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September 2, 2022

Via Electronic Mail

Carmen D. Diaz, Acting Secretary
New Jersey Board of Public Utilities
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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 Acting Secretary Diaz:

Please accept for filing in the above-referenced matter Rate Counsel's response to the August 2, 2022 motion filed by Public Service Electric & Gas Company requesting that the Board of Public Utilities ("BPU" or the "Board") amend the September 14, 2021 Order amending the July 2, 2020 Order Authorizing the Establishment of a Regulatory Asset for Incremental COVID-19 Related Expenses ("COVID-19 Regulatory Asset Order") that extended the regulatory asset period from September 30, 2021 to December 31, 2022, to again extend the end of the regulatory asset deferral period from December 31, 2022 to the end of 2023.

Consistent with the March 19, 2020 Board Order 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

Carmen D. Diaz, Acting Secretary

September 2, 2022

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letter are being provided 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.

Very truly yours,

BRIAN O. LIPMAN
DIRECTOR, DIVISION OF RATE COUNSEL

By: /s/ Brian Weeks
Brian Weeks, Esq.
Deputy Rate Counsel

c. Service List (via electronic mail only)

**In the Matter of the New Jersey Board of Public Utilities’
Response to the COVID-19 Pandemic
BPU Docket No. AO20060471**

**Response of the New Jersey Division of Rate Counsel
To the Motion by Public Service Electric and Gas Company
to Extend the Regulatory Asset Deferral Period
from December 31, 2022 to December 31, 2023**

September 2, 2022

Background

On March 9, 2020 Governor Murphy signed Executive Order No. 103 (“EO 103”) declaring a State of Emergency and a Public Health Emergency in response to the COVID-19 pandemic and authorizing the heads of state agencies 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.”¹

On March 13, 2020, the Board of Public Utilities (“BPU” or “Board”) announced that the State’s public electric and gas utilities agreed to suspend service shutoffs due to the public health emergency and the state-wide effort to respond to the COVID-19 pandemic. The moratorium was later voluntarily extended by the utilities until October 15, 2020. On October 15, 2020, the moratorium was extended by Governor Murphy through Executive Order 190 (“EO 190”) to March 15, 2021. On March 3, 2021 Governor Murphy further extended the moratorium from March 15, 2021 to June 30, 2021 through Executive Order 229 (“EO 229”). On June 4, 2021, through Executive Order 244 (“EO 244”) Governor Murphy terminated the Public Health Emergency put into effect through EO 103, but continued the State of Emergency established in

¹ EO 103, p. 6.

EO 103.² EO 244 also directed that EO 229 would remain in effect until January 1, 2022, with the option of the Governor modifying EO 229 prior to January 1, 2022.

Executive Order 246, issued by Governor Murphy on June 14, 2021 and effective July 1, 2021, ended the utility shutoff moratorium and provided a grace period through December 31, 2021 to customers protected by the moratorium against termination for non-payment of gas, electric, water, or internet service. The grace period was intended to allow customers to apply for available assistance programs, make payment arrangements with utilities to address overdue balances, and provide time for the State to decide the process for distribution of ARP funds to customers in arrears. In addition, when linked with the established Winter Moratorium period, electric and gas utility customers were protected from the termination of utility service for non-payment until March 15, 2022.

On March 25, 2022, Governor Murphy signed S-2356,³ extending the moratorium on shutoffs for certain residential customers with overdue utility payments for 60 days while they await a determination by the applicable State agency on application(s) submitted before June 15, 2022 for payment assistance programs.⁴ These payment assistance programs include the Universal Service Fund, Low Income Home Energy Assistance Program, Low Income Household Water Assistance Program, and any other utility assistance programs administered by the State.⁵ The bill also required all utilities to offer each residential customer in arrears a bill payment plan⁶ for the unpaid balance of at least 12 months' duration; the utility may offer a shorter repayment period if it is offered in conjunction with a debt forgiveness of at least 50

² See also Assembly Bill No. 5820 as L. 2021, c. 103 signed on June 4, 2021.

³ S-2356 amends L.2021, c.317.

