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New Jersey Board of Public Utilities
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The New Jersey Utilities Association ("NJUA") represents the investor-owned utilities providing New Jersey's businesses and residents with safe and reliable electric, water, sewer and natural gas service.[1] The NJUA appreciates the Board and its Staff seeking input from the utility industry on this Straw Proposal regarding Infrastructure Programs.

A variety of alternatives to traditional regulation have been instituted throughout the country to address and reduce regulatory lag. "These include cost trackers, the inclusion of construction work in progress ("CWIP") in rate base, multiyear rate and revenue caps, revenue decoupling, formula rates, and forward test years."[2] Recovery mechanisms, such as the voluntary mechanism proposed by the Board of Public Utilities ("Board") in this straw proposal, provide for more timely recovery, which is credit supportive and which reduces borrowing costs, and therefore customer costs. Many of NJUA's companies operate in multiple jurisdictions around the country. Reducing regulatory lag improves credit metrics and the achievement of authorized equity returns, which properly signals investors and the financial community that the jurisdiction supports policies that provide just and reasonable rates supportive of the debt and equity used to finance the utility investments. Thus, we support the Board's effort to reduce regulatory lag through this proposed mechanism.

Program Duration and Nexus with Base Rate Case

As you are aware, the Board has previously established recovery mechanisms to help ensure that utilities achieve timely, yet just and reasonable, cost recovery treatment for large infrastructure projects, including the Distribution System Improvement Charge (DSIC) for water utilities and various accelerated recovery mechanisms for the energy companies. However, the manner by which such projects are tied to a base rate case, in order to satisfy the NJ Supreme Court's requirement set forth in In re Intrastate Industrial Sand Rates, 66 NJ 12 (1974), has been an issue of some contention.

[1] For purposes of these comments NJUA represents Atlantic City Electric Company, Atlantic City Sewerage Company, Elizabethtown Gas, Gordon's Corner Water Company, Jersey Central Power and Light, Middlesex Water Company, New Jersey American Water, New Jersey Natural Gas, Public Service Electric and Gas, Rockland Electric Company, South Jersey Gas, and Suez.

[2] "Innovative Regulation: A Survey of Remedies for Regulatory Lag," Pacific Economics Group Research LLC for the Edison Electric Institute, April 2011.

In the past, the Board has often met the requirement for nexus to a base rate case by requiring that a base rate case be filed within three years of approval of an infrastructure filing as a non-negotiable condition of approval for any infrastructure program. Nowhere in the Industrial Sand decision, however, is there any reference to a specific time frame for the connection to a base rate case. In fact, NJUA has found no cases that impose a specific time requirement. Thus, there is no legal requirement that a rate case be filed within three years of approval of an infrastructure program, and utilizing a limited three-year time frame is not necessary to satisfy the legal nexus requirement of Industrial Sand. In fact, NJUA believes that there are benefits to allowing for longer time periods between rate cases, and periods longer than three years should be encouraged.

That is why NJUA supports another core tenet of this straw proposal, which is the allowance for up to five years before a base rate case is required after approval of an infrastructure program, for which costs are recovered through an adjustment mechanism. By encouraging utility proposals for Board authorization of investment programs of five years for utility hardening, modernization and improvement programs, the Board will be supporting more efficient, longer-term utility capital planning and a regulatory process that will benefit utility customers, while satisfying the requirement for nexus to a base rate case. Utilities will likely be able to engage contractors for longer periods of time, purchase necessary components in larger quantities, and maximize the efficiency of infrastructure planning, engineering, and construction. At the same time, longer-term programs will streamline the regulatory process, thereby allowing the Board to dedicate resources and staff time toward new initiatives, without compromising (and even enhancing) customer safeguards and regulatory oversight.

We recognize staff's desire to implement additional safeguards as a prerequisite for a longer "stay out" period. However, we remind interested parties that even with the codification of this voluntary infrastructure mechanism, companies would still have to file a request to implement the mechanism with the Board. All relevant parties would have the same opportunities for review, negotiation, and litigation as they do presently before a Board Order is finalized. Parties will also have the opportunity to review the rate calculations as filings are made under the program semi-annually. And New Jersey law explicitly authorizes the Board to direct a base rate case "upon written complaint" if there is evidence that a utility's rates are not "just and reasonable."[3]

Comments on Specific Elements of the Straw Proposal

NJUA has concerns with certain provisions of the straw proposal, and submits the following comments and suggested modifications:

