

92DC42
PO Box 6066
Newark, DE 19714-6066

667.313.0418 - Telephone
302.429.3801 - Facsimile
philip.passanante@pepcoholdings.com

500 N. Wakefield Drive
Newark, DE 19702

atlanticcityelectric.com

July 19, 2023

VIA ELECTRONIC MAIL
sherri.golden@bpu.nj.gov
board.secretary@bpu.nj.gov

Sherri L. Golden, RMC
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

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

Dear Secretary Golden:

By Motion filed June 22, 2023 Atlantic City Electric Company (“ACE” or the “Company”) filed a letter motion (the “Motion”) seeking confirmation by the New Jersey Board of Public Utilities (“BPU” or “Board”) that its pending Non-Utility Generation Charge (“NGC”) and Societal Benefits Charge (“SBC”) Reconciliation Petition, BPU Docket No. ER23020057, complies with the Board’s recent Order dated June 7, 2023, in the above captioned docket (“June 7 Order”). More specifically, the Company asked that the Board determine (1) that the existing component of ACE’s SBC is the appropriate regulatory mechanism for recovery of COVID-19-related regulatory asset balances and (2) that, for purposes of compliance with the June 7 Order, “a new, separate special-purpose clause or rider” is not required (emphasis added). On June 27, 2023, the New Jersey Division of Rate Counsel (“Rate Counsel”) filed its Reply to the Motion. Please accept the following as the Company’s response to Rate Counsel’s baseless allegations.

Timeliness and the June 7 Order

Rate Counsel’s claim that the Motion requires the Board to “reverse, modify or vacate an Order it issued almost three years ago” strains credulity. It is clear on its face that the Motion sought clarification of the June 7 Order. ACE timely filed its Motion on June 22, in accordance with the regulation.

To accept Rate Counsel's position that cost recovery was settled back in 2020 and merely "reiterated" in the June 7 Order, one must ignore the procedural history of this matter. Specifically, Rate Counsel overlooks the orders of President Fiordaliso directing parties to submit comments about cost recovery mechanisms, and the many comments submitted in the docket. The questions presented by President Fiordaliso included questions about the SBC and several comments discuss the SBC. The June 7 Order presents itself as a conclusion to, at least, part of that quasi-legislative regulatory process.

Rate Counsel's reading of the June 7 Order renders that comment process superfluous. Surely it was not the Board's intent to ignore the comments of the entire utility industry as well as Rate Counsel and other interested parties; indeed, the law discourages the drawing of such conclusions. Thus, ACE rightly understood the June 7 Order as a new directive and ACE reasonably submitted a request for clarification of the language.

Clarification and Recovery via the SBC

ACE respectfully submits that the matter pending before the Board is grammatical – and the matter may be resolved by reference to a comma. The words "new" and "separate" are offset by commas from the phrase "special-purpose clause or rider" in the June 7 Order. Commas can mean "and" or they can mean "or", depending on the context and the intent. Here, the Board presented a series of adjectives. ACE reasonably seeks clarification of whether "new" is a requirement or whether recovery may be made through an existing, separate, special-purpose clause or rider.

Clarification is a very reasonable request since a "special-purpose clause" already exists with a well-established tariff mechanism for the recovery of bad debt: the SBC. Indeed, use of the SBC for recovery was a question presented for comment by President Fiordaliso. The SBC was then the subject of discussion in comments submitted in this docket prior to the June 7 Order. Not all utility companies have use of the SBC (notably, water companies do not), which may be why the word "new" was inserted as an option. ACE has already filed for recovery through the SBC and submits that the sentence could be read in a manner that authorizes that filing. Nevertheless, in an abundance of caution, the Company sought clarification and asks the Board to grant the Motion.

Rate Counsel's claim that ACE's interpretation "is contrary to the express language of the SBC statute" is false. A statute's plain language is the "best indicator" of legislative intent,¹ but that plain language must be read "in context."² To make its point, Rate Counsel omits key portions of the statute that support a contrary reading of the statute. In other words, Rate Counsel has taken its preferred language out of context.

¹ DiProspero v. Penn, 183 N.J. 477, 492, 874 A.2d 1039 (2005).