⁴ Id. at §§ 2.k(1) & 2.k.(2).

⁵ Id. at § 2.k(1).

⁶ Commonly referred to as a Deferred Payment Arrangement (“DPA”).

percent of the customer's total arrearages.⁷ It also prohibited any utility from collecting any interest, fee or charge from any residential customer for late payment of any water, electric or gas bill that accrued between the declaration of a public health emergency on March 9, 2020, as per EO 103 of 2020, and March 15, 2022.⁸

On July 2, 2020 the BPU issued an order in I/M/O Board of Public Utilities' Response to the Covid-19 Pandemic, BPU Docket No. AO20060471, authorizing the establishment of a Regulatory Asset for Incremental Covid-19 Related Expenses ("COVID-19 Regulatory Asset Order") to defer the utilities' incremental costs associated with COVID-19 and the state-wide moratorium on utility service shutoffs. The Board established a timetable for the deferral of these costs on the utilities' books and records starting March 9, 2020 and ending on 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, 60 days from the time the Public Health Emergency automatically terminates pursuant to N.J.S.A 26:13-3(b).⁹

On July 6, 2021, Public Service Electric & Gas Company ("PSE&G"), South Jersey Gas Company, Elizabethtown Gas Company (collectively "Companies") filed a letter motion with the Board requesting an amendment to the COVID-19 Regulatory Asset Order, to extend the regulatory asset deferral period from September 30, 2021 to the end of 2023, and to adjust the deadline for filing petitions to recover those costs to a date within 60 days of the extended regulatory asset period. Four other utilities filed letters of support for the Companies' motion.¹⁰

On July 21, 2021, Atlantic City Electric Company stated that it did not oppose the Companies'

⁷ S-2356, §§ 2.b, 2.c, 2.d & 2.e.

⁸ Ibid., §§ 2.g, 2.h, 2.i & 2.j.

⁹ COVID-19 Regulatory Asset Order, p. 4.

¹⁰ SUEZ Water New Jersey, Inc., on July 19; New Jersey-American Water Company, Inc., on July 21; Aqua New Jersey, Inc., on July 23; and Jersey Central Power & Light Company, on September 10.

motion but requested that the Board consider shortening the requested extension of the regulatory asset deferral period to allow cost recovery to begin in mid-2022. Rate Counsel submitted comments, stating it did not object to the extension and was unable to determine a reasonable length of time for the extension, but suggested issues to consider when deciding the length of the extension. Rate Counsel also requested the inclusion of certain conditions to assist in tracking the utilities' use of the extension, their costs, and any offsetting recoveries such as COVID-related government funds, insurance recoveries, or payments toward arrearages. By Order dated September 14, 2021, the Board extended the Regulatory Asset Period to December 31, 2022, and directed each utility to file a petition to recover its regulatory asset within 60 days of December 31, 2022.

Throughout this proceeding, the parties have participated in workgroups to discuss a variety of COVID-related issues, including recovery of the utilities' regulatory asset claims. On July 20, 2022, Board President Fiordaliso issued an Order under this docket directing the parties to submit, within 60 days, comments addressing a list of thirteen questions relating to recovery of those regulatory asset claims.

On August 2, 2022, Public Service Electric & Gas Company PSE&G filed a letter motion with the Board requesting an amendment to the COVID-19 Regulatory Asset Order, to extend the regulatory asset deferral period from December 31, 2022 to the end of 2023, and to adjust the deadline for filing petitions to recover those costs to a date within 60 days of the extended regulatory asset period. Five other public utility companies filed letters in support of PSE&G's motion,¹¹ each also asking the Board to clarify that that they or any other utility may request

¹¹ South Jersey Gas Company and Elizabethtown Gas Company on August 16, 2022 and New Jersey-American Water Company, Jersey Central Power & Light Company and New Jersey Natural Gas Company on August 19, 2022.

recovery of COVID-19 regulatory asset costs before the end of the extended regulatory asset period.¹²

Summary of PSE&G's Motion

On August 2, 2022, PSE&G filed a motion requesting that the Board extend the regulatory asset deferral period for the utilities' incremental COVID-19-related costs, from December 31, 2022 to the end of 2023; and to extend the date for filing a COVID-19 cost recovery petition to a date 60 days past the close of the extended regulatory asset deferral period requested. PSE&G requests the Board do so by amending its September 14, 2021 Order that extended the Regulatory Asset Period to December 31, 2022 and directed each utility to file a petition to recover its regulatory asset within 60 days of December 31, 2022.

