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June 27, 2023

Via Electronic Mail

Ms. Sherri L. Golden, Board 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 Secretary Golden:

Please accept for filing this letter brief of the New Jersey Division of Rate Counsel ("Rate Counsel") in opposition to the motion for reconsideration of the Board's June 7, 2023 Order, filed by Atlantic City Electric Company ("ACE") on June 22, 2023. Consistent with the March 19, 2020 Order of the New Jersey Board of Public Utilities ("BPU" or the "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. 20030254, copies of this comment letter are being filed with each person on the service list by electronic mail. No paper copies will follow. **Please acknowledge receipt of this comment letter.** Thank you for your consideration and attention to this matter.

INTRODUCTION

The Board cannot grant the relief requested by ACE, as it would require the Board to reverse, modify or vacate an Order it issued almost three years ago, or to re-write a statute. ACE is far out of time to request the former, and the Board cannot do the latter. ACE also has not even alleged any error of law or fact in the Board's June 7, 2023 Order that would merit reconsideration. Instead, this motion is another attempt by ACE to avoid Board review of its claims for incremental costs related to the COVID-19 pandemic and a collateral attack on its pending NGC/SBC filing. Since it lacks any legal or factual support, ACE's motion should be denied.

BACKGROUND

The Board issued an Order almost three years ago, on July 2, 2020, setting forth the procedure for addressing the utilities' incremental costs arising from the COVID-19 pandemic. The utilities were authorized to establish a regulatory asset to account for their prudently incurred incremental costs, and to request recovery of those incremental amounts through a filing either in this COVID-19 proceeding or in a base rate case.¹ This process would enable the Board to review the prudence of each utility's claims, and to exercise its discretionary authority to determine the types and amounts of each claim that are recoverable. That July 2, 2020 Board Order was clear and unambiguous about the procedures it established.

¹ I/M/O the New Jersey Board of Public Utilities' Response to the COVID-19 Pandemic, BPU Docket No. AO20060471, July 2, 2020 ("July 2020 Order")

The Board's June 7, 2023 Order in this proceeding stated that all filings for cost recovery of COVID-19 regulatory asset balances will be evaluated on a case-by-case basis, and reiterated that those claims may be presented as part of a base rate case or a separate proceeding. That Order did not decide the types or amounts of cost claims that a utility may recover. Instead, it listed the required elements of a cost recovery proposal if a utility chooses to request recovery of COVID-19 regulatory asset balances independent of a base rate case. The June 7, 2023 Board Order did not change the two available options for a utility to request recovery of its incremental COVID-related cost claims.

DISCUSSION

ACE's Motion Provides No Basis for Reconsideration

A party may ask the Board to reconsider a decision or order, in a properly supported motion under N.J.A.C. 14:1-8.6(a). Under that rule,

A motion for rehearing, reargument, or reconsideration of a proceeding may be filed by any party within 15 days after the effective date of any final decision or order by the Board.

1. Such motion shall state in separately numbered paragraphs the alleged errors of law or fact relied upon and shall specify whether reconsideration, reargument, rehearing or further hearing is requested and whether the ultimate relief sought is reversal, modification, vacation or suspension of the action taken by the Board or other relief.

2. Where opportunity is also sought to introduce additional evidence, the evidence to be adduced shall be stated briefly together with reasons for failure to previously adduce said evidence.

On its face, ACE's motion is both untimely and does not meet the standard for reconsideration under N.J.A.C. 14:1-8.6(a). Basically, ACE has presented no errors of law or fact by the Board to support its motion, or any reason to consider its motion at this time.

ACE's motion for reconsideration is untimely.

Under N.J.A.C. 14:1-8.6(a), a motion for reconsideration of a Board Order must be filed within 15 days after the effective date of the order. ACE has clearly failed to do so.

