rate Counsel or any other party. The distinction AARP made is that the Division of Rate Counsel represents all ratepayers whereas AARP

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<sup>4</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).

represents the specific interests of its 50+ Adult members, many of whom live on fixed and limited household budgets.

AARP further asserted that it will add measurably and constructively to advance this proceeding because of its policy expertise and the experience of its counsel and professional staff with regard to the impact on service availability, rates, tariffs, and cost recovery mechanisms relative to the 50+ Adult community, particularly low, moderate, and fixed-income ratepayers. AARP provided examples of where it previously participated as an intervener or participant in energy proceedings including base rate, infrastructure investment and modernization cases, storm cost recovery related, and clean energy proceedings. AARP cited its history of both federal and state advocacy in support of affordable, safe, and reliable utility services along with its intervention in past proceedings, participation in legislative proceedings leading to and following the adoption of the Electric Discount & Energy Competition Act of 1999, participation in the Energy Master Plan process, and work to establish the USF to demonstrate the unique perspective and insight AARP possesses with respect to the impact of an increase in gas and electric rates and tariffs and the mechanisms for recovering costs to replace existing infrastructure.

AARP asserted that fundamental fairness and due process considerations require that it be afforded an opportunity to intervene in this proceeding as the outcome poses significant and imminent risks to all of PSE&G's customers including the irreparable harm to ratepayers' quality of life. AARP stated that it intends to work cooperatively with other parties in this proceeding in order to avoid delay or confusion in the interests of administrative efficiency and economy. For all the foregoing reasons, AARP respectfully requests the Board grant it intervener status in order that it may substantially and adequately represent the interests of its members.

No opposition to the Motion filed by AARP has been received to date.

## **DISCUSSION AND FINDINGS**

### **Motions to Intervene**

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider the following factors:

1. The nature and extent of the moving party's interest in the outcome of the case;
2. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

If the standard for intervention is not met, N.J.A.C. 1:1-16.5 provides for a more limited form of involvement in the proceeding as a "participant," if, in the discretion of the trier of

fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion. Under N.J.A.C. 1:1-16.6(c), such participation is limited to the right to argue orally, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact.

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record that involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervenor's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, BPU Docket No. EM05020106 (June 8, 2005).

After consideration of the papers, and given the lack of any objections, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.3, that AARP will be directly affected by the outcome of this proceeding and will add measurably and constructively to the case without causing undue delay or confusion. I **HEREBY FIND** that AARP has met the standards for intervention in this proceeding. Accordingly, having received no objections, I **HEREBY GRANT** the motion for intervention of AARP pursuant to the authority granted to me by the Board under the October 28, 2020 Order.

Additionally, I reviewed the proposal for a procedural schedule, which has been agreed to by Staff and the New Jersey Division of Rate Counsel. I **HEREBY ISSUE** the following Procedural Schedule identified as Exhibit A, and **HEREBY DIRECT** the parties to comply with its terms.

Lastly, in compliance with the Board's Order in Docket No. EO20030254, all parties are **HEREBY DIRECTED** to serve all documents electronically.

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.

This Order shall be effective on January 28, 2021.

DATED: January 28, 2021

BY:



JOSEPH L. FIORDALISO  
PRESIDENT

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

DOCKET NO. AO20060471

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# EXHIBIT A

## DOCKET NO. AO20060471 Procedural Schedule

Motions to Intervene and Participate	February 5, 2021
Deadline for First Round of Discovery+	February 5, 2021
Stakeholder Meeting	February 8, 2021
Additional Stakeholder Meeting	TBD
Public Hearings	Week of Feb. 22-25

+ Discovery is ongoing and the parties will endeavor to answer all discovery within seven business days of service.