PSE&G argues that the incremental costs, particularly those related to bad debt and carrying costs on its incremental accounts receivable ("AR"), are mounting and will continue to mount past the current December 31, 2022 end date for the regulatory asset period.¹³ PSE&G states its concern that some customers now in arrears have not paid the Company's bills in over two years and will be too far behind to be able to catch up with their payments, may move to a different residence or may no longer be their customers. PSE&G anticipates that customers in these circumstances likely will not completely pay their outstanding bills, and it will likely need to write off an increasing amount of arrearages.¹⁴

PSE&G states that its overdue AR (greater than 30 days) on June 30, 2022 amounted to \$543 million, which is \$328 million higher than on June 30, 2019, the same time of year before

¹² Atlantic City Electric Company ("ACE") filed a letter on August 26, stating that it did not oppose PSE&G's motion. ACE also stated that it has stopped deferring any costs to the COVID-19 regulatory asset.

¹³ August 2, 2022 Affidavit of Jane Bergen, Director of Billing, Revenue and Controls for Public Service Enterprise Group, in Support of Public Service Electric and Gas Company's motion to extend the close of the COVID-19 regulatory asset period.

¹⁴ Motion, pp. 2-3 of 5.

the COVID-19 pandemic, a 153% increase.¹⁵ PSE&G also states that its AR overdue over 30 days has increased by \$70 million from June 30, 2021.¹⁶ PSE&G now has 162,000 customers with bills overdue over six months, almost double the 77,000 similarly overdue customers on June 30, 2019 but the same number as June 30, 2021.¹⁷

Arrearages have continued to increase despite increased revenue from payment assistance programs. PSE&G reports that approximately 40,000 more of its customers are now receiving some form of payment assistance, from the Universal Service Fund (“USF”), Low Income Home Energy Assistance Program (“LIHEAP”) and Payment Assistance for Gas and Electric (“PAGE”) programs,¹⁸ increasing the Company’s revenue from those programs by 74% during the first half of this year compared with the first half of 2021.¹⁹ The Company also anticipates additional funding from the Fresh Start program, although it involves a complicated and time-consuming process.²⁰ PSE&G also has received \$90 million of federal ARP funds which, combined with revenue from USF, LIHEAP and PAGE, amounts to \$191 million.²¹ The Company attributes this increased revenue to both the less restrictive eligibility criteria for those programs as well as the Company’s own enhanced outreach to customers.²² PSE&G states that extending the regulatory asset period would allow more time for these efforts to generate more revenue.

¹⁵ Motion, p. 3 of 5; Bergen Aff. ¶ 6.

¹⁶ Motion, p. 3 of 5.

¹⁷ Motion, p. 3 of 5; Bergen Aff. ¶ 7.

¹⁸ Motion p. 4 of 5; Bergen Aff. ¶ 9.

¹⁹ Motion, pp. 4-5 of 5; Bergen Aff. ¶ 12.

²⁰ Motion, p. 4 of 5; Bergen Aff. ¶ 10.

²¹ Motion, p. 5 of 5; Bergen Aff. ¶ 12.

²² Motion, p. 4 of 5; Bergen Aff. ¶¶ 8, 9 & 10.

Nevertheless, PSE&G reports that its total overdue AR remains \$328 million higher than it was before the COVID-19 pandemic.²³ PSE&G estimates it will take several years to bring the incremental arrearages down to pre-COVID-19 levels.²⁴

Considering the large number of customers who are in arrears and who need assistance, PSE&G anticipates continued incremental costs to hire additional employees for field collection and call center work, and eventual shut offs. The Company expects these expenses will continue to accrue until well beyond the December 31, 2022 close of the current COVID-19 Regulatory Asset period.²⁵ Therefore, PSE&G argues that the end date for the regulatory asset deferral period should be extended to December 31, 2023, one year beyond the date set in the September 14, 2021 COVID-19 Regulatory Asset Order.

