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May 10, 2021

Via Electronic Mail

Ms. Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9TH Floor
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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") regarding the April 20 Initial Board Staff Recommendations. 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

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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.

INTRODUCTION

With more than $700 million in electric, gas, and water arrearages, as of year-end 2020,[1] and the end of the moratorium on disconnections on June 30th fast-approaching, New Jersey's policy makers, ratepayers and utilities are confronting an unprecedented crisis.[2] The crisis calls for an all-hands-on-deck approach to preparing for the moratorium's end. The need for special relief; the cost of such relief; and the allocation of the costs associated with the relief are among the many issues of concern. Policies and programs for partial arrearage forgiveness, deferred payment arrangements, expanded outreach regarding financial assistance programs as well as modifications to existing financial assistance programs are all on the table for discussion.

Throughout the country, states are grappling with the same issues and challenges, and so experiences and approaches in other jurisdictions may shed light on the design and implementation of policies and programs in New Jersey. Among considerations are the time frames that are appropriate for each element of the COVID-related arrearage-management policies and programs. Potentially, some of the practices and policies that are adopted to address the pandemic-caused crisis can continue long after the pandemic has ended as many households will continue to struggle to pay utility bills. For example, expanded outreach regarding financial

[1] Various utilities have provided updated arrearage data corresponding to the early months of 2021.

[2] PSE&G has reported in this proceeding that: "The increases in [Accounts Receivable] are seen in every aging bucket; however the most dramatic increases are in the oldest aging buckets." PSE&G, COVID Collection Strategy, April 23, 2021, at 1.

assistance programs may be appropriate indefinitely, whereas expanded arrearage forgiveness programs may be appropriate for a more limited time period.

Preventing disconnections from essential utility services helps all customers experiencing financial difficulty, whether their incomes are chronically low or they are experiencing temporary hardship. Preventing disconnections also helps ratepayers who are still able to pay their bills by minimizing the amount of "uncollectibles" that will be passed on to them through rates. Furthermore, preventing disconnections is essential to public health and our economy, since both are threatened if essential utility services are withheld.

RECOMMENDATIONS

Rate Counsel thanks the Board and Board Staff for facilitating discussions among stakeholders with the goal of identifying and ultimately implementing policies and programs in a timely manner that balance the needs and constraints of all. Keeping people connected to essential utilities is important in the best of times; in the wake of the unprecedented COVID-19 pandemic, the challenge of so doing is far greater than ever.

Solutions should make it as easy as possible for customers in arrears to recover from economic setbacks. For example, if and where possible, arrearage forgiveness programs should simply credit the agreed-upon percentage of forgiveness, without waiting for customers to ask for such forgiveness. Arrearage payment programs should allow self-certification, with requirements for documentation not occurring for at least two more years. As an emergency, temporary measure, water utilities should be required to knock on customers' doors, mirroring the collection requirements of electric and gas utilities' field collectors, before disconnecting service for non-payment.[3] On a more permanent basis, the Board should modify its rules so that water utilities are held to the same collection practices as electric and gas utilities.

Regardless of the program or policy that the Board adopts to address the post-moratorium arrearage crisis, the Board should incorporate accountability measures so that the Board can, in a fully-informed manner, monitor the efforts that utilities make to prevent service disconnections as well as monitor the costs associated with such efforts. During these crisis times, it is possible that stakeholders will discover "best practices" – and that some of those practices will merit adoption well after the post-moratorium time of crisis passes. That is, helping customers to avoid disconnection was important before the onset of the COVID-19 pandemic, and will continue to be important long after the post-pandemic economic fallout has subsided. Lessons learned during this time of crisis may well be valuable in non-crisis years to come.

In addition to the recommendations discussed above, Rate Counsel urges the Board to adopt the following measures to buffer the financial shock customers would otherwise experience post-moratorium, as well as to increase the likelihood that customers are able to pay the outstanding amounts due to utilities.

