

September 16, 2022

VIA ELECTRONIC MAIL

Carmen Diaz
Acting Secretary of the Board
44 South Clinton Ave., 1st Floor
Post Office Box 350
Trenton, NJ 08625-0350
Phone: 609-292-1599
Email: 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 Acting Secretary Diaz:

The New Jersey Utilities Association (“NJUA”) represents investor-owned utilities (“utilities”) that provide electric, natural gas, telecommunications, water and wastewater services to residential and business customers throughout the state. In reference to the Board’s July 20, 2022, Order Setting Comment Schedule in the above-referenced Docket soliciting input from the public and interested parties on the 13 questions regarding Regulatory Asset Cost Recovery, NJUA offers these comments on behalf of all of our members. Each NJUA member participating in this letter reserves the right to submit comments on an individual basis.

Pursuant to the Board’s March 19, 2020, Order regarding the COVID-19 pandemic issued in BPU Docket No. EO20030254, this filing is being electronically filed by email with the Board Secretary and served by email upon the service list; no paper copies will follow.

1. Has the utility received any insurance payments or any Federal funding or State funding that can be used to offset the deferred expenses? Should the uncollectibles/arrearages be treated differently from costs such as Personal Protective Equipment, etc.?

Each utility reserves the right to comment on how it has used various types of funding, if any, to offset its deferred expenses. As to the treatment of costs, the utilities believe that COVID-related uncollectibles and other incremental expenses should be treated similarly, to the extent they are not already recoverable under a utility’s existing rider mechanism, i.e., the Societal Benefits Charge.

2. Should customer arrearages be treated differently from other expenses?

No. COVID-related uncollectible expenses and other incremental expenses incurred by the utilities as a result of the COVID-19 pandemic should be recoverable. As the nation endured severe economic impacts from COVID-19, the expense associated with personal protective equipment (“PPE”), other related expenses, such as expenses due to complying with distancing requirements for employees, and customers falling behind on the payment of their utility bills all share the same root cause. The moratorium on shut offs inhibited the utilities’ ability to engage with customers and recover these expenses, which exacerbated the amount of accumulated arrearages. Additionally, once the moratorium ended, there were additional statutory and regulatory requirements with respect to collections activity that further contributed to greater arrearage levels.

3. Should the deferred expenses be recovered in rates and amortized? If yes, how long should that amortization period be for? Should the amortization period vary and be dependent on the type of utility, size and its financial situation?

The appropriate mechanism for recovery of incremental COVID-19 expenses, as well as the recovery period, should reflect the circumstances of the individual utility. A one size fits all approach would be counterproductive to the interests of utilities and their customers. As such, the Board should maintain flexibility in the duration of the amortization period as each utility may have slightly different experiences with their regulatory asset accounts.

4. Should the unamortized balance be subject to carrying charges?

Yes. The unamortized balances should be subject to carrying costs at the individual utility’s current weighted average cost of capital. The financial impact on utilities of carrying arrearages and other expenses from the inception of COVID-19, i.e., for approximately three years, was and is significant. Basing the recovery of these dollars on a yet to be determined amortization period calls for an appropriate carrying charge to be factored into the recovery rate.

5. Currently, the EDCs recover uncollectibles via the Societal Benefits Charge (“SBC”). Should gas and water utilities be permitted to recover uncollectibles through a SBC-type recovery mechanisms?

The utilities agree that gas and water utilities should be permitted to recover uncollectibles through a SBC-type recovery mechanism. Some gas and water utilities requested this treatment to be similar to the EDCs who recover their uncollectibles via the SBC. Permitting the gas and water utilities to recover uncollectibles through a SBC type-mechanism for all uncollectible balances would bring parity among the utilities in addressing a commonly shared issue and expense.

6. Should the SBC-type recovery mechanism be limited to COVID-related arrearages, or should it include all arrearages?

As an initial matter, uncollectible expenses, rather than arrearages, are recovered through the existing applicable SBC mechanisms for the EDCs. The EDCs’ current SBC recovery mechanism is applicable to all uncollectible expenses, including those related to the COVID-19 pandemic. Therefore, the utilities believe that the SBC-type recovery mechanism applicable to gas and water companies should include all uncollectible expenses regardless of whether those uncollectibles are specifically attributable to the

COVID-19 pandemic. Not only will this provide consistency in approach among the utilities, but it may also be difficult (and even impossible) to specifically determine what arrearages are attributable to the COVID-19 pandemic, especially given the length of the shut-off moratoria.

