



Submitted via E-Mail
July 7, 2023

State of New Jersey, Board of Public Utilities
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P.O. Box 350
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**RE: NJ Board of Public Utilities Response to the COVID-19 Pandemic
Docket No. AO20060471
Request to Clarify Reporting Requirements Under P.L. 2022, C. 107**

Dear Secretary Golden:

On behalf of Natural Resources Defense Council (NRDC), please accept these comments to the New Jersey Board of Public Utilities in the above referenced proceeding. NRDC was granted Participant status in this proceeding and has been participating actively in the stakeholder work groups associated with this docket.

This letter asks the Board and/or Staff to clarify one specific aspect of the reporting requirements established in the Board's Order Adopting Standardized P.L. 2022, C. 107 Reporting Template, dated May 10, 2023 ("Order"). Utilities' first reports under that Order are due on August 1, 2023.

For the reasons explained below, we ask that the Board and/or Staff provide a clear definition of "residential" customers, for purposes of reporting, to ensure that accounts providing service to multi-family, master metered residential buildings are identified as residential accounts. We suggest that data on such accounts be reported as "multi-family residential," to distinguish them both from "non-residential" accounts and from "residential" accounts where the resident is the accountholder. We believe this clarification is necessary to achieve the law's central purpose—identifying energy and water affordability challenges across the state and devising policies and programs to ensure all New Jerseys residents have affordable access to essential utility services.

P.L. 2022, C. 107 requires utilities to report data on discontinuances for non-payment, customer arrears, deferred payment agreements, and other data points related to access to affordable utility service. We thank the Board and Staff for their efforts to implement this important new law. The Board recently took a critical step forward by adopting a standardized reporting template. Such a template, with clear definitions of terms, is essential to obtain consistent, high-quality data that the Board and the public need to more fully understand utility affordability challenges in the state.

We appreciate that Staff solicited feedback from stakeholders on a draft template and made numerous changes to account for comments submitted by utilities, NRDC, and others. And we

respect that not every change recommended in comments was incorporated into the final template.

However, as utilities are preparing their initial reports, we believe there is one discrete, cross-cutting issue, which was raised in stakeholder comments but not resolved in the final template, that the Board and/or Staff can and should clarify now to ensure the integrity of the first ten months of data.¹

One of the law's central features is that it requires data to be broken down by "customer class."² It does not identify or define the specific classes that must be used, but it does refer in multiple places to "commercial and residential customers" as the focus of the Legislature's concerns about utility affordability.³ Accordingly, the Board's reporting template requires utilities to report data separately on "residential and non-residential" accounts.

Although the term "residential" would seem to be clear, it is in fact ambiguous due to the way in which master metered multi-family residential buildings may be classified in a utility's rate structure. This situation primarily arises for water and wastewater service. For electric and gas service, each unit in a multi-family building is typically individually metered for electric and gas, with the resident as the account holder. In contrast, for water and wastewater service, multi-family buildings are commonly master metered, with the building owner as the account holder.

The Board's regulations define "residential customer" as "a customer who receives service from a regulated entity for use in a residence."⁴ This would seem to include master metered multi-family buildings. Yet, the tariffs for the state's three largest investor-owned water utilities appear to treat multi-family buildings, at least where the building owner is the account holder, as "commercial" customers or to otherwise exclude them from the "residential" customer class.⁵

¹ These data are due within the next two months. The Order requires utilities to submit data from April-June 2023 by August 1, 2023, and to submit data from Sept. 2022 through March 2022 by Sept. 15. Order at 6-7.

² N.J.S.A. 48:2-29.58.

³ For example, the law requires the Board, at the close of this proceeding, to assess the data and provide a report to the Legislature concerning the effect of the COVID-19 pandemic on electric, gas, water, and wastewater utility service to "commercial and residential customers in this State." Id. After this proceeding ends, it requires the Board to continue collecting the same set of data concerning "commercial and residential customer[s]," on an ongoing basis, and to publish online a quarterly report that includes "the board's assessment of whether existing customer assistance programs are presently, and in the future, sufficient to meet the financial needs of customers in arrears who are unable to pay those arrears in full, as well as the needs of customers who may be unable to pay future bills." N.J.S.A. 48:2-29.59.