Timing of the end of the moratorium on disconnections:

Continue the moratorium on disconnections until arrearage programs and policies are in place: As recommended in comments recently filed by AARP and Legal Services of New Jersey: "The moratorium on disconnections should remain in place until COVID-19 utility bill payment and arrearage forgiveness programs are operational." Utilities are more likely to cooperate with stakeholders on identifying and designing appropriate arrearage measures *before* the moratorium ends than after the moratorium ends. After the moratorium ends, the incentive

[3] See N.J.A.C. 14:3-3A.2(d)(4).

for utilities to focus on arrearage management programs will diminish. Moreover, the utilities' proposed collection plans suggest that some may begin collection activity in areas where they anticipate a greater likelihood that customers will be able to pay down their arrears. Rate Counsel suggests that the Board consider whether a phased approach to lifting the disconnection moratorium may be advisable, perhaps using zip code data to differentiate areas based on anticipated revenue recovery or risk of widespread disconnections. The Board's finding that adequate programs and policies to protect ratepayers' and utilities' interest are in place and operational should occur *before* the moratorium ends.

Arrearage forgiveness: Rate Counsel is hopeful that some of New Jersey's share of federal monies will be allocated to forgive a pre-determined percentage of ratepayers' utility arrearages. The timing of the availability of such monies as it relates to the presently scheduled end of the moratorium on disconnections is not yet known. This uncertainty further supports Rate Counsel's recommendation that the end of the moratorium on disconnections be postponed until the Board learns if monies will be available, and the amount of such monies.

Modifications to the Universal Service Fund ("USF") Program:

Raise the USF income-eligibility ceiling for a two-year period from 185% FPL to 400%. Consistent with Staff's proposal, the Board should raise the income-eligibility ceiling for the USF program from 185% of the federal poverty level ("FPL") to 400% of the FPL. Raising the income threshold also affects the calculation of households' energy burden – which is another USF eligibility criterion. Households must meet the affordability threshold, which assesses the percentage of a household's income that is used for electric and gas expenses. By increasing the income cut-off, all else being equal, electric and gas expenses will comprise a smaller percentage of household income at the higher end of the income eligibility bracket. However, without further data and information, one cannot readily estimate the number of households with incomes of up to 400% of FPL that will also satisfy the USF Program's energy burden requirement. To Rate Counsel's knowledge, it has been 15 years since the Board has analyzed the energy burdens of USF recipients.[4] Entirely apart from the COVID-related measures under investigation in this proceeding, Rate Counsel also urges the Board separately to undertake an analysis of all energy assistance programs at the level of detail undertaken in 2006 in order to inform longer-term policy making relating to the goal of ensuring that ratepayers can pay their utility bills.

Raise the USF cap to $2,160 (or more) per year. The USF program is funded through a surcharge on electric and gas bills, and, for this reason, it is critically important to consider the impact of modifications to the USF program on all ratepayers. Therefore, Rate Counsel supports Staff's proposal to raise the USF cap, but only if federal or state monies become available to subsidize such a change.

The Board established the USF in 2003, and evaluated some elements of the USF in 2019.[5] However, in its 2019 decision, although the Board raised the income threshold from 175% FPL to 185% FPL, the Board did not address the merits of the $1,800 limit. The limit was established many years ago, and so, regardless of the pandemic, this limit has been long overdue

[4] The most recent comprehensive evaluation of the USF Program was conducted in 2006. "Impact Evaluation and Concurrent Process Evaluation of the New Jersey Universal Service Fund, Final Report," APPRISE, Prepared for the New Jersey Board of Public Utilities, April 2006. See id., at 101, Tables 7-1A, 7-1B, and 7-1C.

[5] In the Matter of the Universal Service Fund Program, Docket No. EO19030308, Order Adjusting Universal Service Fund Eligibility Criteria, dated August 7, 2019, effective on August 17, 2019.

for an increased, or, at a minimum, careful examination of the need for an increase.[6]

Rate Counsel fully supports the proposed immediate increase to $2,160 (again provided that supplemental funds are available either through federal or state monies), but also recommends that, in order to determine whether raising the cap to $2,160 is sufficient (and indeed should be permanently increased), the Board should seek additional information from utilities about the distribution of the size of existing USF grants, including the theoretical sizes that, but for the cap, would be provided to vulnerable ratepayers. This information would enable stakeholders to assess how many grants would be higher based on the USF benefit calculations if they were not capped at $2,160 and by how much.

