

92DC42
PO Box 6066
Newark, DE 19714-6066

302.429.3105 - Telephone
302.429.3801 - Facsimile
philip.passanante@pepcoholdings.com

500 N. Wakefield Drive
Newark, DE 19702

atlanticcityelectric.com

May 12, 2017

**VIA FEDERAL EXPRESS and
ELECTRONIC MAIL**

irene.asbury@bpu.nj.gov

board.secretary@bpu.nj.gov

Irene Kim Asbury, Esquire
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
Trenton, New Jersey 08625-0350

RE: Comments of Atlantic City Electric Company Regarding the Stakeholder Process
to Address the Implementation of Interim Rates

Dear Secretary Asbury:

The undersigned is Assistant General Counsel to Atlantic City Electric Company (“ACE”). Attached are eleven copies of ACE’s Comments in connection with the Board of Public Utilities’ pending Stakeholder Process regarding the implementation of interim rates.¹ ACE appreciates the effort that has gone into the development of the Stakeholder Process, and the opportunity to provide its Comments. ACE looks forward to working with the Board of Public Utilities, its Staff and all interested parties on this important proposal.

Kindly accept this submission for filing and return one date-stamped and “filed” copy of this communication and its attachment in the pre-addressed, postage-prepaid envelope provided.

¹ Please note that ACE has separately filed Comments on the straw proposal concerning the implementation and expansion of infrastructure programs.

Irene Kim Asbury, Esquire

May 12, 2017

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Thank you for your cooperation and courtesies. Feel free to contact me with any questions or if I can be of further assistance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Passanante", followed by a horizontal line and the initials "/jpr".

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

Enclosure

cc: Andrew J. McNally, Esquire, Chief Counsel (electronic mail and Federal Express)
Paul Flanagan, Esquire, Executive Director (electronic mail and Federal Express)

Comments of Atlantic City Electric Company
Regarding the Stakeholder Process to Address
The Implementation of Interim Rates

Overview

Atlantic City Electric Company (“ACE”) appreciates the efforts of the Board of Public Utilities (the “Board”) and its Staff to bring needed specificity and clarity to the process of implementing base rates on an interim basis. ACE believes the straw proposal prepared by Staff is a strong starting point that can be further enhanced with just three specific refinements. ACE includes those suggestions below, but also wishes to make clear its enthusiastic support for the stakeholder and rulemaking process initiated by the Board in this proceeding. Additionally, ACE supports and joins in the comments of the New Jersey Utilities Association, and submits these comments to provide additional input on the straw proposal.

It is a matter of well-settled law in New Jersey that the Legislature has conferred upon utilities the ability to unilaterally implement proposed rates on an interim basis, subject to certain conditions, if a base rate case has not been finally decided in nine months. *See N.J.S.A. 48:2-21(d)*. Indeed, the Supreme Court of New Jersey has held that the ability to implement interim rates is a remedy for regulatory lag, concluding that “at the end of a suspension period, in the absence of a stipulated extension or waiver, the utility’s proposed rates may immediately become effective subject to conditions, such as refund, dependent upon the Board’s final determination.” *See In re Revision of Rates Toms River Water Company*, 82 *N.J.* 201, 211 (1980). Thus, a utility’s ability to implement interim rates is not at issue here.¹ What does require additional specificity are the procedures to be followed by utilities when implementing provisional rates.

Implementing interim rates in a reasonable, predictable and transparent manner is an important issue to both ACE and its customers. From the Company’s perspective, interim rates assure ACE that its request for additional income, to the extent it is found to be reasonable, will become effective at the end of the statutory suspension period and will not be delayed beyond the time period determined to be reasonable by the Legislature. This tool would help ACE to mitigate the negative impact of regulatory lag—which is beyond the control of the Company and often beyond the control of the Board—on the Company’s financial condition. It also further encourages efficient litigation and disposition of rate cases which is a benefit to everyone—including the customers who ultimately pay a portion of the costs of litigation.

From the customer’s perspective, it is equally important that interim rates be implemented so that customers are only charged rates that are just and reasonable—any excess interim rates will be refunded with interest upon a final decision by the Board. This aspect of the

¹ The Board’s effort to promulgate guidance on this issue is also consistent with the direction of the New Jersey Supreme Court: “Consistent with its delegated duties of ‘general supervision and regulation of and jurisdiction and control over all utilities * *,’ *N.J.S.A. 48:2-13*, **the Board must devise appropriate administrative mechanisms for regulating utilities which elect to implement proposed tariffs at the end of a suspension period.**” *See In re Revision of Rates Toms River Water Company*, 82 *N.J.* 201, 212 (1980) (emphasis added).

interim rates proposal is an important customer safeguard. Taken together, ACE believes the elements of the Staff's straw proposal represent a balanced approach to setting provisional rates.

