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VIA ELECTRONIC MAIL

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Aida Camacho-Welch
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RE: In the Matter of the New Jersey Board of Public Utilities' Response to the
COVID-19 Pandemic
BPU Docket No. AO20060471

Dear Secretary Camacho-Welch:

Atlantic City Electric Company (“ACE” or the “Company”) respectfully submits this correspondence to the Board of Public Utilities (“Board” or “BPU”) in response to the Comments of the New Jersey Division of Rate Counsel (“Rate Counsel”) filed on May 10, 2021.¹ ACE addresses the following recommendations in Rate Counsel’s comments and offers points previously stated in working group meetings into the record of this proceeding. Notably, these comments speak to the long-term solution offered by arrearage management plans, responds to Rate Counsel’s call for continuation of the moratorium, and responds to Rate Counsel’s recommendation to allocate the cost of the arrearages to utilities’ shareholders. Ultimately, ACE is a committed to working with the State to efficiently and effectively address the arrears associated with COVID in a manner consistent with the law.

The Company’s comments are as follows:

- **Arrearage Management Plans (AMPs) are a Long-Term Solution to Help Customers**

As previously discussed in ACE’s March 1, 2021 written comments and further discussed the working groups, ACE believes that AMPs can be a tool to assist customers in need and drive positive customer payment behavior. These plans, however, address arrears over a period of time.

¹ ACE received electronic service of these comments on May 7, 2021.

Additionally, creating a new AMP would require upgrades to technology and time associated with implementation. The time and upgrades can act to further delay providing necessary assistance to customers. Where there is an immediate need for relief of arrearages, AMPs may not be the best suited option available to satisfy that immediate need. AMPs may be a part of a longer-term solution with the focus on supporting customers over a period of time.

ACE offers the following example for reference to another state's approach. In Maryland, as an alternative to traditional AMPs that are expensive to implement and need extensive system changes, legislation was enacted that directed \$83 million in funding to the Maryland Public Service Commission ("MD PSC") to retire customer arrearages. The Maryland utilities will identify eligible customers based upon established criteria and submit those lists to the MD PSC. The MD PSC will subsequently provide guidance about the distribution of funds to each utility.

- **Rate Counsel's Request for an Indefinite Extension of the Moratorium is Unnecessary**

ACE does not believe that the moratorium in New Jersey should be further extended as Rate Counsel proposes. Currently, the moratorium ends on June 30, 2021. ACE suspended the disconnection of service for customers due to the COVID-19 Pandemic on March 20, 2020 and some customers may have also been protected under the Winter Termination Program since November 2019. During this time, customer arrearages have continued to grow substantially.

ACE is supportive of ensuring that customers have access to every available tool to help them manage their arrearages. Since the moratorium was lifted by the State of Delaware, ACE's sister utility Delmarva Power has been proactive with customers to prevent disconnections wherever possible, directing them to funding and payment plans. While roughly 100,000 customers were eligible for disconnection since the moratorium lifted, Delmarva's pro-active efforts and changes in customer behaviors have resulted in approximately 30 customers being permanently disconnected per month, and 13,000 payment plans implemented. In addition, since the end of the moratorium in Delaware, Delmarva Power has seen customer arrearages decrease significantly and has experienced a 30% decrease in the number of residential customers with arrearages from pre-COVID levels. On the other hand, other jurisdictions where the moratorium has continued or ended more recently are seeing sizable increases, causing customers to have balances grow to unmanageable levels.

ACE is mindful of and deeply sympathetic toward the customers adversely impacted by the COVID-19 pandemic. Accordingly, ACE has increased communication efforts and support, as detailed in the Company's November 30 comments in this proceeding. However, despite the increased focus and communication efforts of ACE and our agency partners, enrollment in energy assistance programs has significantly declined, a 12% reduction in 2020 from 2019 levels. Similarly, ACE has seen a notable decline in customers seeking payment arrangements (only 38K new arrangements were set in 2020 compared with more than 70K the prior year). Ending the moratorium will be the most efficient means of addressing the issues presented in this proceeding.

Ending the moratorium, however, need not impact all residential customers at one time. The Board could provide guidance in this docket on the utility collections process going forward. ACE is open to narrowing the scope of customers that would be eligible for disconnection by identifying classes of protected customers. These classes can be defined as low to moderate income families, senior citizens, customers with a confirmed medical condition or illness, unemployment, and any identified customers for which remote work or virtual schooling would be impacted by disconnection. Residential customers not eligible for disconnection could also be those who demonstrate that they are recipients of benefits from numerous customer assistance programs and have demonstrated financial need. ACE can identify customers that have received assistance and protect their accounts when they apply for existing assistance programs to avoid disconnections.

As the State reopens further, these classes can be reevaluated by the Board in this proceeding or elsewhere. Rate Counsel also discusses a phased approach, which may be an alternative to a blanket, indefinite extension of the moratorium. Ultimately, ACE believes that resuming collection activities will increase the urgency among customers to address arrearages either through the available extended payment arrangement options and/or enrollment in available energy assistance programs.

- **Rate Counsel’s Insistence on “Shareholder Responsibility” for COVID Moratorium Related Arrearages is Inconsistent with New Jersey Law**

Rate Counsel’s insistence that [s]hareholders should bear a cost of the unprecedented size of utility arrearages” is inconsistent with New Jersey law. Essentially Rate Counsel is asking the Board to determine that shareholders shoulder the burden for the bad debt associated with the COVID-related moratoriums. The bad debt at issue is a prudently incurred cost driven by governmental directives. For electric and gas utilities, the bad debt is a “social program” already established and available as a safety net in response to this extraordinary public health emergency. Rate Counsel proposes to penalize shareholders, disallowing prudently incurred costs, and disadvantaging utilities for their participation in this important social program. Rate Counsel offers no legal support for their position, which is plainly contrary to law.