ACE's motion conflates the Board's July 2, 2020 Order with its June 7, 2023 Order, asking the Board to "confirm" that ACE may request recovery of its incremental COVID-related costs through its SBC filings. However, neither of those Board Orders, or any other Board Order, authorized the electric utilities to request recovery of their incremental COVID-related costs through their SBC filings. Accordingly, ACE's request for "confirmation" is in fact a request to modify the July 2, 2020 Board Order by adding the SBC proceeding as a third option for it to request recovery of its incremental COVID-related cost claims. A motion asking the Board to reconsider the process it established for handling incremental COVID-related cost claims should have been filed by July 17, 2020. Moreover, there has been no change of material fact warranting the Board's review. As per N.J.A.C. 14:1-8.6, ACE's motion to change the procedures set forth in the July 2, 2020 Board Order is far out of time and should be denied.

1. ACE has identified no error of law or fact by the Board to support its motion for reconsideration.

Under N.J.A.C. 14:1-8.6(a), a motion for reconsideration of a Board Order must identify alleged errors of fact or law by the Board to support its motion. ACE has failed to do so,

providing no basis for reconsideration under N.J.A.C. 14:1-8.6(a). Instead, ACE merely asserts its preference to demand full recovery of all its claimed incremental uncollectibles accrued during the COVID-19 pandemic through its SBC filing rather than as directed by the Board: through a filing in this COVID-19 proceeding or in a base rate case. ACE's procedural preference provides no basis to reconsider the Board Orders of June 7, 2023 or July 2, 2020. In fact, multiple legal bases support denial of ACE's motion.

First, ACE's motion is contrary to N.J.S.A. 48:3-60, the statute establishing the SBC. ACE flatly asks the Board to re-write or ignore a critical portion of that statute. To avoid review of its COVID-related cost claims as contemplated by the July 20, 2020 Order, ACE's motion proposes to recover 100% of its incremental COVID-related cost claims through its annual SBC filings, without any Board review of the types or amounts claimed. That argument is contrary to the express language of the SBC statute. That statute does not guarantee full recovery of claims for uncollectibles, but authorizes the Board to permit a utility to recover "some or all" of its SBC cost claims, "as appropriate." The legislature expressly authorized the Board to exercise its discretion to determine which cost claims are recoverable through the SBC, stating:

[T]he board shall permit each electric public utility and gas public utility to recover some or all of the following costs through a societal benefits charge that shall be collected as a non-bypassable charge imposed on all electric public utility customers and gas public utility customers, as appropriate.

N.J.S.A. 48:3-60(a) (emphases added).

ACE misrepresents the statute as requiring recovery of uncollectibles in the SBC, quoting only a portion of the statute and deleting the critical phrases "some or all" and "as appropriate."

Compare N.J.S.A. 48:3-60(a) with 6/22/23 ACE motion p. 3. The language that ACE omits expressly authorizes the Board to determine the appropriately recoverable portion of uncollectibles in an SBC cost claim. ACE's motion deletes those essential phrases from the statute, and thereby asks the Board to ignore the plain language of the statute and divest itself of its authority to review the recoverability of ACE's SBC claims. Reading the statute as written plainly shows that the statutory language establishing the SBC requires the Board to reject ACE's claim that the Company must recover 100% of its incremental COVID-related cost claims through its annual SBC filings.

Second, the legislature authorizes and requires the Board to set just and reasonable rates in all of its proceedings. N.J.S.A. 48:2-21. Rate setting in this context requires review of ACE's incremental COVID-related uncollectible claims for prudence and other appropriate indicia of recoverability. In fact, in its June 7, 2023 Order, the Board reiterated that a utility's compliance with the filing requirements in that Order "does not guarantee Board approval of requested COVID-19 regulatory asset cost recovery." Id., p. 4.

Well-established principles of administrative law also recognize the Board's discretion to select the procedures that it uses. The Board has done so, directing the utilities to file claims to recover their incremental COVID-19 related costs in either this COVID-19 proceeding or in a base rate case, and to continue to request recovery of their average pre-pandemic level of uncollectibles through an SBC filing.²

² See In re Provision of Basic Generation Service for the Period Beginning June 1, 2008, 205 N.J. 339, 347 (2011) (stating New Jersey agencies enjoy great leeway when selecting the procedures and methods to fulfill their statutory mandates).