Specific Comments

Consistent with the general comments noted above, ACE offers the following specific suggestions:

In paragraph one, the interest rate to be applied to any refunded amounts should be specified. ACE recommends that such refunds be subject to the same interest rate calculation applied by the Board to customer deposits retained by the utilities. Therefore, ACE would propose that paragraph one be revised to read:

Interim rates may be implemented on a provisional basis, subject to refund with interest, after the expiration of the suspension period established pursuant to N.J.S.A. 48:2-21(d). The interest rate which shall be applied to any such refunds is that interest rate calculated by the Board in accordance with N.J.A.C. 14:3-3.5(d)(interest on customer deposits).

In paragraph three, Staff raises the issue of the appropriate rate design to be used to implement provisional rates but does not provide a specific recommendation. ACE suggests that the same rate design in effect prior to implementation of the provisional rates be utilized for the purpose of implementing interim rates. ACE believes this approach is a straightforward, practical way to implement interim rates since it is based upon the rate design most recently authorized by the Board through a final order. Therefore, ACE would propose that paragraph three be revised to read:

The rate design used to implement rates on an interim basis shall be the rate design approved by the Board in the utility's most recent base rate proceeding.

In paragraph eight, the burden is placed on Staff to confirm that the specified notice provisions have been met. ACE suggests that it would be more streamlined and efficient for the utility to certify that the specified notice provisions have been satisfied. Staff would review the certification, notify companies when the notice requirements have not been satisfied, and provide an opportunity for the company to cure any identified notice defect. Therefore, ACE would propose that paragraph eight be revised to read:

After the utility has certified to Staff that it has completed the requirements in (6) and (7) above, rates shall become effective consistent with the terms of the notice unless Staff has notified the company by the end of the 5th business day following the notice by the utility that the company has not met the notice requirements. Thereafter, the company shall be provided with an opportunity to cure the identified defective notice.

ACE would also note that paragraph five references the "appropriate method" for providing any required refunds to customers at the conclusion of the base rate proceeding. ACE

is not suggesting changes to this provision but simply notes that its affiliated utility in Delaware has experience providing customer refunds as Delaware permits the implementation of interim rates as a matter of routine practice. Given this experience, ACE would be happy to make the expertise of its affiliated company available to assist the Board in this matter. In addition, ACE has prepared a Refund Plan Template, based on the process followed in Delaware, that could be useful to the parties in this stakeholder proceeding. That Template is attached to these comments.

While ACE believes the straw proposal is a strong starting point, ACE is also concerned that Staff's efforts not be undermined by recommendations that run counter to the legislative intent to provide this remedy to utilities, or by any other arbitrary limitations parties might propose. Although it is true that interim rates are not the norm, they are the legislatively-conferred remedy when the nine-month statutory period is exceeded without a final decision, and there should be clear guidelines for how interim rates are implemented. This is in the best interests of both utilities and their customers. Moreover, suggestions that utility delays, missed deadlines and forecasted data are solely responsible for protracted rate cases is not supported by the facts. Of the parties typically involved in a base rate case, the utility is the only entity with a vested interest in a prompt conclusion to the proceeding. Further, as the Board is well aware, some recent cases have been delayed at the Office of Administrative Law, and the Board itself has sought extensions of the time to make its final decision.

As for the use of forecasted data and any suggestion that the use of forecasted data be limited in some way, utilities have been permitted to file seven months of forecasted data since the Board made its decision in the *Elizabethtown Water* case in 1985. See *In re Elizabethtown Water Company Rate Case*, BPU Docket No. WR8504330, Decision on Motion for Determination of Test Year and Appropriate Time Period for Adjustments (May 23, 1985), at 2 ("*Elizabethtown*"). Nothing in the straw proposal implicates that decision in any way, or raises issues as to how base rate cases are routinely processed in New Jersey. Should the Board seek to address that broader issue, however, ACE would note its belief that the Board should revisit *Elizabethtown* to permit the use of a fully forecasted test year and extended post-test year adjustment period. The Board in *Elizabethtown* anticipated setting rates using forecasted rate base, income and expenses: ACE believes it should take the next logical step and permit a fully forecasted test year.

As for concerns that interim rates will be subject to large refunds because the Board rarely grants a utility's full rate request, ACE notes the straw proposal clarifies that the utility may implement an interim rate that is less than its full rate request. This provision should help to mitigate concerns regarding large refunds. Moreover, it is one of the ways in which the Staff's straw proposal is a significant improvement over the current state of affairs as it explicitly permits the utility to implement interim rates that are less than its full proposed rates. This provision should also help to address concerns regarding rate volatility and the mechanics of providing customer refunds. As noted above, utilities have experience providing customer refunds, and ACE would be happy to make representatives from its affiliates available to the parties to discuss the mechanics of a successful refund process.