- "3. Any Infrastructure Program must be incremental to the Utility's average CapEx over the past five years." As a baseline for infrastructure program expenditures, NJUA suggests that depreciation expense[4] is a more appropriate baseline. Companies that invested heavily over the past several years to address the directives of the Board and the needs of customers, as well as meet reliability and resiliency goals, would essentially be penalized through the use of "CapEx"as the baseline. This runs counter to the Board's expressed goals for utility infrastructure investment to promote reliability and resiliency. Calculation of depreciation expense is a fundamental part of every utility's base rate case. That expense represents the baseline for capital expenditures to maintain rate base at the level established in its last base rate case. Incremental capital spending in excess of depreciation expense represents investments that are benefiting customers, but the company is not currently able to recover those investments in

[3] NJSA 48:2-21

[4] With "depreciation expense" defined as "either the amount established in the utility's last base rate case or equal to the end of period approved Rate Base Depreciable Plant multiplied by the approved depreciation rate (if the rate was set within the last 5 years)"

rates until its next base rate case. Thus, incremental capital investments in excess of the company's depreciation expense should be eligible for recovery under this mechanism.

- "4. A filing in support of an Infrastructure Program must…include similar projects within the utility's CapEx budget equal to ten percent of the amount of the Infrastructure Program…" NJUA is concerned about this provision exacerbating regulatory lag associated with rate base investment. New capital spending that has not yet been approved in a utility's base rate case diminishes a utility's ability to earn its previously authorized return. Because the Board ultimately approves the overall expenditures for the programs, with limited permitted annual deviations from the budget (see bullet #4c), and the impact on utility rates is subject to a cap, there is little, if any, risk to customers of a utility exceeding the approved expenditures. To the extent that staff is concerned about the potential for cost over-runs for the associated projects, there is also the opportunity for review in the utility's next base rate case. Thus, given the safeguards included in this proposal, the requirement for a 10 percent rate base match is not necessary.
- "9. The maximum annual increase in rates attributable to an infrastructure program will be two percent." NJUA understands this provision to use average total bill for all customers as the base against which the 2 percent cap is applied, as we believe the vast majority of customers consider the impact of the entire bill when judging relative expense. It is also critical to remember that this proposed cap sets the outer boundary for overall annual increases associated with this mechanism. We are concerned, however, that the two percent cap may not adequately accommodate projects for utilities with relatively low commodity charge. Given the variability of commodity prices (e.g., a sharp decline in natural gas prices over the past several years), an across-the-board 2 percent cap could serve to materially limit investment for certain projects at a time when those projects are most economical for customers. As such, a higher cap – at least with respect to those projects associated with low commodity prices – is appropriate.
- The proposal appears to completely exclude water companies that utilize the DSIC from using this new mechanism (see bullet #16). There are resiliency and reliability related projects that, it appears to our members, would qualify for recovery under this proposal, but do not presently qualify for recovery under the DSIC.[5] We believe a water company should be allowed to utilize this mechanism for eligible investments that are ineligible for DSIC recovery. However, the companies are willing to accept that the cap ultimately adopted for this proposed infrastructure mechanism would apply to the DSIC and this mechanism, combined.
- With respect to the "earnings test" proposed in #14, the straw proposal states that it should include an "unadjusted cost and revenue study." NJUA believes the purpose of the earnings test should be to identify significant, persistent earnings beyond the authorized return. Therefore, there should be permissible adjustments for items beyond the utility's control, such as weather and non-recurring (i.e., extraordinary) financial events.
- "8. The Infrastructure Program must include a cost benefit analysis." While NJUA certainly understands and supports the interest in having the costs of a program (which is of course inherent in any infrastructure mechanism filing) and its benefits to consumers enumerated in the filing, this language could be construed as requiring a cost benefit analysis ("CBA") modeling that would invite dueling,

[5] Examples include Distribution system management and automation assets (SCADA equipment, relays, reclosers); volt/VAR control (maintaining voltage and reactive power in local power grids); communications networks leak detection equipment; meters; pumps (both VFD upgrades and hardening of pump stations through elevation or enclosure); and, back-up power for pumps.

complex CBA models and consultancies, which will simply add cost and delay to the resolution of the filing. NJUA requests that this provision be amended to state: "The infrastructure program filing must include a presentation explaining how the proposed expenditures are reasonable and prudent and will benefit customers."

Once again, we thank the Board and the Staff for its effort on this proposed voluntary infrastructure recovery mechanism. While the straw proposal is a very positive step in the right direction, it is critical that the concerns we have raised are addressed in order to ensure the intended result of incentivizing investment in resilient and reliable utility infrastructure. Some of NJUA's member companies may have additional comments, and reserve the right to present such comments prior to the close of the comment period.

Sincerely,

Andrew D. Hendry
President