7. Should the deferred COVID related expenses, including the arrearages, be shared between shareholders and ratepayers? If yes, what would the accounting treatment be?

12. If a shareholder contribution were approved for the COVID-related uncollectibles, what should be the appropriate sharing be for ratepayers and shareholders?

The utilities provide a joint response to Questions 7 and 12. NJUA fully recognizes the Board's broad authority with respect to utility ratemaking and cost recovery. While that authority gives the Board purview to ask relevant questions related thereto, the underlying premise implicit in the above-referenced questions, *i.e.*, the sharing of COVID related expenses between shareholders and customers, detracts from maintaining focus on the critical goals of reducing arrearages and assisting customers in need. More importantly, the pursuit of such an approach risks jeopardizing the utilities' ability to leverage capital markets cost effectively by increasing financing costs and weakening investor confidence. The utilities note that their shareholders have already contributed substantially to customers and the State in response to the COVID-19 pandemic. In addition, as discussed below, the ordering of mandatory shareholder contribution toward these costs is prohibited as a matter of law. Lastly, it is important to note that the State mandated moratorium on customer shut offs has hampered the utilities' ability to engage with customers and manage the current amount of arrearages as well as the eventual corresponding incremental accounts receivable carrying charges and incremental bad debt expense.

Shareholder Contributions

NJUA member company shareholders have already contributed substantially to assist the citizens of New Jersey through this pandemic. Collectively, NJUA member utilities have given tens of millions of dollars in shareholder-funded, corporate contributions to non-profit partners that help New Jersey customers and community members significantly impacted by the COVID-19 pandemic. In addition, the utilities have worked closely with the State to donate PPE out of their own supplies. These actions collectively yielded substantial contributions by utility shareholders for the benefit of New Jersey residents.

The U.S. Constitution and Regulatory Compact Bars a Mandatory Contribution

Recovery of the cost of serving uncollectible accounts is notably distinct from the shareholder contributions discussed above. Mandatory shareholder funding of the cost of serving uncollectible accounts violates the Takings Clause of the U.S. Constitution. The Takings Clause of the Fifth Amendment provides that private property shall not "be taken for public use, without just compensation." U.S. Const. Amend. V.2. The arrearages at issue are prudently incurred costs driven by governmental directives to serve non-paying customers during the pandemic. *See*, respectively, Executive Order No. 246 and P.L.2021, c.317. In this regard, 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 in other enterprises having

comparable risks.” *State Farm Mut. Auto. Ins. Co. v. State*, 124 N.J. 32, 48 (1991) (internal citation omitted). A mandatory shareholder contribution would effectively prohibit recovery of prudently incurred costs resulting from the utilities’ response to the public health emergency.

Board precedent and the regulatory compact further dictate that shareholders cannot be mandated to fund arrearage relief. The regulatory compact is the foundation upon which the regulated, investor-owned utilities operate, ensuring balance between customer and shareholder interests. The compact has been traditionally understood to mean that, in exchange for the grant of franchise rights, the utility is regulated by the State and required under law to provide safe, adequate, and proper service to all customers. For the framework to work, the State must allow the utility to recover prudently incurred costs, at rates regulated by the Board, plus an opportunity to earn a fair return on capital for its investors. This principle is codified in the New Jersey statute that requires the provision of safe, adequate and proper utility service by regulated utilities at just and reasonable rates (N.J.S.A. 48:2-23). Mandating shareholder contribution in place of allowing recovery of prudently incurred costs is tantamount to denying recovery and impairs the shareholder’s opportunity to earn a fair return. Impairment of the opportunity to earn a fair return may negatively impact investment in New Jersey regulated utilities as compared to peer utilities and therefore inhibit the utilities’ ability to efficiently access the capital markets. This could increase the cost of raising capital, resulting in higher financing costs passed on to customers over time. Moreover, threatening the financial integrity of the utilities is particularly shortsighted, as their financial strength will be critical to attaining the State’s ambitious clean energy goals. The regulatory compact exists to protect customers just as much as it does utilities and their shareholders.