For one, Rate Counsel appears to advocate for an unconstitutional taking. The takings clause of 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.² In this regard, with respect to public utilities, the United States Supreme Court has held that “[i]f the rate does not afford sufficient compensation, the State has taken the use of utility property without paying just compensation and so violated the Fifth and Fourteenth Amendments.” *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 308 (1989). 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

² This provision applies to the states through the Fourteenth Amendment.

in other enterprises having comparable risks.” *State Farm Mut. Auto. Ins. Co. v. State*, 124 N.J. 32, 48 (1991) (internal citation omitted). Here, Rate Counsel would deny a reasonable return; denying recovery for prudently incurred costs resulting from the Company’s response to the public health emergency.

Moreover, for more than two decades, New Jersey law has provided an appropriate cost recovery mechanism for bad debt associated with moratoriums and other social programs for electric and gas utilities. That cost recovery mechanism is the Societal Benefits Charge (“SBC”), which was included in the Electric Discount and Energy Competition Act (“EDECA”) as part of utility restructuring. Specifically, the statute establishes a cost recovery mechanism for “social programs” that achieve public policy goals. N.J.S.A. 48:3-60a(1). The legislative history behind EDECA explains that the BPU was “determined to preserve the provision and funding for existing social protection programs, including the winter moratorium program, the costs associated with serving ‘bad debt’ customers, low income assistance and weatherization programs.”³ The BPU went on to “emphasize that electric utilities having the obligation of implementing social programs . . . should not be financially or competitively disadvantaged as a result.”⁴

The BPU then proposed a mechanism for “timely recovery of these costs by utilities”⁵ with full recognition that “actual funding levels to implement these programs will likely fluctuate as they have in the past according to economic conditions, weather, and other external factors.”⁶ The BPU’s recommendations informed the Legislature, which established the SBC for social programs. Since EDECA’s enactment, through the initial transition period and the Great Recession to the present, the BPU has consistently allowed ACE to recover the costs of its social programs, such as bad debt or uncollectible accounts. Additionally, the Company’s BPU-approved Tariff, at Section IV, Rider (SBC), allows recovery for “uncollectible accounts.” Regardless of the funding fluctuations due to economic or other external factors, the BPU has consistently ensured that “electric utilities having the obligation of implementing social programs” are not “financially or competitively disadvantaged as a result.”⁷

The safety net at issue here is not a traditional charitable contribution. The COVID-related moratoriums have all been implemented with State guidance and direction, including numerous Executive Orders. The costs (the bad debt) associated therewith is distinguishable from a utility’s “discretionary” charitable contributions, which involve “numerous personal choices,” and are ultimately the responsibility of the shareholders.⁸ Rate Counsel’s claim that “shareholders bear a

³ *Restructuring the Electric Power Industry in New Jersey, Findings and Recommendations*, Dkt. No. EX94120585Y (April 30, 1997) at 9.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 141.

⁷ *Id.*

⁸ *In the Matter of Petition of New Jersey American Water Company, Inc. for an Increase in Rates for Water and Sewer Service and other Tariff Modifications*, 169 N.J. 181, 194-95 (2000).

cost of the unprecedented size of utility arrearages” incorrectly conflates a State-directed social program with a charitable contribution.

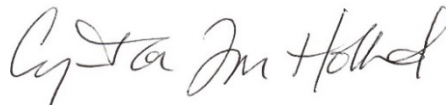
ACE acknowledges the “widespread economic disruptions to businesses and individuals resulting from the COVID-19 pandemic,” which is why ACE took immediate steps to directly help customers in need and expand awareness of the existing bill assistance programs available to customers facing temporary or extended financial hardship. ACE has consistently worked with the BPU and the State to ensure that customers are protected. Accordingly, ACE urges the Board to reject Rate Counsel’s recommendation and continue the support for “an important part of the State’s safety net for the less fortunate.”⁹

Rate Counsel also incorrectly suggests that shareholders have not contributed to date. ACE’s shareholders have contributed substantially to this cause. As previously stated in this docket, ACE provided approximately \$1.2 million in COVID-19 related, shareholder-funded, corporate contributions to non-profit partners that help those customer and community members significantly impacted by the Pandemic. Also, shareholders continue to fund carrying costs associated with higher Accounts Receivable balances and longer deferred payment arrangements. These actions are not insubstantial contributions by utility shareholders.

- **Conclusion**

Ultimately, these comments speak to the long-term solution offered by arrearage management plans, responds to Rate Counsel’s call for continuation of the moratorium, and responds to Rate Counsel’s recommendation to allocate the cost of the arrearages to utilities’ shareholders. ACE respectfully requests that the Board dismiss Rate Counsel’s recommendation that shareholders cover the bad debt associated with COVID-related arrears. The law is well established in New Jersey that those costs are recovered from ratepayers, because the costs are prudently incurred and an electric utility, such as ACE, should not be disadvantaged for providing necessary social programs. ACE appreciates the opportunity to comment and welcomes further engagement with the Board, Rate Counsel, and stakeholders in this proceeding.

Respectfully submitted,



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cc: Service List

⁹ *Id.* at 140.

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 Nos. EO20030254 and AO20060471

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