Rate Counsel Response

As a preliminary matter, Rate Counsel notes that PSE&G's filing requests relief by way of motion. It is unclear that this is the proper procedure to amend the September 14, 2021 COVID-19 Regulatory Asset Order, or whether PSE&G's current motion should have been filed as a petition so as to allow all interested parties an opportunity to be heard.²⁶ Ensuring the due process rights of all interested parties is paramount and as demonstrated by the Board Staff's procedural determination, will not prejudice the rights of PSE&G. Rate Counsel provides this substantive response while reserving all rights to further contest the procedural or substantive issues relating to this filing.

Initially, Rate Counsel is concerned about the need for a second extension of the deferral period. It is worth noting that PSE&G is the only utility seeking an extension. While the other

²³ Motion, p. 5 of 5; Bergen Aff. ¶¶ 6 & 12.

²⁴ Motion, p. 5 of 5; Bergen Aff. ¶ 11.

²⁵ Motion, pp. 4-5 of 5; Bergen Aff. ¶ 11.

²⁶ See N.J.A.C. 14:1-10.3.

utilities do not oppose PSE&G's motion, other utilities appear to have already ended their COVID deferrals and appear more concerned that their ability to file for recovery will not be impacted by this motion. While an extension of the regulatory asset deferral period beyond December 31, 2022 may be a reasonable solution to the issues raised by PSE&G, based upon the facts presented in the motion and the other utilities' not requiring such an extension, it is unclear that any extension is required. To the extent an extension is appropriate, an additional year appears to be too long. If the Board is inclined to provide any extension, Rate Counsel respectfully recommends inclusion of certain conditions to ensure appropriate implementation of the COVID-19 Regulatory Asset. It is unclear from the Company's motion papers what exactly these costs will be or whether they are reasonable, prudent and subject to recovery. Therefore, those issues are beyond the scope of this motion and Rate Counsel reserves its right to address them in a future proceeding.

Rate Counsel notes that PSE&G's motion does not expressly request that the Board allow a utility to request recovery of COVID-19 regulatory asset costs before the end of the extended regulatory asset period. Rather, five other utility companies have made that request in their letters expressing support for PSE&G's motion. This request places the need for PSE&G's motion into question. Nonetheless, granting their request would require a further modification of the September 14, 2021 COVID-19 Regulatory Asset Order, which currently requires filing a petition for recovery of the COVID-19 regulatory assets costs within 60 days of the expiration of the regulatory asset period. Whether the regulatory asset period is extended or not, any utility should be able to file for recovery of regulatory assets costs before the close of the regulatory asset period.

It continues to be reasonable to require PSE&G (and all the utilities) to diligently use the regulatory asset period, and any extension of it, to reduce their regulatory asset claim. The grace period on the shutoff moratorium expired on December 31, 2021,²⁷ and the Winter Termination Period protecting some customers expired on March 15, 2022²⁸ – over four months ago. Only customers who have applied for payment assistance, i.e., financially disadvantaged customers, are temporarily protected from disconnection for non-payment. Nevertheless, the amount of uncollectibles claimed by PSE&G,²⁹ and by most utilities, continues to grow.³⁰ One diligent use of the regulatory asset period is to enhance proper collection activity.

PSE&G only partially explains, in broad terms, its efforts to collect arrearages from its customer base. The Company’s motion focuses on increased arrearages attributable to the portion of its residential customers who are temporarily protected from collection and shutoff activity for non-payment; however, it says little about the other half of its customer base. As PSE&G’s motion points out, over half of its residential customers who are in arrears (approximately 57%) are not protected from collection and shutoff activity, and are eligible for “field” collection and disconnection; almost half of its total arrearages (approximately 42%) are owed by those customers.³¹

²⁷ Executive Order 246, June 14, 2021.

²⁸ N.J.A.C. 14:3-3A.5.

