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September 19, 2022

Via Electronic Mail

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

Please accept for filing in the above-referenced matter Rate Counsel's responses and comments on the COVID-19 Related Regulatory Asset and Cost Recovery questions presented in the July 20, 2022 Order of Board President Fiordaliso.

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 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.

Carmen D. Diaz, Acting Secretary
September 19, 2022
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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**

**Responses and Comments of the New Jersey Division of Rate Counsel
On the COVID-19 Related Regulatory Asset and Cost Recovery Questions
Presented in the July 20, 2022 Order of Board President Fiordaliso**

September 19, 2022

Q.1.a. Has the utility received any insurance payments or any Federal funding or State funding that can be used to offset the deferred expenses?

A.1.a. All COVID-related funds received by the utility from insurance payouts, Federal or State funding, or any other sources should be offset against deferred COVID-related incremental expenses that the Board determines to be recoverable. The time period to review and consider these offsetting funds, including customer paydowns of arrearages, should extend through the expiration date of the recoverable Regulatory Asset. In the event a utility receives any payment, funding or other offset to its COVID-related incremental expenses after the expiration of the Regulatory Asset period, Rate Counsel asks that the Board include a true-up of all material costs and recoveries.

Q.1.b. Should the uncollectibles/arrearages be treated differently from costs such as Personal Protective Equipment (“PPE”), etc.?

A.1.b. Yes. Uncollectibles/arrearages represent expenses that are created because utilities provided service without getting paid for it and, under the direct-write-off method used by most utilities, they are written off directly to expense. The deferred COVID-related incremental uncollectibles/arrearages represent expenses that should be considered extraordinary due to their magnitude caused by the moratoriums. While arrearages are being addressed, PPE costs should no longer be recoverable as extraordinary after March 7, 2022. Although COVID-19 remains an ongoing public health risk requiring certain continued precautions, Governor Murphy recognized that it no longer constitutes an emergency when he terminated the Public Health Emergency by Executive Order 292 effective March 7, 2022. Accordingly, at least since March 7, 2022, PPE expenses should be considered typical operational expenses that should not be eligible for any special recovery because they are no longer extraordinary. With the COVID-19 pandemic continuing for over two years, PPE and other COVID-related costs have become standard business expenses. For example, just as a utility may not receive a special recovery for extra salt or shovels during a cold winter, it should not receive a special recovery for hand sanitizer and masks after expiration of the Public Health Emergency.

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

A.2. See answer A.1.b.

Q.3.a. Should the deferred expenses be recovered in rates and amortized?

A.3.a. Deferred COVID-19 expenses that are not offset by federal and State funds, insurance recoveries, COVID-related cost savings, customer paydowns of arrearages or any other sources should be recovered in rates and amortized. Regardless of how the utility recovers any offsetting funds, a prudency review of the deferred expenses should occur in the next base rate case. This would be similar to the review of any provisional rate recovery mechanism, such as accelerated infrastructure filings. Rate Counsel prefers that all issues related to the review of deferred COVID-19 expense claims take place in the context of a base rate case for those utilities that file fairly frequent base rate cases. This process provides the opportunity to consider the size, financial situation, prudence of deferred expenses, management diligence, customer rate impacts, and other related matters for the particular utility under review. For those utilities, such as the smaller water/wastewater utilities, that do not file frequent rate cases and for which a base rate case could be disproportionately expensive, an alternative process could be to review their deferred COVID-19 expense claims through the petitions they file within 60 days of the expiration of the regulatory asset period. The rate recovery mechanism for those expenses found to be prudent could be through a special purpose tracker for a specified period, which tracker should expire once the cost recovery has been completed. This special purpose tracker should be designated only for expenses directly related to COVID-19 incurred during a specified time period beginning at the start of the COVID-19 pandemic and ending at a determined point in time. A similar special purpose tracker could also be used as the rate recovery mechanism for all other utilities that are not recovering their deferred COVID-19 expenses through base rates. The prudence of the deferred costs recovered through a special purpose tracker must be proven in the utility's next base rate case.

Q.3.b. If yes, how long should that amortization period be for?

A.3.b. Rate Counsel believes that the amortization period should be set at a specified number of years that should be the same for all of the electric distribution companies ("EDCs"), gas distribution companies and large water/wastewater utilities, whether the deferred COVID-19 expense rate recovery occurs through base rates or a special purpose rider. A reasonable amortization period could be between 3 and 5 years, which has been used many times and for many deferred expense issues in prior New Jersey rate regulation. Exceptions could be made for the smaller water/wastewater utilities for which a longer amortization period would be warranted due to their financial condition and/or severe customer rate impact.

Q.3.c. Should the amortization period vary and be dependent on the type of utility, size and its financial situation?

A.3.c. See answer A.3.b.