<u>Expand universe of customers eligible for Fresh Start</u>. Staff, in its proposal, indicates that the purpose of increasing the income cap would be to enroll higher income earners into a Fresh Start arrearage forgiveness program, and not to award them with high monthly USF benefits. Specifically Staff indicates that one option would be to set the USF benefit calculation to provide a minimum $5 USF monthly benefit to any applicant who only meets the income requirement, but not the energy burden requirement. Staff explains that, using this approach, if customers have an arrearage of $60 or more, they will be automatically enrolled in Fresh Start arrearage forgiveness program by their utility company. Rate Counsel supports expanding the universe of customers eligible for a Fresh Start, if not through the Staff-proposed modification to the USF Program then instead, as Staff also proposes, as a result of automatic enrollment in an

[6] See AARP comments in the Board's USF proceeding, Docket No. EO19030308, dated May 24, 2019, at 8 suggesting that if the Board has not examined the merits of the existing cap since the completion of the APPRISE Report in 2006, the Board should seek additional information from utilities. Entirely apart from the pandemic, a well-informed assessment of the much-outdated cap is long overdue. The pandemic underscores the importance of this assessment.

arrearage forgiveness program by virtue of being eligible for the Winter Termination Program (see below).

Change the Fresh Start arrearage forgiveness formula so more eligible customers receive this benefit. As currently structured, the Fresh Start program "forgives" the customer's entire arrearage at the end of the year if the ratepayer pays every month's current bill in full for the entire year. Reportedly the purpose of this structure was to modify the behavior of the ratepayer to prioritize utility bills over other expenses. This goal cannot be achieved, however, if the ratepayer cannot afford to pay all living expenses, especially when this is due to externalities such as unemployment, low pay, high rent or health problems. As a result, if the ratepayer misses even a single payment during the year, they forfeit the entire arrearage forgiveness and remain in full debt to the utility. Rate Counsel recommends re-structuring the arrearage forgiveness so that the ratepayer receives an immediate benefit for each payment made during the Fresh Start year. That re-structured benefit would retire 1/12 of that customer's total arrearage for each monthly payment. If the customer can pay every bill in full for the entire year, the entire arrearage is forgiven, but if not, then every timely payment will reduce their utility debt burden. In addition, Rate Counsel recommends changing eligibility to Fresh Start so that a customer may apply more than once in their life. Other states, such as Maryland, have already changed eligibility to once every seven years[7] and reportedly there is legislation pending in Maryland to reduce this further to once in five years.

Automatic enrollment:

Enroll anyone eligible for the Winter Termination Protection Program into a utility-

[7] Md. Public Utilities Code Ann. § 7-512.1(a)(2)(iii).

administered arrearage program. For the sake of timely assistance to those customers having a challenging time paying their bills, Rate Counsel recommends that all households that are eligible for the Winter Termination Protection Program be automatically enrolled in a utility-administered arrearage program. The Board should not require ratepayers to upload documents to qualify -- those most in need of assistance are the least likely to have high-speed internet access or electronic scanning devices.[8] Instead the Board should rely on customers' self-certification and postpone any requirement for documentation for two years after the Board issues its order in this proceeding.