²⁹ Motion, p. 3; Bergen Aff., ¶ 12.

³⁰ The electric and gas utilities reported to the Board total arrearages of over \$810 million in June 2022, an increase of over \$94 million, or 13%, from June 2021. NJ BPU, “New Jersey Electric and Gas Public Utility Arrearages as of June 2022,” available at <https://www.nj.gov/bpu/newsroom/reports/covid19/June%202022-%20Arrearage%20Data-%20Energy.pdf>.

The water utilities reported to the Board total arrearages of over \$56 million in May 2022, an increase of over \$11 million, or 24%, from May 2021. NJ BPU, “May 2022 Water Arrearages,” available at <https://www.nj.gov/bpu/newsroom/reports/covid19/May%202022%20Arrearages%20for%20Posting.pdf>.

³¹ Bergen Aff. ¶ 5.

As intended by the Legislature,³² ratepayers in arrears are temporarily protected from disconnection if they apply for payment assistance or negotiate a Deferred Payment Agreement (“DPA”). Many of these ratepayers will require this assistance or negotiated DPAs to repay their arrearages. In fact, eligibility for payment assistance is based on the applicant’s income and family size.³³ Each payment assistance program, as well as any amounts not paid by the ratepayers in arrears, is funded by other ratepayers. Allowing time for ratepayers in arrears to obtain payment assistance³⁴ and to repay on negotiated terms will lessen the financial burden on other ratepayers who are still able to pay their bills. This process, however, is ongoing, and PSE&G, as well as the other utilities, should begin to see additional revenues flow from these programs, further reducing the arrearages.

We also note that a large share of customers in arrears, of both PSE&G and the other utilities, are commercial entities not protected by any of the payment assistance programs cited by PSE&G. PSE&G reported to the Board total arrearages of over \$547 million in June 2022, of which over \$165 million, or 30%, is owed by commercial customers. This amount is owed by approximately 85,000 delinquent commercial accounts, representing only about 15% of PSE&G’s 580,252 total customer accounts in arrears. The number of delinquent commercial

³² S-2356, amending P.L.2021, c.317; N.J.S.A. 40A:5A-28 et seq.

³³ The payment assistance application process is the only Board-recognized process that considers the affordability of utility rates for any ratepayer. Utility rate increases have been granted throughout the Covid-19 pandemic and its economic hardships, as they are routinely, with regard solely for the financial circumstances of the utilities. None of the requested increases, for base rates or for optional infrastructure programs, have been denied. The ability of ratepayers to pay any of those rate increases is never considered in the ratemaking process.

³⁴ Applications for payment assistance can be time-consuming. As PSE&G notes in its motion, the Fresh Start program, for example, involves a complicated and time-consuming process. Motion, p. 4 of 5; Bergen Aff. ¶ 10.

customers is also only about 1/6 of the approximately 495,000 residential accounts in arrears, a much smaller number that is potentially more manageable for collection and disconnection.³⁵

The number of commercial customers in arrears, as well as the amounts owed, were similar for the other electric and gas utilities. The electric and gas utilities reported to the Board in June 2022 total arrearages of over \$810 million; over \$211 million, or 26% of this total, was owed by commercial customers. The 116,883 commercial accounts in arrears represented less than 1/7 of the 852,524 residential accounts in arrears, and only about 12% of the 969,407 total of all customer accounts in arrears.³⁶

Accordingly, Rate Counsel considers it appropriate to ask the utilities to explain how they have been using the regulatory asset period, and any extension of it, to collect on the customer accounts in arrears that are not protected from disconnection for nonpayment, and to allow the process of payment assistance applications and negotiated repayments to follow their due course. The efficiency of their efforts is clearly material to the prudence of their management.