Third, in addition to its current unsupported motion, ACE has elected to disregard the process for incremental COVID-related cost recovery set forth by the Board in the July 2, 2020 Order. ACE has filed a base rate case,³ but has not requested its incremental COVID-related costs in that proceeding. ACE also has stated, in writing, its defiance of the July 2, 2020 Board Order in this COVID-19 proceeding, unilaterally asserting its contrary decision not to request its incremental COVID-related costs through a filing under this docket.⁴ In addition, ACE's motion is clearly contrary to the July 2, 2020 Board Order governing requests to recover incremental COVID-related costs. That Order directed each utility to file its claim for incremental COVID-related costs either under this COVID-19 docket or in a base rate case. Instead, contrary to the Board's direction, ACE now demands recovery of its entire COVID-related incremental costs, without any Board review for prudence or recoverability, through its annual SBC filing.⁵ ACE simply refuses to comply with the Board's direction. This bold claim and its embodiment in this motion must be denied.

CONCLUSION

ACE's motion is an unsupported attempt to evade Board review of the types of expenses it claims, the amounts of those claims, the return on those amounts, and Board discretion to

³ I/M/O The Petition of Atlantic City Electric Company for Approval of Amendments to its Tariff to Provide for an Increase in Rates and Charges for Electric Service Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, and for other Appropriate Relief (2/2023), BPU Docket No. ER23020091.

⁴ In the January 31, 2023 letter from Cynthia L. M. Holland, Esq. to the Board Secretary, ACE declared that it stopped deferring any COVID-19 related expenses to its Board-authorized regulatory asset on Sept. 30, 2021. Instead, ACE stated its position that it will request recovery of all its uncollectible expenses through its SBC filings, instead of in the COVID-19 proceeding or in its base rate case. Rather than offer any legal support for its defiance of the Board's July 2, 2020 Order, ACE supported its non-compliance by citing its own October 1, 2021 and January 12, 2023 Compliance Plans in the COVID-19 proceeding. ACE's current motion relies on the same specious argument, and must be denied. That January 31, 2023 ACE letter is attached as Exhibit A.

⁵ I/M/O The Petition Of Atlantic City Electric Company To Reconcile And Update The Level Of Its Non-Utility Generation Charge And Its Societal Benefits Charge (2023), BPU Docket No. ER23020057.

Secretary Sherri Golden

June 29, 2023

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allocate a portion of the economic harm from the COVID-19 pandemic to all affected parties. Since ACE's motion for reconsideration lacks any legal or factual support, has not identified a single error of law or fact in the June 7, 2023 Board Order, is in any event far out of time, and contrary the Board's prior orders and the relevant statute, the motion should be denied.

Respectfully submitted,

BRIAN O. LIPMAN, ESQ.
DIRECTOR, DIVISION OF RATE COUNSEL

By: */s/ Brian Weeks*
Brian Weeks, Esq.
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c: Service List (via electronic mail)

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January 31, 2023

VIA ELECTRONIC MAIL

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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 Acting Secretary Diaz:

Pursuant to an Order Authorizing Establishment of a Regulatory Asset for Incremental COVID-19 Related Expenses (the "Order"), approved and issued by the New Jersey Board of Public Utilities (the "Board") on July 2, 2020, New Jersey's regulated utilities were authorized to defer COVID-19-related incremental costs and related offsets into a regulatory asset.

In compliance with the Order and consistent with its terms, Atlantic City Electric Company ("ACE" or the "Company") has tracked such prudently incurred incremental costs and includes the most current quarterly report as **Attachment 1**. Because of the exigencies created by the COVID-19 pandemic, **Attachment 1** is accompanied by a Certification in lieu of an Affidavit of Verification. The individual providing the Certification is a corporate officer of ACE. ACE will continue reporting these relevant costs on a quarterly basis.