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[8] **High-speed internet access tracks income – as income declines, so too does broadband adoption. https://www.pewresearch.org/internet/fact-sheet/internet-broadband/?menuItem=2ab2b0be-6364-4d3a-8db7-ae134dbc05cd; https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/; see also Kimberley Irby, New Jersey Future, "Broadband for All: The Geography of Digital Equity in New Jersey," Sept. 2020, https://www.njfuture.org/research-reports/broadband-for-all-report/.**

The New Jersey Board of Public Utilities in its investigations on telecommunications and cable service quality has had the opportunity to initially examine the state of and issues affecting broadband access in New Jersey. I/M/O Verizon New Jersey's Discontinuance of Landline Telecommunications Maintenance, Facilities and Infrastructure, Docket No. TO15121325; and I/M/O Request for Investigation into Operations of Altice USA in New Jersey, Docket No, CX21020139, currently pending. Additionally, Rate Counsel notes that on March 25, 2021, New Jersey Bill A850 was passed in both houses of the legislature. A850 establishes a "Broadband Access Study Commission" consisting of 13 members, including the New Jersey Board of Public Utilities. Trackbill.com/bill/new-jersey-seembly-bill-850-establishes-broadband-access-study-commission/1836521.

Expanded Outreach:

Train field collectors on facilitating enrollment in energy assistance programs and deferred payment arrangements. Field collectors should "go the extra mile" to engage in conversations with customers and encourage and facilitate customers' enrollment in payment assistance programs and deferred payment arrangements. Simply dropping off information or leaving door hangers alone is not sufficient during this unprecedented crisis. Utilities should provide their collection staff at least basic information on available assistance programs, to inform any discussion with customers. Moreover, utilities should ensure that field collectors can communicate in the language spoken in the communities where they seek to collect payments due.

Conduct outreach on energy efficiency programs to customers in arrears. The Board should direct utilities to submit proposals by May 31, 2021 as to ways that they plan to expand outreach to those customers with arrearages about energy efficiency programs.[9]

Expand outreach regarding payment assistance and deferred payment arrangement ("DPA") options. The economic fall-out from the COVID-19 pandemic has expanded the universe of customers struggling to pay bills, and includes households who likely have not previously relied on subsidies or financial assistance programs, which, in turn, means that outreach may need to expand and be designed accordingly.[10] This expanded outreach includes,

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[9] "Low-Income Energy Efficiency Opportunities Study," APPRISE, December 2017. https://www.edf.org/sites/default/files/APPRISE_Low-Income-Energy-Efficiency-Opportunities-Study-2017.PDF.

[10] See "COVID-Driven Utility Arrearages, Implications for Policy in Massachusetts and the Nation," Anna Kowanko and Charlie Harak, National Consumer Law Center, February 2021 ("NCLC Report"), at 2, stating: "The COVID-19 pandemic has created a new class of struggling

but should not be limited to, door knocks by all utilities, as mentioned above, as well as door hangers, multiple mail notices, bill inserts, phone calls, social media posts, emails, and local newspaper advertisements. Additionally, the planned "Utility Assistance Week," which will occur between May 17 and May 21, can be a valuable component of the outreach, but of course utilities' concerted and comprehensive outreach should not end on May 22.

Shareholder Responsibility:

Allocate a fair share of the cost of the arrearages to utilities' shareholders. Shareholders should bear a cost of the unprecedented size of utility arrearages. This is occurring in other states, and certainly should occur in New Jersey.[11] This reflects the reality of the widespread economic disruptions to businesses and individuals resulting from the COVID-19 pandemic.

Parallel Programs for Water Utilities:

Design and implement parallel assistance programs for water utility customers. Rate Counsel recognizes that the water working group is considering ways to assist customers with water utility arrearages. Rate Counsel urges the Board to direct water utilities to implement

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customers—those who were previously able to pay their bills, but due to the pandemic are no longer able to make payments." https://www.nclc.org/images/pdf/special_projects/covid-19/Rpt_Covid_Utility_Arrearages.pdf.