⁴ NJAC 14:3-1.1.

⁵ See New Jersey American Water Co. Tariff, effective June 2023, Fourth Revised Sheet No. 35, https://www.amwater.com/njaw/resources/PDF/rates/newjersey_americanwater_rates_NJAWC_Tariff.pdf ("Residential uses in Commercial class (Apartments and condominiums) while considered commercial customers, are not eligible for [a certain economic development] program."); Veolia Tariff, effective June 2023, Second Revised Sheet No. 14, https://mywater.veolia.us/sites/default/files/VWNJBUNO1WaterWastewaterTariffEffJune2023_0.pdf (defining "residential customer" to include single-family properties, but to exclude condominiums, cooperatives, or "apartment developments," whether individually metered or master metered); Aqua Tariff, effective June 2019,

Anecdotally, at least, this appears to be a common practice among both publicly and privately owned water utilities nationally.

We recommend that the Board take the approach followed by the California Water Resources Control Board, which, in its template for water systems' comprehensive annual reports, directs utilities to report certain data separately for "single-family residential" (described as "single family detached dwellings") and "multi-family residential" (including "apartments, condominiums, town houses, duplexes, and trailer parks").⁶

This approach would be consistent with Governor Murphy's concern that all New Jersey residents maintain access to essential utility service, as reflected in his adoption and extension of the COVID-19 utility shutoff moratorium and the subsequent grace period. In a series of executive orders, he extended shutoff protections during the "to New Jersey residents, which includes all residential accounts and any accounts primarily serving residential customers."⁷ When the Legislature further extended the grace period, it likewise sought to protect all residents.⁸

The shutoff moratorium and grace period ended last year. But P.L. 2022, C. 107, by requiring reporting of shutoffs and associated data (e.g., arrears, deferred payment agreements, assistance programs), shares the moratorium's underlying purpose of promoting affordable access to essential utility service for all residents of New Jersey. Accordingly, the Board should adopt a similarly expansive definition of "residential" for purposes of reporting under the new law. This would enable the Board, and the Legislature, to have a full picture of how shutoffs and utility debt affect New Jersey residents.

We respectfully request that the Board provide the requested clarification to utilities and all other concerned parties before the first reporting deadline on August 1, 2023.

Original Sheet No. 3, https://www.aquawater.com/assets/doc/1_tariff-aqua-new-jersey-inc-bpu-no-18-water-updated-122021-sht-6.pdf (defining "residential class" as "An individually-metered dwelling unit intended for human habitation (including a detached house, rowhome, townhouse, condominium and mobile home) or an individually-metered home or building consisting of not more than two dwelling units" and "commercial class" as including "apartments [and] condominium complexes").

⁶ California Water Resources Control Board, "Drinking Water System's 2021 Annual Report to the Division of Drinking Water for the Year Ending December 31, 2021," https://drive.google.com/file/d/1-vK3gDLlwqvUuLF5NgYRSxFJERLg_N7o/view?usp=sharing. The California template makes this distinction in regard to data on connections, water deliveries, billing, revenues, shutoffs, deferred payment agreements, and arrears. Further, specifically for purposes of reporting shutoffs for nonpayment, California legislation defines "residential service" as "water service to a residential connection that includes single-family residences, multifamily residences, mobile homes, including, but not limited to, mobile homes in mobile home parks, or farmworker housing." Cal. Health & Safety Code, Health & Safety Code Section 116904.

⁷ E.O. 190 (para. 1), E.O. 229 (para. 1), E.O. 246 (para. 3).

⁸ P.L. 2021, c. 317 (providing that covered residential customers include "a residential customer of record...or any residential tenant of a residence where the owner or any agent or other representative of the owner of the residence is a non-residential customer of record....").

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Lawrence Levine', with a horizontal line extending to the right.

Lawrence Levine
Director, Urban Water Infrastructure
Natural Resources Defense Council

CC: Service List