As stated in the Compliance Plan filed by the Company on October 1, 2021, the Company stopped deferring COVID-19 related expenditures to the regulatory asset on September 30, 2021. The attached report includes informational data regarding aging of accounts receivable balances, as well as write-off information and number of reconnected customers. Like other uncollectible expenses, the COVID-19-related incremental uncollectible expenses will be addressed in the Company's Societal Benefits Charge ("SBC") update/reconciliation filings and not included in the COVID-19 regulatory asset. As previously reported, the existing balance for ACE is a regulatory

Carmen D. Diaz
January 31, 2023
Page 2

liability, which the Company intends to address in its annual SBC filing, anticipated for filing February 1, 2023. Accordingly, it is the Company's position, consistent with its the January 12, 2023 Compliance Plan in this docket, that no additional reporting is required. As such, this January 31 quarterly report will mark the final report filed by ACE unless the Board directs otherwise.

Pursuant to the Order issued by the Board in connection with *In the Matter of 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, Order dated March 19, 2020, this letter and its attachment(s) are being electronically filed with the Secretary of the Board and the New Jersey Division of Rate Counsel. No paper copies will follow.

Should you have any questions or concerns regarding the above, please do not hesitate to contact me.

Respectfully submitted,



Cynthia L.M. Holland
An Attorney at Law of the
State of New Jersey

Enclosure

cc: Service List

**IN THE MATTER OF THE NEW
JERSEY BOARD OF PUBLIC
UTILITIES' RESPONSE TO THE
COVID-19 PANDEMIC**

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
BPU DOCKET NO. AO20060471**

CERTIFICATION OF WILLIAM D. MOKOID

WILLIAM D. MOKOID, of full age, certifies as follows:

1. I am the Regional President for Atlantic City Electric Company ("ACE"). In light of the constraints associated with the COVID-19 pandemic, I am submitting this Certification in lieu of Verification in support of ACE's Incremental Costs Report in the above-referenced docket.

2. I hereby certify that, as Regional President, I am duly authorized to make this Certification on ACE's behalf.

3. I further certify that the information and data contained in the Incremental Costs Report are true and correct to the best of my knowledge, information, and belief.

4. I further and finally certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: _____

1/31/23

W. D. Mokoid
WILLIAM D. MOKOID

Attachment 1

Atlantic City Electric Company ("ACE")
New Jersey
COVID-19 - Incremental Costs
Other Data