- Q.4. Should the unamortized balance be subject to carrying charges?
A.4. See answer A.7.b below.
- Q.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 mechanism?
A.5. Rate Counsel believes that the EDCs should be allowed to recover through the SBC only their regular, ongoing uncollectible expenses and should not include extraordinary, non-recurring deferred incremental COVID-related uncollectibles. Rate Counsel does not support allowing gas or water utilities to recover uncollectibles through an SBC-type recovery mechanism. Rather, Rate Counsel prefers that the review of uncollectibles, including deferred incremental COVID-19 uncollectibles, occur in the context of a base rate case. Reviewing these uncollectible expenses in a base rate case allows careful scrutiny of the utility’s billing, collection, customer service and disconnection practices to ensure the utility has exercised prudent diligence and not merely shifted the entire burden of its uncollectible expense onto its ratepayers. A base rate case also allows review of the utility’s cost savings experienced as a direct result of the pandemic and any funds recovered by the utility from any other sources, including customers paying down arrearages, federal and State funds and insurance recoveries. Rate Counsel also notes that the SBC rate mechanism requires perpetual annual filings and reconciliations which, due to the expense involved, may not be financially feasible for the smaller water and sewer utilities.
- Q.6. Should the SBC type recovery mechanism be limited just to COVID-related arrearages, or should it include all arrearages?
A.6. See answer A.5.
- Q.7.a. Should the deferred COVID related expenses, including the arrearages, be shared between shareholders and ratepayers?
A.7.a. As noted above, the utilities should be allowed to recover only their prudently incurred incremental COVID-related expenses, after review in a base rate case or a similar proceeding for the small water and sewer companies. This is consistent with traditional ratemaking principles. Second, the utilities should not recover any claimed costs for services they did not perform, such as charges for shutting off or restoring service that they could not shut off and did not need to restore due to the moratorium on utility service disconnections for non-payment. This is consistent with traditional cost causation principles in ratemaking. Third, Rate Counsel believes that ratepayers should not be charged with 100% of the COVID-related deferred expense rate recovery and that this burden should be shared between the ratepayers and utility shareholders based

on equitable factors. This reflects both principles of equity and the concepts that underlie ratemaking. Utilities and their customers do not operate in a vacuum. The pandemic has caused material financial harm for a wide variety of businesses and ratepayers nationwide, including in the State of New Jersey. Considering these circumstances, it is not unreasonable for the Board to ensure that utility shareholders “share some of the pain” with the ratepayers and be made responsible for a portion of the costs caused by this extraordinary event.

Q.7.b. If yes, what would the accounting treatment be?

A.7.b. Rate Counsel notes that there are several different accounting treatments to accomplish some measure of cost sharing between ratepayers and shareholders. Rate Counsel recommends that the preferred method of cost sharing should be by allowing the utility to recover through its special purpose COVID-19 tracker a certain percentage of its incremental uncollectibles. The percentage could reflect the severe contraction in the United States economy during the pandemic. Such sharing would expose the utilities to a proxy for the economic reality faced by for-profit corporations not protected by a government-granted monopoly and a rate of return calculated to minimize their risks. As PSE&G noted in its August 2, 2022 motion to extend the COVID-19 regulatory asset period, the number of its customers in arrears and the amounts they owe continues to grow. PSE&G specifically noted that arrearages continue to grow for customers who are applying for various payment assistance programs. Accordingly, it would not be unreasonable for the utilities’ shareholders to absorb 33% of their customers’ incremental uncollectible amounts accrued since March 9, 2020. On that day, Governor Murphy signed Executive Order No. 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

Q.8.a. Should the COVID-related deferral be recovered in base rates or in a special purpose rider?

A.8.a See answer A.3.a.

Q.8.b. Should the recovery mechanism be case specific dependent on the type of utility, size and its financial situation?

A.8.b. See answers A.3.a and A.3.b.

Q.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?

¹ EO 103, p. 6.

- A.9. As noted in answers A.3.a and A.5, regardless of the recovery method selected, a prudency review of all claimed COVID-19 related deferred expenses should occur in the utility's next base rate case, similar to the review of any provisional rate recovery mechanism, such as accelerated infrastructure filings. Rate Counsel prefers rate recovery treatment of the Board-approved deferred COVID-related expenses through a special, time-limited tracker clause, as long as the clause is a special purpose tracker for a specified time period, which tracker would expire upon completion of that cost recovery period. For those utilities that do not file frequent rate cases and for which a base rate case could be disproportionately expensive, an alternative process could be to review the prudency of their deferred COVID-19 expense claims through the petitions they file within 60 days of the expiration of the regulatory asset period, followed by establishment of a special, time-limited tracker clause.
- Q.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?
- A.10. Before seeking to recover any of its deferred incremental COVID-related expenses from its ratepayers, the utility must provide proof supported by detailed documentation that it has made reasonably prudent and diligent efforts to assist customers in paying down their arrearages, applied for any COVID-related federal and State grants, and submitted claims for any applicable insurance coverage. The utility should also provide documentation that details and quantifies any of such funds that the utility has received. Additionally, the utility should provide documentation regarding any savings directly attributable to COVID-19, such as a reduction in services provided or expenses.
- Q.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.?
- A.11. With regard to rate recovery of a utility's deferred COVID-related expenses, regardless of the recovery mechanism, Rate Counsel believes that the COVID-related payments that the utility receives, such as customer arrearage paydowns, Federal, State and local funds, and insurance recoveries must be trued up, even if received after the specified amortization period. This is necessary in order to avoid losing the ratepayer benefits in the form of the cost-offsetting additional customer arrearage paydowns, government funds and insurance reimbursements received subsequent to the calculation and implementation of the COVID-related deferred expense recovery rate. This reconciliation process should not cease at the end of the expense amortization period, but should continue to ensure that the utility's claimed COVID-related costs are offset against all of its recoveries, such as delayed insurance recoveries or additional federal funds.

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

A.12. Assuming that the “uncollectibles” refer to deferred incremental COVID-related uncollectibles, see answers to A.7.a and A.7.b.

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

A.13. Yes. See answer A.11.