Via regular and electronic mail

May 12, 2017

Irene Kim Asbury, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
CN 350
Trenton, New Jersey 08625
Irene.Asbury@bpu.state.nj.us

Re: AARP Comments Concerning the NJ Board of Public Utilities Straw Proposal on Infrastructure Programs

Dear Secretary Asbury,

AARP is a non-profit, nonpartisan membership organization that believes no one's possibilities should ever be limited by their age and seeks to find new solutions so that more people can live and age as they choose. AARP is one of the only national advocacy organizations working at both the federal and state levels to fight against unfair utility rates and to help people save money on their utility bills. In these difficult economic times, we, along with our members, continue to advocate on behalf of families struggling to pay their utility bills. We work to advance regulations and legislation that protects consumers from unfair rate increases, advances consumer protections and shields consumers from cost shifting by utility corporations.

AARP has reviewed the BPU's straw proposal concerning Infrastructure Programs released on April 26, 2017 and attended the May 4, 2017 stakeholder meeting at the BPU headquarters in Trenton. Additionally AARP has intervened in several recent proceedings before the Board concerning infrastructure programs. AARP is active on alternative ratemaking issues in many states and has studied the issues extensively. Our review of infrastructure trackers reveals that they are not needed to incent sufficient and prudent CapEx investments, and at the same time provide a windfall to utilities. Along with our comments at the stakeholder meeting, please accept these comments on behalf of AARP's 1.3 million Garden State members concerning the straw proposal.

AARP believes that consumers should be able to rely on high-quality energy, and other utility services. In fact this is what consumers pay for in their rates. AARP further believes that a utility's revenue requirement should be based on just and reasonable expenses necessary to provide service and investments that are prudent and used and useful to ratepayers. Rates should be stable, predictable, and understandable, with costs allocated fairly among customers.

Traditional "cost-of-service" regulation provides state regulators with sufficient tools to facilitate replacement and repair of aging infrastructure in a manner that protects ratepayers and balances the interests of consumers and shareholders. This process also ensures a transparent examination of utility costs based on intervenor and public participation, actual evidence and thorough analysis.

Barring extreme or emergency circumstances, AARP opposes the use of trackers, surcharges and other alternative cost recovery schemes outside the base rate case. For the reasons summarized here, and discussed more fully below, AARP opposes the BPU Infrastructure Programs straw proposal:

1. These alternative regulatory schemes undermine the comprehensive review of utility costs and prudence of investment decisions; consumers cannot be assured they are paying just and reasonable rates.

2. Generic infrastructure investment surcharges are single-issue ratemaking at its worst.

3. Infrastructure investment surcharges fast-track rate increases, but not decreases.

4. Surcharges lower utility risk since cost recovery is guaranteed. Therefore, if implemented, the utility return on equity must also be lowered.

A Solution in Search of a Problem

Utilities have an obligation to make all necessary and prudent investments without such extraordinary treatment as outlined in the straw proposal. Failing to carry out this obligation amounts to holding consumers hostage, rather than fulfilling a utility's obligation to serve.

As stated in the announcement of this stakeholder process, the Board has approved in excess of $3 billion in infrastructure programs. There is no representation, much less proof, that needed infrastructure investments are not being made in New Jersey because the utilities do not receive the extraordinary accelerated recovery called for in the proposal.

The BPU's straw proposal is not based on any cost/benefit analysis of its own effects, nor on any economic research from New Jersey or other jurisdictions nor has the Board provided stakeholders with an economic impact analysis of the proposal as detailed in the "Common Sense Principles" of Executive Order No. 2.

An Undue and Dramatic Shift of Risk

The Board's straw proposal shifts practically all distribution risks on to consumers. However, the proposal does not lower allowed returns commensurately; rather, it pegs the allowable returns to the return on equity, (ROE), allowed in a prior case, and before such extra-base-rate investments were considered and tracker recovery implemented.