For electric utilities, the incremental uncollectible expenses that will accrue because of unpaid arrearages are part of a long-established “social program” that has endured through restructuring and is available as a safety net in response to this extraordinary public health emergency, pursuant to N.J.S.A. 48:3-60 (a)(1). In relevant legislative history, the Board stated that it 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.” *Restructuring the Electric Power Industry in New Jersey*, Docket No. EX94120585Y (April 30, 1997) at 9. As the Board recognized, “[e]lectric utilities have also been relied upon to ensure universal access to electricity service, to be the provider of certain social programs, and to be *an integral part of a societal safety net for those less fortunate consumers who are unable to pay their utility bills* for reasons beyond their control.” *Id.* at 119. The Board chose to “*emphasize* that electric utilities having the obligation of implementing social programs . . . should not be financially or competitively disadvantaged as a result.” *Id.* at 9. Rather, the Board recommended “timely recovery of these costs by utilities,” *id.*, 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.” *Id.* at 141. The Board’s Findings and Recommendations from April 30, 1997 were forwarded to the New Jersey Legislature and the subsequent Electric Discount and Energy Competition Act of 1999 includes an important provision allowing cost recovery for social programs, which has been relied upon by the electric utilities for over two decades. *See* N.J.S.A. 48:3-60(a)(1). A similar program will be established for water and wastewater and recovery of bad debt accrued as a result of the moratorium has been authorized for all utility sectors. *See* I/M/O the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic, Order Authorizing Establishment of a Regulatory Asset for Incremental COVID-19 Related Expenses. Docket No. AO20060471 (July 2, 2020).

8. Should the COVID-related deferral be recovered in base rates or in a special purpose rider? Should the recovery mechanism be case specific dependent on the type of utility, size and its financial situation?

While the type of utility, size and financial situation of a utility should not determine the utilities' ability to recover prudently incurred costs, the recovery mechanism should be utility-specific depending on the circumstances of each. As the utilities vary across sectors, size and the communities and territories they serve, the utilities may be in uniquely different circumstances, including differences in the timings of base rate cases. In any event, each utility should be permitted to recover its uncollectible expense through a SBC-type recovery mechanism.

9. Should a utility carry the COVID-related expenses and arrearages into a subsequent Rate Case or file a separate petition to recover through a clause?

Each utility should be given the opportunity to determine what path of recovery is best for them and propose it to the Board for approval.

As noted in response to Question 5 above, all utilities should be permitted to recover uncollectible expenses through a SBC-type recovery mechanism similar to the EDCs.

10. When filing for relief should the utility provide proof that it did not receive any COVID-related financial support, either in the form of Federal or State grants, insurance payouts, and/or customer repayment invoices?

On a monthly basis, the utilities provide information to the BPU regarding Federal and State grants to customers. These monthly reports also would indicate if a utility did receive insurance payouts. The utilities can also include verifications or certifications in their petitions to the Board seeking recovery of COVID-19 pandemic-related incremental costs.

11. Does there need to be a true-up of the COVID-arrearages, due to pay downs, Federal funds received, State funds received, Insurance funds received, etc.?

When Federal and State funds are received, the utilities post these funds to customer accounts, thereby reducing customer arrearages. Companies are already providing this information in their arrearage and energy assistance information submitted to the BPU. Savings are in the quarterly COVID report filed with the BPU. Offsets to customer accounts, whether by virtue of customer paydowns or assistance funds received, will be handled through true-ups to whichever mechanism is used by the individual utility to recover its uncollectible expense.

13. Should there be a true-up of the COVID arrearages?

Please see the response to Question 11 above.

Conclusion

We greatly appreciate the Board's dedication to working with the utilities to assist utility customers throughout this challenging time. We agree that it is important to continue to do so, but we must do so constructively. As summarized above, it is our concern that even the consideration of shareholder contribution detracts from the important goals of reducing arrearages and encouraging customers' participation in deferred payment arrangement and assistance programs. It is also worth considering whether this consideration implicitly threatens the utilities' financial viability by weakening investor confidence regarding reasonable treatment of these or similar costs in the future.

Thank you for your continued engagement with stakeholders and consideration on these important issues. Your work in leading our state through this difficult time is commendable and we appreciate the opportunity to submit these comments.

Respectfully,

Mark G

Mark G. Kahrer
Chairman