With respect to the suggestion that the Board should provide affirmative approval of any provisional rates, this is simply not consistent with the plain language of *N.J.S.A. 48:2-21(d)* or New Jersey case law. The Legislature has conferred upon utilities the ability to unilaterally implement rates without further review or approval by the Board when the nine month period has elapsed. The Board does not have the legal authority to take away that which the Legislature has granted. In addition, there are significant legal and practical problems with actually implementing this suggestion since the underlying case will not yet have been fully litigated when interim rates were implemented. Moreover, inserting a Board approval before rates could be implemented would require that more process, and more delay, be added. This is precisely the problem that the legislative remedy of interim rates is intended to address. To add such a requirement would frustrate the legislative intent of providing an efficient remedy to the utility to implement rates at the end of the suspension period. This is not appropriate.

Finally, ACE supports the notice provisions set out in the straw proposal. These provisions effectively treat the implementation of interim rates in the same manner as the implementation of base rates for the purpose of notifying customers and other interested stakeholders. Suggestions that enhanced notice provisions (such as bill inserts) are required for a rate that is temporary only increase costs that are ultimately borne by customers. For notice purposes, interim rates should be treated in the same manner as all other rates.

In conclusion, ACE applauds the Board's efforts to clarify and codify the unilateral right of utilities to implement provisional rates upon the expiration of the statutory suspension period. ACE stands ready to assist the Board and its Staff in this stakeholder process and in the companion rulemaking.

Atlantic City Electric Company

Rate Refund Plan Template

I. Background

The purpose of this plan is to outline the process used to implement rate refunds.

II. Applicability of the Refund

Any customer who received service from [date] to [date] is entitled to a refund for the difference between final rates approved by the Board of Public Utilities (the “BPU”) and the provisional rates placed into effect on [date] where rate design and usage levels provide for a refund. This includes customers who are active and those that have left the Company’s system. If a customer has left the Company’s system, it means that they are no longer a customer.

III. Proposed Timing of the Refunds

Refunds will be applied to customer’s accounts beginning within six weeks of the implementation of the final BPU-approved rates.

IV. Mechanics of the Rate Refund

The Company’s Billing System rate refund process uses a batch system that recalculates billed revenue using the final rate factors (xx rates) compared to those used in the actual bill calculation (xx rates). The process begins with a request from the Regulatory Compliance team that identifies the time frame affected by the rate change, as well as the final approved rate factors that replace the original rates used during the actual billing process.

The final approved rate factors are loaded in the rate refund tables within the production system effective with the xx date. These rates replace the provisional rates that had been in effect during the dictated time period. Based on the request from the Regulatory team, the rate refund process is set up to select the accounts and bill periods that potentially require a refund. This process selects active and inactive accounts. Once the accounts are identified, the refund process recalculates the revenue based on the final approved rates for each account and bill period affected. The recalculated revenue is compared to the original billed revenue and the difference is the refund adjustment. Reports are produced that list each account and adjustment by bill period. Selected accounts from the reports are reviewed to ensure that the recalculated revenue and the adjustment amounts are correct. Reports are generated to identify exceptions which are reviewed and adjusted manually, if necessary.

Next, a file is created with each account and the accompanying refund adjustment. This file is used to calculate interest and to post adjustments to the customer’s account. Reports are produced from this process and selected accounts reviewed to verify the interest calculated and that the adjustments are posted correctly. Adjustments are posted as separate lines for each bill period. Interest is also displayed as a separate line item by bill period.

After the refund adjustments are posted, revenue reports are produced with the adjusted revenue. Reports detailing this information are then provided to Revenue Accounting.

The refund adjustment, where applicable, appears on the bill as a line item in the Billing Summary section. Accounts are reviewed in production and selected bills are verified.

Due to the volume of adjustments and the processing time involved, the rate refund will be processed over several weekends by billing cycle. Any refund issued to an inactive account will have an adjusted bill sent which will reflect the amount of the refund plus interest.

V. Interest Rate to be Applied

The rate refund interest rate to be applied in this instance is in accordance with N.J.A.C. 14:3-3.5(d) (interest on customer deposits).

VI. Customer Communications

A general statement about the Electric Rate Refund will be included in the Company's bill insert. After the credits are posted, a message will appear on the bill of those receiving refunds.

VII. Reporting Requirements (Summary of total refund dollars)

Sixty (60) days after the last refunds are posted, the Company will provide the BPU with a summary report of the refunds applied to customer accounts; interest paid will be reported separately.

VIII. Customer Care Credit and Collections Process

The credit adjustments will be applied against the customer's account arrearages. If the same customer with the Company has an inactive account and an active account, after the credit adjustments are applied to the inactive account, the credit adjustments would then be moved to the customer's active account. If a customer has an inactive account but no active account with the Company, after the credit adjustments are applied to the inactive account, where applicable, a letter will be sent to that customer stating that a refund is due. If there is no response or if the letter comes back undeliverable, those refund dollars would be escheated to the State of New Jersey.