Under the straw proposal, a utility is allowed automatic recovery of costs, but prudence evaluations are deferred to the next rate case, which can be as long as 5 years into the future, (and after the utility has received revenues covering the projects). Under this and the Board's straw proposal on interim rates, residential, commercial and industrial ratepayers could be paying over-priced rates to a utility that is over-earning, provisional increases on those already overpriced charges and for gold plated infrastructure projects that are neither reasonable nor used and useful. Clearly this violates the Board's mission to ensure that safe, adequate, and proper utility services are provided at reasonable, non-discriminatory rates to all members of the public who desire such services

Affordability

All consumers must be able to rely on the availability of safe, affordable, and high-quality services. The straw proposal recommends the maximum annual increase in rates attributable to an Infrastructure Program be two percent. Two percent rate increases are not de minimis, and can adversely affect many customers struggling to keep pace with utility payments.

Home energy costs make up a sizable portion of household budgets. One group particularly vulnerable to rapid increases in energy prices is older consumers. Although they consume approximately as much energy as younger people do, older Americans devote a higher percentage of their total spending to residential energy costs. They spend a greater proportion of their income to heat their homes (this is true even after statistics are adjusted for weather and home size). Low-income older households spend an average of 10 percent of their income on residential energy. However, in about one out of four cases, low-income older households devote 15 percent or more of their income to home energy bills. Too often older adults with low incomes must choose between cutting back on energy expenditures and reducing spending for other necessities, and may thus end up risking their health or comfort.

Rate increases, including provisional rate hikes, are very burdensome to customers. A recent New Jersey Department of Human Services report**, *Living Below the Line 2017***,[i] finds that nearly six in ten NJ retired elder-only households' lack sufficient annual incomes to insulate them against poverty as they age. This report also notes that the "median annual incomes among NJ retired women vary greatly by race and ethnicity. Median income for White women elders ($18,817) is approximately $4,300 higher than median income for Black women elders ($14,521), $8,930 higher than median income for Hispanic women elders ($9,883), and $6,200 higher than median income for Asian women elders ($12,605)". 30% of all NJ seniors rely on social security as their sole income.

The New Jersey Board of Public Utilities must ensure service affordability for all— all utility rates should reflect the prudent use of ratepayer money and fairly distribute costs and savings among consumers, while taking into account households with lower incomes. The BPU Straw Proposal violates these principles.

Excessive Earnings

The Straw Proposal recommends that "if the calculated Return on Equity (ROE) exceeds the allowed ROE from the last base rate case by fifty basis points, there will be no accelerated recovery for the next six months and until a new calculation shows no return over the fifty basis points."

Fifty basis points provides the utility an enormous opportunity for over-earnings. For example, half a percent on a rate base of $1.37 billion, (see New Jersey Natural Gas testimony in September 2016 rate case), grossed up for taxes is over $11 million for the customers of just this one utility. Suspending the accelerated recovery for 6 months and "until a new calculation shows no return over the fifty basis points" does nothing to compensate customers for the excess net revenues they paid the utility leading up to the determination of the 50 basis points excess.

Any limitation is pegged to the ROE from the last rate case, during which the Board may not have even considered the impact on risk of a Capital Cost surcharge proposed after that rate case.

The Straw Proposal calls for an unadjusted cost and revenue study. Without adjustment, the cost and revenue study can contain single-issue costs and revenues, which distort the study's value as an estimate of ongoing net revenues. For example, one-time costs or one-time revenue losses could be included in the year's unadjusted cost-and-revenue study. These are not included in a normal base rate revenue requirement. They could understate the utility's net earnings, and thus enable the utility to avoid the suspension of the accelerated recovery, (see items 14 and 15 of the Straw Proposal).

Weakens Critical Oversight & Consumer Protections

A prudence review is an analysis of the decision-making process and the activities performed by a utility in the provision of service to its customers. Prudence evaluations of actual construction are a tool that only works once the project is completed, and it is possible to identify harm to consumers that justifies further regulatory examination. Otherwise the Board is trying to review all decisions, regardless of their ultimate result, almost in real time, an overwhelming, impossible and unnecessary task.