² Spade v. Select Comfort Corp., 232 N.J. 504, 515, 181 A.3d 969 (2018).

Looked at through a wider lens, N.J.S.A. 48:3-60a states that

the [B]oard 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:**

- (1) The costs for the social programs . . . ;
- (2) Nuclear plant decommissioning costs;
- (3) The costs of demand side management programs that were approved by the [B]oard pursuant to its demand side management regulations prior to April 30, 1997. . . . [continuing as the clean energy program]
- (4) Manufactured gas plant remediation costs, . . . ; and
- (5) The cost, of consumer education, . . .

[Emphasis added.]

Rate Counsel claims that ACE seeks recovery that would “re-write a statute.” The Company respectfully disagrees. ACE merely seeks a Board determination consistent with the plain language read in context. Rate Counsel focuses on the words “some or all,” but the more complete phrase is “some or all of the following costs.” The “following costs” are then delineated in the five subpoints of the statute. ACE recovers for social programs, including the cost of serving bad debt, through the SBC, but it does not recover the costs of nuclear plant decommissioning or manufactured gas plant remediation costs. Accordingly, ACE has been permitted to recover “some” of the costs that are relevant to it, but not all, “as appropriate.”

Moreover, ACE’s reading of the statute accords with the legislative intent referenced in the Motion and elsewhere in the record. The legislative history makes it clear that the Board expected utilities to recover the cost of social programs through the SBC. As noted above, President Fiordaliso asked questions about SBC recovery for COVID-19 related costs, including bad debt. In the June 7 Order, the Board stated that any filing for recovery of balances independent of a rate case be a “new, separate, special-purpose clause or rider.” ACE seeks clarity on the language and confirmation that the Board will allow recovery via the SBC.

Further, as noted in the Motion and as previously stated, the Company’s COVID-19 Quarterly Reports and January 31, 2023 letter to the Board in the COVID-19 proceeding have consistently expressed ACE’s position that any pandemic-related deferred Uncollectible expenses were to be addressed and recovered in its SBC.³ For example, in the Company’s COVID-19 Quarterly Report dated October 31, 2022, the Company stated:

³ This legal position is fully supported by a letter filed by Public Service Electric and Gas Company (“PSE&G”) dated July 18, 2023 in this docket. PSE&G is similarly situated to ACE in that it has been deferring COVID-19-related uncollectible expenses in its SBC and is currently seeking recovery of those expenses through its SBC over a three-year amortization, as is ACE.

Like other uncollectible expenses, the COVID-19-related incremental uncollectible expenses will be addressed in the Company's Societal Benefits Charge update/reconciliation filings **and not included in the COVID-19 regulatory asset.**

[Emphasis added.]

Consistent with that statement, in the Company's 2021 and 2022 SBC proceedings, the Board approved stipulations of the parties deferring cost recovery of COVID-19-related Uncollectible expense in an amount of \$15.735 million (2021 proceeding) and \$9.331 million (2022 proceeding). In each case, the deferred COVID-19-related Uncollectible expenses were authorized by Board Order to be deferred in ACE's SBC for future recovery by the Company.⁴

Finally, Rate Counsel makes unfounded claims that ACE seeks "to avoid Board review of its claims for incremental costs related to the COVID-19 pandemic" and has somehow made "a collateral attack on [ACE's] NGC/SBC filing." It is unclear where Rate Counsel reached this false conclusion. ACE acknowledges that it has filed its "pending NGC/SBC filing" with the costs included therein. ACE does not question the Board's ability to review the Company's costs, which is why ACE has brought the matter to the Board. The Company expects review in that docket, which is where ACE has traditionally reconciled such costs. It appears that Rate Counsel has misunderstood the Company's request for clarification as an exemption from regulatory oversight, which is well beyond anything stated in the Motion.

Conclusion

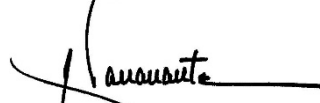
For the foregoing reasons, ACE disputes Rate Counsel's allegations and renews its Motion seeking clarification of the June 7 Order. Specifically, the Company asks the Board to determine (1) that the existing component of ACE's SBC is the appropriate regulatory mechanism for recovery of COVID-19-related regulatory asset balances (the cost of serving bad debt and the regulatory liability established for COVID expenses) and (2) that, for purposes of compliance with the June 7 Order, "a **new**, separate special-purpose clause or rider" is not required (emphasis added).

