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via electronic mail and regular mail

Irene Kim Asbury, Secretary
New Jersey Board of Public Utilities
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Re: BPU Stakeholder Process to Develop a Straw Proposal Concerning
Infrastructure Programs

Dear Secretary Asbury,

The Eastern Environmental Law Center hereby submits initial comments for this Stakeholder Process on behalf of the Environmental Defense Fund (“EDF”).

EDF is a national nonprofit membership organization that links science, economics, and law to create innovative, equitable, and cost-effective solutions to society’s most urgent environmental problems. EDF has more than 365,000 dues-paying members nationwide, including more than eleven thousand in New Jersey. EDF has been involved in regulatory proceedings on infrastructure upgrades around the country. EDF has also intervened or participated in several BPU proceedings.

EDF appreciates BPU’s initiation of a Stakeholder Process to develop a Straw Proposal for regulations governing programs to maintain and upgrade New Jersey’s energy and electricity infrastructure (hereinafter referred to as “Infrastructure Programs”). Through these initial comments, EDF outlines several best practices to be incorporated into the Straw Proposal, which will work to ensure that Infrastructure Programs maximize program benefits, properly manage risk, and protect the interests of ratepayers.

Infrastructure upgrades are necessary to address “growing demand, aging infrastructure, environmental requirements, [and] an increasing call for the construction of renewable projects...”¹ Without upgrades, New Jersey’s electrical

¹ Pre-Approval Commitments: When And Under What Conditions Should Regulators Commit Ratepayer Dollars to Utility-Proposed Capital Projects? National Regulatory Research Institute, Scott Hempling & Scott H. Strauss, November 2008 (“Hempling & Strauss”) p. 2

utilities cannot fulfill their obligation to continue providing safe, adequate, proper, environmentally protective service. N.J.S.A. 48:2-23.

BPU holds the regulatory authority to order any utility to “maintain its property and equipment in such condition as to enable” the utility to provide safe, adequate, proper and environmentally protective service. Id. This includes the power to consider new technologies that increase energy efficiency and environmental protection. N.J.A.C. 14:3-3.1(b). The issuance of new regulations and filing requirements, which would govern programs to maintain infrastructure and incorporate new technologies, falls squarely within BPU’s authority.

To date, BPU has considered each proposal to replace or upgrade infrastructure on a case-by-case basis. For example, Accelerated Pipeline Replacement programs were submitted in reaction to the federal government’s Call to Action on accelerated gas pipeline replacement.² BPU requested Storm Hardening proposals in response to the Major Storm Events of 2011 and 2012.³ This Stakeholder Process, in contrast, provides an excellent opportunity for the Board to proactively define and set statewide policy priorities and goals for the future of New Jersey’s infrastructure.

EDF recommends that BPU prioritize Infrastructure Programs that serve the key goals of the Energy Master Plan: rewarding energy efficiency, reducing peak demand, driving down energy costs, integrating greater Distributed Energy Resources, and improving reliability & resiliency. December 2015 Energy Master Plan Update pp. 38, 39, 50.⁴

EDF anticipates that as a result of this Stakeholder Process, BPU will provide expanded guidance to utilities on the objectives of Infrastructure Programs and the safeguards that must be instituted to ensure customer benefits are maximized. In particular, BPU should provide details on the components of a successful cost-benefit analysis.

BPU’s Straw Proposal should be benchmarked against successful Infrastructure Program approvals in other states, and incorporate the best

² NJNG: Docket # GO12020255, October 23, 2012, Agenda Item 2C.

SJG: Docket # GO12070670, February 20, 2013, Agenda Item 2K.

Elizabethtown Gas: Docket # GO12070693, August 21, 2013, Agenda Item 2C.

³ I/M/O the Board’s Review of the Utilities’ Response to Hurricane Irene, Docket # EO11090543, January 23, 2013, Agenda Item 6B.

⁴ BPU Orders must conform, to the maximum extent practicable and feasible, with the Energy Master Plan. N.J.S.A. 52:27F-15(b).

practices from these programs.⁵ These best practices will ensure that customer benefits are maximized, and ratepayers' interests are prioritized and protected.

Best Practices

Integrated Resource Planning. BPU should require that utilities justify each Infrastructure Program through Integrated Resource Planning ("IRP"), addressing all of the priorities and goals that BPU lays out in the Straw Proposal, including environmental impacts, cost-effectiveness, and reliability. IRP is a process of planning to meet the public's needs for electricity services in a way that satisfies multiple objectives for resource use. Hempling & Strauss, p. 19. This process identifies the public's needs and the investment options that may satisfy them cost-effectively. Id.