The Straw Proposal eviscerates the Board's ability to identify imprudence, to correct for it, and to incent adherence to prudence going forward. Semi-annual status reports, as described in the Straw Proposal, are no substitute for prudence evaluations. Under the straw proposal prudence reviews can occur after five years, allowing a significant amount of time to elapse since the decisions and conditions which give rise to concerns that the utility may have been imprudent.

Semi-annual status reports do not give the Board a means to oversee project management. Boards cannot substitute for management as a project goes along and it is inconsistent with the Board's role as a regulator to try to oversee or supervise the implementation of a utility capital project. Just reviewing the periodic filings for mathematical accuracy and fidelity to the accounting rules of the surcharge, as proposed, would likely be very time-consuming, but not helpful in protecting consumers in a substantive way.

A base rate review, after project completion, is the only administratively feasible way to evaluate prudence and protect ratepayers. Given the myriad of construction decisions made each day, trying to oversee the projects in real time or near real time would bog the Board down and produce ineffective and inefficient reviews, and deprive interested parties a genuine opportunity to challenge the utility's decisions. By contrast, base rate consideration allows the Board, (the public and intervenors), to identify decisions that in fact hurt consumers and that may have been imprudent, and devote their resources to consideration of these decisions and consequences.

Additional Concerns

1. AARP is concerned that the proposal to base the need for such extraordinary recoveries on the average CapEx of the last five years allows the utility to "game" the baseline so as to justify the extraordinary rates. To obtain accelerated recovery for investment costs, the utility could hold back for a time in making needed investments, thus lowering the bar for proposed investments under the Straw Proposal, i.e., the average of the last five years would be artificially reduced, making a greater amount of investment "incremental" to that average.

2. The Straw Proposal fails to provide any definition of benefits and costs established for the required benefit-cost study. As stated above, AARP believes an unbiased and credible cost

benefit study should be done prior to moving forward on this straw proposal or any other regulatory initiative.

3. The Straw Proposal fails to define "critical interconnections of a utility plant." Regardless of how the costs associated with a project are recovered, care needs to be taken to avoid having captive distribution ratepayers provide accelerated funding for interconnections that benefit competitive providers and unregulated affiliates of the distribution utility.

For the reasons discussed above, AARP is opposed to the implementation of the Board's proposed straw proposal. However should the Board determine to move forward with this initiative, we urge the Board to first conduct the requisite cost/benefit analyses, utilize credible and unbiased economic research, provide an economic impact analysis for New Jersey, including customer classes and closely study the problems caused by trackers and similar alternative ratemaking schemes in other jurisdictions. After such a review we recommend the BPU conduct a robust stakeholder process beyond the quickly convened meeting that has thus far occurred, and whereby stakeholders and the public have an on-going opportunity to meet with Board staff to review the Board's research, studies and analyses, comments received to date and with adequate time for deliberation and input.

Few government agencies affect consumers' lives as thoroughly as the Commissions and Boards that regulate utility services. Thank you for your careful consideration of AARP's comments. If you have any questions or would like additional information please do not hesitate to contact me at eliebman@aarp.org.

Sincerely,

Evelyn Liebman

Evelyn Liebman
New Jersey Associate State Director, Advocacy

AARP is a nonprofit, nonpartisan organization with a membership that helps people 50+ have independence, choice and control in ways that are beneficial and affordable to them and society as a whole. AARP does not endorse candidates for public office or make contributions to either political campaigns or candidates. We produce AARP The Magazine, the definitive voice for 50+ Americans and the world's largest-circulation magazine with over 35.1 million readers; AARP Bulletin, the go-to news source for AARP's millions of members and Americans 50+; AARP VIVA, the only bilingual U.S. publication dedicated exclusively to the 50+ Hispanic community; and our website, AARP.org. AARP Foundation is an affiliated charity that provides security, protection, and empowerment to older persons in need with support from thousands of volunteers, donors, and sponsors. We have staffed offices in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands

---

[i] http://www.state.nj.us/humanservices/news/reports/doasreports.html