Rate Counsel Recommendations

Rate Counsel does not believe that a one-year extension of the regulatory asset deferral period is needed. To the extent any extension is deemed appropriate, Rate Counsel recommends that the Board impose reasonable conditions, particularly requiring each utility in this proceeding to file an updated plan setting forth how it will use the additional time to obtain appropriate federal funds and work with customers to reduce arrearages and avoid disconnections, as well as requiring the utilities to keep transparent records of actions taken and costs incurred.³⁷ This would include the utilities' actions to collect arrearages from commercial customers, who remain

³⁵ NJ BPU, "New Jersey Electric and Gas Public Utility Arrearages as of June 2022," p. 7 of 9, available at <https://www.nj.gov/bpu/newsroom/reports/covid19/June%202022-%20Arrearage%20Data-%20Energy.pdf>.

³⁶ *Ibid.*, p. 1 of 7.

³⁷ We note that PSE&G's motion papers outline much of the plan that it has followed.

subject to collection without delay. In addition to the information the utilities are required to file, this recordkeeping should include periodic filings setting forth new hires and their roles; numerical goals and achievements such as arrearages collected; numbers of disconnections and re-connections by zip code; DPAs entered into, paid off and broken; funds received by each utility from programs such as USF, Fresh Start, LIHEAP, PAGE and Lifeline; detailed accounting of each regulatory asset cost for which the utility intends to seek recovery; amounts of arrearages recovered through any mechanism including the Societal Benefits Charge (electric), base rates (gas) and from federal funds (e.g. ARP and Consolidated Appropriations Act of 2021); amounts of COVID-related short-term borrowing and carrying costs on that debt; amounts saved due to COVID-related changes in their business activities; revenues from each class of customer during the regulatory asset period; and other relevant information.

This additional information is necessary to evaluate the prudence and recoverability of each utility's regulatory asset, and to compare the utilities' claims. While Board Staff has required each utility to submit quarterly reports under the COVID-19 Regulatory Asset Order, the data reported varies widely by utility and does not include all the parameters listed above or indeed all the parameters directed in that Order. In addition, those reports should be in a consistent format using Excel, to enable accurate evaluation and comparison across all utilities.

Rate Counsel respectfully requests that the Board ensure an efficient process by the utilities for distributing federal assistance funds to each utility's customers, so that funds intended to reduce ratepayer debts are not diverted into IT or other administrative costs. Rate Counsel requests that evaluation of the recoverability of the COVID-related costs and expenses of all the utilities be addressed in separate and full proceedings for each utility, and that the recovery mechanism set a specific expiration date and transparent and uniform reporting.

Rate Counsel has no objection to the Board's considering, in the context of PSE&G's motion, the request by five other utility companies that a utility may file to recover its COVID-19 regulatory asset costs before the end of the extended regulatory asset period. This request is not unreasonable under two conditions: 1) the utility making such early filing verifies that it is no longer accruing any more COVID-19-related costs after its COVID-19 cost recovery filing, and 2) the utility will address any future COVID-19-related costs in its next base rate case under traditional ratemaking procedures. Doing so will allow closure of the COVID-19 regulatory asset proceeding for each utility as it seeks recovery for those costs. Otherwise, this regulatory asset could become another rider or clause that continues indefinitely.

Rate Counsel takes no position in this motion on the prudence or recoverability of any element of the regulatory asset claimed by PSE&G or any other utility. Rate Counsel reserves all our rights to comment on or respond to any further filings by any party related to PSE&G's motion.

Conclusion

As set forth above, Rate Counsel does not believe there is an adequate basis for a one-year extension of the regulatory asset deferral period in the COVID-19 Regulatory Asset Order beyond December 31, 2022. To the extent the Board determines any extension is appropriate, Rate Counsel believes such extension should be subject to the conditions set forth above. Rate Counsel further recommends that the Board impose reasonable conditions regarding clear, comparable and transparent accounting for the regulatory asset claims, and plans for the use of the extended regulatory asset period to reduce arrearages and other incremental COVID-related costs.

Rate Counsel also recommends that, if the Board grants the request that a utility company may file to recover its COVID-19 regulatory asset costs before the end of the extended regulatory asset period, the utility must: (a) verify that it is no longer accruing any more COVID-19-related costs after its COVID-19 cost recovery filing; and (b) agree to seek recovery of any further COVID-19-related costs in its next base rate case under traditional ratemaking procedures.

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

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