⁴ See Board Order dated June 7, 2023 in BPU Docket No. ER22020038 (2022 NGC/SBC) and Board Order dated October 6, 2021 in BPU Docket No. ER21020088 (2021 NGC/SBC). In each proceeding, the COVID-19-related Uncollectible expense was determined by deducting from the total Uncollectible expense for the relevant recovery period the portion related to non-pandemic Uncollectible expense, which was determined by utilizing the Board-authorized methodology for calculating pre-pandemic Uncollectible expense.

Sherri L. Golden, RMC
July 19, 2023
Page 5

The Company appreciates the Board's time and consideration of this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Passanante", written over a horizontal line.

Philip J. Passanante
An Attorney at Law of the
State of New Jersey

cc: Service List

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 Nos. EO20030254 and AO20060471

Service List

BPU

Sherri L. Golden
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350
sherri.golden@bpu.nj.gov
board.secretary@bpu.nj.gov

Taryn Boland
Chief of Staff
taryn.boland@bpu.nj.gov

Robert Brabston, Esquire
Executive Director
robert.brabston@bpu.nj.gov

Stacy Peterson
Deputy Executive Director
stacy.peterson@bpu.nj.gov

Michael Beck, Esq.
Chief Counsel
michael.beck@bpu.nj.gov

Carol Artale, Esquire
Deputy General Counsel
carol.artale@bpu.nj.gov

Heather Weisband, Esquire
heather.weisband@bpu.nj.gov

Alice Bator
Director, Division of Audits
alice.bator@bpu.nj.gov

Michael Kammer
Director, Division of Water
michael.kammer@bpu.nj.gov

Lawanda Gilbert
Director, Division of Cable
Television and Telecommunications
lawanda.gilbert@bpu.nj.gov

Julie Ford-Williams
Director
Division of Customer Assistance
julie.ford@bpu.nj.gov

DIVISION OF LAW

Daren Eppley, Esquire
Division of Law
Hughes Justice Complex
Public Utilities Section
25 Market Street
P.O. Box 112
Trenton, NJ 08625
daren.eppley@law.njoag.gov

Pamela Owen, Esquire
pamela.owen@law.njoag.gov

RATE COUNSEL

Brian O. Lipman, Esquire
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625-0003
blipman@rpa.nj.gov

T. David Wand, Esquire
dwand@rpa.nj.gov

Susan McClure, Esquire
smcclure@rpa.nj.gov

Brian Weeks, Esquire
bweeks@rpa.nj.gov

Maria Novas-Ruiz, Esquire
mnovas-ruiz@rpa.nj.gov

Bethany Rocque-Romaine, Esquire
bromaine@rpa.nj.gov

Robert Glover, Esquire
rglover@rpa.nj.gov

Debora Layugan
dlayugan@rpa.nj.gov

RATE COUNSEL CONSULTANT

Susan Baldwin
13 Church Hill Street
Watertown, MA 02472
smbaldwinconsulting@gmail.com

ELECTRIC & GAS COMPANIES

ACE

Cynthia L.M. Holland, Esquire
Assistant General Counsel
Atlantic City Electric Company
92DC42
500 N. Wakefield Drive
Newark, DE 19714-6066
cynthia.holland@exeloncorp.com

PSE&G

Matthew Weissman, Esquire
PSE&G
80 Park Plaza, T-5
Newark, NJ 07102-4194
matthew.weissman@pseg.com

Danielle Lopez
danielle.lopez@pseg.com

Bernard Smalls
bernard.smalls@pseg.com

Caitlyn White
caitlyn.white@pseg.com

Michele Falco
michele.falco@pseg.com

JCP&L

Joshua Eckert, Esquire
JCP&L
300 Madison Avenue
Morristown, NJ 07960
jeckert@firstenergycorp.com