[11] See, e.g., Order Instituting Rulemaking to Address Energy Utility Customer Bill Debt Accumulated During the COVID-19 Pandemic, Rulemaking 21-02-014, Order Instituting Rulemaking, February 17, 2021, at 19, stating (cite omitted): "In October 2020, Public Service Company of New Mexico, a New Mexico Public Regulation Commission regulated entity, created a COVID Customer Relief Fund assistance program. This program is funded by $2 million in shareholder contributions and offers assistance to income-qualified residential and small business customers with past due electric bills." See also, id., at 19-20, stating: "In December 2020, the Arizona Corporation Commission approved a plan for utilities to automatically enroll customers at 150% of the federal poverty level who are behind on their bills in an eight-month payment plan and provide a one-time bill forgiveness up to $250. Half of the funding for the bill forgiveness comes from utility shareholders, and utilities are able to request for recovery of the other half in rates."

policies and programs that mirror those offered to gas and electric customers, initially on an emergency basis, justified by the unprecedented COVID-19 pandemic. Subsequently, Rate Counsel urges the Board to consider permanent rule changes to provide water utility ratepayers with protections and assistance that parallel those provided to electric and gas customers.[12]

Informed Policy Making:

Data collection, analysis, and reporting can inform decision making and outreach activities. Toward that end, Rate Counsel recommends that the Board:

Continue to monitor trends in: (1) the number of accounts in arrears (separately by customer class); (2) dollars in arrears (separately by customer class); (3) enrollment in energy assistance programs; (4) enrollment in DPAs; and (5) disconnections. Rate Counsel recommends that the Board seek utility coordination on uniform data reporting, especially regarding the definition of "in arrears" (e.g., does this category include/exclude accounts fewer than 30 days in arrears?).

Continue to examine the impact of arrearages and potential disconnections on communities of color and overburdened communities: Continue to collect, analyze, and report data disaggregated to the zip code level, to support community-based outreach efforts.[13] The Board could consider requiring this granular level of detail less frequently than the data described above.

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[12] Regarding potential federal monies, see "Fact Sheet on Recent Federal COVID-19 Relief Funding to Help Consumers with Water and Sewer Bills," Last Updated April 5, 2021, National Consumer Law Center, Natural Resources Defense Council ("NCLC Report"). https://www.nclc.org/images/pdf/special_projects/covid-19/FS_NRDC_Covid_Water_Sewer.pdf

[13] See AARP Comments in this proceeding, April 27, 2021 (7th recommendation). See also NCLC report at 2, stating: "It is expected that terminations will continue to hit Black and Hispanic customers particularly hard, as the limited data on shut offs by race and ethnicity already shows."

Evaluate best practices: Recognizing that long after the economic repercussions of this pandemic have subsided, low-income households will continue to depend on assistance to pay bills, now is an opportunity to assess which practices should continue indefinitely. Some of the pandemic-related measures may be effective on a longer term basis. Within one year after the end of the moratorium, the Board should convene a technical workshop to distinguish between those practices and policies that are specific to the COVID-19 pandemic and those practices and policies that should continue indefinitely.

Financial Impact: The Board should collect data on the cost of each of the payment assistance proposals it is considering as well as the financial impact of each proposal on the utilities and on other ratepayers. Furthermore, the Board should identify the source of funds for each arrearage management proposal.

CONCLUSION

In conclusion, Rate Counsel urges the Board and the utilities to seek federal monies to defray a substantial portion of utility arrearages and arrearage management programs. Also, Rate Counsel supports easy-to-administer and easy-to-enroll programs. Where feasible, programs should be coordinated with the appropriate state, social service, and community organizations. Customers' privacy should be protected, and best practices tracked. Even after the financial consequences of the COVID-19 pandemic have subsided, there will continue to be customers struggling to pay utility bills. Lessons learned during these extraordinary times may help the Board and the many stakeholders in this proceeding modify and improve existing policies and programs to reduce utility disconnections over the long term. Rate Counsel looks forward to continuing to collaborate with New Jersey's stakeholders to design policies and programs that are fair and effective.

Rate Counsel appreciates the opportunity to comment and anticipates that, by considering the issues noted above, this proceeding will develop fair and equitable measures to address the financial harm to rate payers and the public utilities from this pandemic.

Respectfully submitted,

STEFANIE A. BRAND
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By: /s/_Brian Weeks ________________
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cc: Electronic Mailing List