BPU can use IRP to determine whether each Infrastructure Program proposal serves the goals and priorities identified in the Straw Proposal and the Energy Master Plan. This would also allow BPU to avoid unnecessary or duplicative programs.

Cost-Benefit Analysis. When a utility proposes an Infrastructure Program, BPU decides whether the investment is reasonable, and whether the benefits warrant the costs. N.J.S.A. 48:3-57(e). Therefore, each Infrastructure Program must be accompanied by a thorough analysis conducted by experts, quantifying the benefits of the program. Through this Stakeholder Process, BPU can identify the necessary components of that cost-benefit analysis.

Performance Metrics. Each utility implementing an Infrastructure Program must provide for regular reporting of performance metrics, tracking progress towards each promised benefit.

In each of the Accelerated Pipeline Replacement cases, as well as the approval of PSE&G's Energy Strong program,⁶ BPU required utilities to regularly report performance metrics, and further partially tied cost recovery to certain metrics. Ohio has required reporting of performance metrics in an approval of an

⁵ Here is a compendium of state commission decisions on gas Infrastructure Programs: https://energy.gov/sites/prod/files/2015/03/f21/AGA%20Compendium%20StateReplacementActivity_May_2014.pdf

Here are a few examples of effective surcharges for electric Infrastructure Programs:

- Maine Public Utility Commission: Central Maine Power, Docket # 2001-215(II)
- Pennsylvania Public Utility Commission: Duquesne Light, Docket # M-2009-2123948
- Texas Public Utility Commission: In re Oncor, Docket # 35718

⁶ I/M/O the Petition of Public Service Electric and Gas Company For Approval of the Energy Strong Program, Docket # GO13020156, May 21, 2014, Agenda Item 2I, p. 6.

Infrastructure Program.⁷ Oklahoma has tied cost recovery for another Infrastructure Program to a guarantee of certain cost reductions.⁸

Cost Recovery Caps. Imposing a cost recovery cap limits the economic risk to ratepayers. Hempling & Strauss, p. 18. BPU capped cost recovery in each of the Storm Hardening and Accelerated Pipeline Replacement cases. California has used sophisticated recovery caps in two Infrastructure Program approvals.⁹

Thorough Prudency Review. BPU must ensure that each Infrastructure Program undergoes a thorough post-investment prudency review. If an approval includes immediate cost recovery, then BPU must reserve the right to require customer refunds for imprudent expenditures. BPU should also consider a requirement that cost reductions resulting from Infrastructure Programs be credited directly to ratepayers.

Guideline on Annual Rate Increase. The BPU guidance that initiated this Stakeholder Process called for a hard two percent cap on annual rate increases attributable to an Infrastructure Program. EDF proposes that the two percent rate increase level be considered a guideline, rather than a hard cap.

The costs of an Infrastructure Program are not entirely within a utility's control. If external circumstances cause a program's costs to rise after BPU has approved it, then a hard cap on rate increases could force the utility to cut corners, or halt work on a necessary program. Therefore, a hard cap would discourage larger, systemwide Infrastructure Programs, which may be more cost-effective than smaller, regional projects.

As detailed above, the cost recovery and rate increases attributable to an Infrastructure Program can be tied to the actual benefits of the program, as tracked by performance metrics.

Conclusion

In sum, EDF supports the development of regulations that would govern utility proposals for necessary infrastructure upgrades. Without these upgrades, we "risk continued dependence on yesterday's technology." Hempling & Strauss, p. 26. In this comment, EDF suggests several best practices to be incorporated into the Straw Proposal to maximize program benefits, manage risk, and prioritize ratepayer interests.

⁷ In re Duke Energy, Ohio Public Utility Commission, Docket # 08-920-EL-SSO.

⁸ In re Oklahoma Gas & Electric, Docket # 201000029.

⁹ California Public Utility Commission, In re Pacific Gas & Electric, Docket # A.05-06-028. In re San Diego Gas & Electric, Docket # A.05-03-015.

EDF appreciates the opportunity to provide these initial comments on BPU's Straw Proposal through this Stakeholder Process. EDF anticipates providing further, more detailed comments as the Stakeholder Process moves forward.

Sincerely yours,



Raghu Murthy

c: **via** email
Mary Barber
Director, New Jersey Clean Energy
Environmental Defense Fund