ROCKLAND

John L. Carley, Esquire
Consolidated Edison Co. of NY
4 Irving Place
New York, NY 10003
carleyj@coned.com

NJNG

Andrew K. Dembia, Esquire
1415 Wycoff Road
P.O. Box 1464
Wall, NJ 07719
adembia@njng.com

**SOUTH JERSEY GAS &
ELIZABETHTOWN GAS**

Deborah Franco, Esquire
Regulatory Affairs Counsel
520 Green Lane
Union, NJ 07083
dfranco@sjindustires.com

BOROUGH OF BUTLER

Robert H. Oostdyk, Jr., Esquire
Murphy McKeon P.C.
51 Route 23 South
P.O. Box 70
Riverdale, NJ 07457
roostdyk@murphymckeonlaw.com

James Lampmann
Borough Administrator
1 Ace Road
Butler, NJ 07405
jlampmann@butlerborough.com

WATER/WASTEWATER COMPANIES**Gordon's Corner Water Company**

David G. Ern, President
27 Vanderburg Road
P.O. Box 145
Marlboro, NJ 07746
dgern@gordonscornerwater.com

Eric Olsen
eolsen@gordonscornerwater.com

Aqua NJ, Inc.

Adam Burger
10 Black Forest Road
Hamilton, NJ 08691
aburger@aquaaamerica.com

Kimberly Joyce
kajoyce@aquaaamerica.com

William C. Packer, Jr.
wcpackerjr@aquaaamerica.com

NJ American Water Company

Bruce V. Miller, Esquire
Sarmili Saha, Esquire
Cullen Dykman LLP
One Riverfront Plaza
Newark, NJ 07102
bmiller@cullenllp.com
saha@cullenllp.com

Debbie Albrecht
debbie.albrecht@amwater.com

Favson Lakes Water Company

John Cannie, President
160 Boonton Avenue
Kinnelon, NJ 07405
flwc@optonline.net

Montague Water Company

Steve Lubertozzi, President
2335 Sanders Road
Northbrook, IL 60062
steve.lubertozzi@uiwater.com

Middlesex Water Company

Dennis W. Doll
481 C Route 1 South, Suite 400
Iselin, NJ 08830
ddoll@middlesexwater.com

Jay Kooper
jkooper@middlesexwater.com

Suez Water NJ, Inc.

Rodolphe Bouichou
461 From Road, Suite 400
Paramus, NJ 07652
rodolphe.boulchou@suez.com

Mark Janovic
mark.janovic@suez.com

Jim Cagle
jim.cagle@suez.com

Midtown Water Company

John J. Brunetti, President
1655 US Highway 9
Old Bridge, NJ 08857

Shore Water Company

Samuel Faiello, President
105-23rd Avenue
South Seaside Park, NJ 08752
samsjfv@verizon.net

Gloria Stuart
glorstuart@comcast.com

Simmons Water Company

David B. Simmons, Jr., President
P.O. Box 900
Branchville, NJ 07826
dbsjr@simmonstransport.com

Atlantic City Sewer Company

Tom Kavanaugh
Carl Cordek
1200 Atlantic Avenue, Suite 300
Atlantic City, NJ 08401
tkavanaugh@acsewerage.com
cordekc@aol.com

Lake Lenape Water Company

Jeffrey Fuller, President
83 Eagle Chase
Woodbury, NJ 11797
jmf1294@yahoo.com

Mt. Olive Villages Water Company

Henry K. Schwartz, President
200 Central Avenue
Mountainside, NJ 07902
zln1@aol.com

MUNICIPAL WATER COMPANIES

Richard Calbi, Director
Village of Ridgewood
131 N. Maple Avenue, Suite 5
Ridgewood, NJ 07450
rcalbi@ridgwoodnj.net

Chris O'Leary, General Manager
Borough of Park Ridge Water
53 Park Avenue
Park Ridge, NJ 07656
coleary@parkridgeboro.com

Art Dysart, Superintendent
Clinton Water and Sewer Utility
43 Leigh Street
Clinton, NJ 08809
artdysart@clintonnj.gov

Andrew Dujack, President
Town of Dover Water Commissioners
100 Princeton Avenue
Dover, NJ 07801