	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	
Receivable Aging Data (A/R \$)																									
0-30 Days	49,746,172	42,512,628	44,860,247	35,298,231	44,889,552	82,333,130	93,950,811	83,654,838	55,606,286	50,559,872	60,406,187	68,273,051	73,969,341	62,111,315	53,575,334	52,532,134	42,662,450	66,102,343	92,098,084	97,592,871	97,592,236	67,372,118	56,032,162	59,417,793	
31-60 Days	12,746,794	10,884,831	12,521,984	11,749,117	8,480,397	10,110,831	17,636,353	18,770,863	17,985,726	11,865,624	9,465,393	13,898,479	11,659,112	16,124,137	12,106,150	12,310,970	11,833,303	7,320,178	13,702,368	15,725,941	16,208,236	19,345,519	11,726,464	10,023,666	
61-90 Days	6,039,013	7,899,478	7,346,620	7,515,076	7,033,467	4,950,589	6,099,837	9,413,128	12,437,450	11,235,547	6,517,737	5,395,039	5,476,479	7,650,371	8,834,244	7,836,548	6,896,887	6,728,646	5,213,260	6,783,800	8,894,755	9,306,566	11,855,709	8,144,666	
91-120 Days	3,186,241	4,459,105	6,503,741	5,605,073	5,773,020	5,157,274	4,190,572	4,753,974	7,073,206	9,976,143	9,032,547	4,914,671	6,503,235	4,198,941	6,040,926	7,252,527	6,184,740	5,632,719	5,224,801	3,942,678	5,028,895	7,202,890	7,432,544	8,390,283	
121-150 Days	3,102,139	2,474,353	3,957,333	5,639,327	4,674,436	4,637,380	3,843,944	3,476,938	4,033,694	6,221,735	9,096,402	7,512,109	8,116,803	5,798,996	3,934,269	5,372,346	5,789,443	5,498,642	4,997,906	4,336,586	3,381,890	4,040,249	6,273,287	7,027,898	
151+ Days	11,728,896	12,078,606	13,300,578	15,723,938	19,432,334	22,098,755	23,658,751	20,260,275	20,378,461	22,329,091	26,045,559	31,113,532	52,280,996	54,385,706	52,314,004	52,136,119	43,131,922	44,484,294	44,705,006	37,826,363	36,554,166	32,605,180	31,852,880	33,250,956	
Total	\$ 86,549,255	\$ 80,309,001	\$ 88,490,503	\$ 81,530,762	\$ 90,283,206	\$ 129,287,959	\$ 149,380,268	\$ 140,330,015	\$ 117,514,824	\$ 112,248,012	\$ 120,565,826	\$ 131,106,881	\$ 158,005,967	\$ 150,269,466	\$ 136,804,927	\$ 137,440,643	\$ 116,498,746	\$ 135,766,821	\$ 165,941,425	\$ 166,208,438	\$ 167,665,178	\$ 139,872,521	\$ 124,503,046	\$ 124,255,262	
Receivable Aging Data (Total Customers)																									
0-30 Days	286,593	262,687	271,395	277,482	269,352	282,563	281,203	291,839	277,315	286,221	298,231	302,599	300,164	286,523	274,256	285,319	279,777	295,958	304,479	296,170	296,798	284,762	279,102	281,301	
31-60 Days	48,080	46,755	43,494	40,181	37,490	36,180	46,863	47,020	50,602	43,150	45,838	48,988	43,029	45,390	41,023	43,151	45,158	39,633	46,828	42,525	51,760	51,600	48,836	47,059	
61-90 Days	22,545	25,864	24,637	22,213	18,049	15,247	15,787	20,838	26,144	25,522	18,267	20,907	20,877	19,446	20,602	21,016	21,032	20,810	19,895	18,649	19,499	28,670	28,645	24,907	
91-120 Days	15,097	16,270	17,864	16,137	14,393	10,663	9,007	10,036	13,815	17,490	16,830	13,907	13,278	12,624	12,875	13,278	14,614	13,597	12,395	11,301	12,084	14,309	21,184	18,925	
121-150 Days	12,199	10,995	13,014	13,979	11,827	9,839	7,875	6,610	7,999	10,975	14,100	12,356	10,272	10,567	9,712	9,484	9,880	10,682	10,144	8,530	8,248	8,157	11,572	17,488	
151+ Days	79,691	82,013	85,163	89,819	94,067	94,986	94,438	84,100	81,884	83,284	87,211	93,251	96,375	97,287	98,804	100,080	91,941	93,437	94,572	88,120	87,806	87,861	89,374	93,198	
Total	464,205	444,584	455,567	459,811	445,178	449,478	455,173	460,443	457,659	466,642	480,477	488,674	484,624	471,837	457,272	472,328	462,402	474,117	488,313	465,295	476,195	476,359	478,713	482,878	
Write-Offs Data																									
Actual Write-Off	863,626	440,380	(9,359)	(31,937)	(17,390)	125,595	801,213	3,923,101	169,307	14,236	30,212	13,098	9,379,473	714,444	55,168	330,083	2,502,847	858,636	745,365	3,096,991	1,394,563	2,196,182	1,696,275	1,751,243	
Recoveries	(161,618)	(208,462)	(159,300)	(132,771)	(99,883)	(105,571)	(90,662)	(87,441)	(133,298)	(98,779)	(61,835)	(119,094)	(140,412)	(169,744)	(141,009)	(105,303)	(147,649)	(113,165)	(65,598)	(101,179)	(104,293)	(112,941)	(103,238)	(82,111)	
Net Write-Offs	702,007	231,918	(168,659)	(164,708)	(117,073)	20,024	710,551	3,835,660	36,010	(84,543)	(51,624)	(105,995)	9,239,061	544,700	(85,841)	224,780	2,355,198	745,470	679,767	2,997,812	1,290,270	2,073,241	1,593,037	1,669,132	
Cumulative Number of Customers Reconnected		32	101	186	213	219																			

Footnotes:

- Note 1 Actual Write-offs increase in January 2022 is related primarily to write-offs of inactive accounts only during that month.
- Note 2 Total Write-Offs includes generation.

In the Matter of the New Jersey
Board of Public Utilities'
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Pandemic
BPU Docket No. AO20060471

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