Robert Kinsey, Superintendent
Town of Dover Water
37 North Sussex Street
Dover, NJ 07801
rkinsey@dover.nj.us

John Allsebrook, Superintendent
Borough of Berlin Water Department
59 South White Horse Pike
Berlin, NJ 08009
dpwsupt@berlinnj.org

Kristin Epstein, Assistant Director
Trenton Water Works
333 Cortland Street
P.O. Box 528
Trenton, NJ 08604
kepstein@trentonnj.org

Patricia McGowan, Water Clerk
City of Bordentown Water Department
324 Farnsworth Avenue
Bordentown, NJ 08505
pmcgowan@cityofbordentown.com

John J. Wells, Licensed Operator
jwalls@cityofbordentown.com

Steve DiOrio, Superintendent
Collingswood Water Department
215 Hillcrest Avenue
Collingswood, NJ 08108
sdiorio@collingswood.com

Mike McIntyre, Director
Wildwood Water Utility
3416 Park Boulevard
Wildwood, NJ 08260
mmcintyre@wildwoodnj.org

**CABLE TV AND
TELECOMMUNICATIONS**

Altice USA (f/k/a/ Cablevision)
Marilyn D. Davis, Area Director
Government Affairs
Altice USA
494 Broad Street, 9th Floor
Newark, NJ 07102
marilyn.davis16@alticeusa.com

**Charter Communications f/k/a
Time Warner**
Michael A. Chowanec
VP-State Regulatory Affairs
Charter Communications
400 Atlantic Street
Stamford, CT 06901
michael.chowanec@charter.com

Comcast
Elizabeth Murray
Senior Director or Regulatory Affairs
Comcast
50 Randolph Road
Somerset, NJ 08873
elizabeth_murray@comcast.com

Stephanie Kosta
Vice President – Government Affairs
Comcast
3800 Horizon Boulevard, Suite 300
Trevose, PA 19053
stephanie_kosta@comcast.com

**Service Electric Cable TV of
Hunterdon, Inc.**
John Capparell
General Manager
Service Electric Cable TV
2260 Avenue A, LVIP#1
Bethlehem, PA 18017
jcapparell@spectv.com

Jennifer Brown
Regulatory Affairs Director
brownj@spectv.com

**INCUMBENT LOCAL
EXCHANGE CARRIERS (ILECS)**

Verizon New Jersey, Inc.
Ava-Marie Madeam
Vice President - State Regulatory
Affairs NY, NJ, CT
999 West Main Street, 3rd Floor
Freehold, NJ 07728
avamarie.p.madeam@verizon.com

Sylvia Del Vecchio, Manager
Verizon New Jersey, Inc.
9 Gates Avenue, 2nd Floor
Montclair, NJ 07042-3399
sylvia.i.del.vecchio@verizon.com

Richard C. Fipphen, Esquire
Assistant General Counsel
Verizon New Jersey, Inc.
140 West Street, 6th Floor
New York, NY 10007
richard.fipphen@verizon.com

CenturyLink
Josh Motzer
Director – State Government
Relations
37 W. Broad Street, Suite 470
Columbus, OH 43215
josh.motzer@centurylink.com

**Momentum Telecom
(Warwick Valley)**
Virginia O'Hanlon
Manager - Regulatory & Tax
Compliance
47 Main Street
Warwick, NY 10990
vohanlon@momentumtelecom.com

AT&T
Charlene Brown
VP External Affairs – NJ
AT&T
192 West State Street
Trenton, NJ 08873
cb1362@att.com

**Service Electric of Cable TV
New Jersey, Inc.**
Robert H. Williams, Esquire
General Manager
320 Sparta Avenue
Sparta, NJ 07871
bobw@secable.com

Robbin Blessing
Assistant Manager
robbin@secable.com

AARP
Janine G. Bauer, Esquire
101 Grovers Mill Road, Suite 200
Lawrenceville, NJ 08648
jbauer@szaferman.com

Evelyn Liebman
Director of Advocacy
AARP NJ State Office
303 George Street, Suite 505
New Brunswick, NJ 08901
eliebman@aarp.org