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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Tariff Filings or Petitions Which Propose Increases in Charges to Customers

Proposed Amendment: N.J.A.C. 14:1-5.12

Authorized By: New Jersey Board of Public Utilities, Richard S. Mroz, President, Joseph L. Fiordaliso, Mary-Anna Holden, Dianne Solomon, and Upendra Chivukula, Commissioners.

Authority: N.J.S.A. 48:2-13.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

BPU Docket Number: AX1750469.

Proposal Number: PRN 2018-007.

Comments may be submitted through March 17, 2018, by e-mail **in Microsoft Word format**, or in a format that can be easily converted to Word, to: rule.comments@bpu.nj.gov or on paper to:

Irene Kim Asbury, Secretary

New Jersey Board of Public Utilities

ATTN: BPU Docket Number: AX1750469

44 S. Clinton Ave., 3rd Floor, Suite 314

PO Box 350

Trenton, NJ 08625-0350

The agency proposal follows:

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Summary

The Board of Public Utilities (Board) is proposing an amendment to N.J.A.C. 14:1-5.12 that will require a utility that submits a tariff filing or petition that proposes increases in charges to customers pursuant to this rule to include a consolidated tax adjustment (CTA) analysis with supporting information and documents as part of the filing requirements in a base rate case. The amendment adjusts the scope of a CTA analysis by: (1) requiring that it shall be for five consecutive tax years including the complete tax year within the utility’s proposed test year; (2) the calculated CTA shall be allocated so that the rate base adjustment may be reduced by up to 25 percent of the full CTA; and (3) the transmission portion of an electric distribution company’s income shall not be included in the calculation of CTA.

The Board has required a CTA analysis to be a component in base rate cases for decades. By order dated January 23, 2013, the Board directed Board staff to convene all interested parties to participate in a proceeding to review issues related to the CTA. Staff solicited and received information from interested parties through multiple notices to comment on issues related to CTA policy and non-confidential comments received were posted publicly on the Board’s website. Based on the comments received, staff recommended to the Board that the current CTA policy should remain in effect, except in three ways: 1) limit the time period for a CTA calculation to the petitioner’s five consecutive tax years from the beginning of the test year; 2) establish a savings allocation that would allow 75 percent of the calculated tax savings to be retained by the company and 25 percent of the calculated savings to be allocated to the ratepayers; and 3) establish that transmission assets of electric distribution companies shall not

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be included in CTA calculations. Staff notified the Board of its intention to distribute the proposed recommendations to all interested parties. The notice containing staff’s proposal was published in the New Jersey Register on July 7, 2014, at 46 N.J.R. 1657(a). Additionally, the notice of proposal was distributed to all interested parties and posted on the Board’s website with a request that written comments on the proposed modification of the CTA policy be submitted on or before Monday, August 18, 2014. After receiving written comments in response to the notice of proposal, the Board determined that, based on the complete record, there is a sound policy argument for continuing the CTA and the Board concurred with staff’s proposed modifications. On December 17, 2014, the Board entered an order modifying the Board’s current CTA policy to include staff’s recommended changes, which was subsequently overturned by the New Jersey Appellate Division. This proposed amendment is in furtherance of implementing the Board’s CTA modifications in accordance with formal rulemaking as required by the Appellate Division in its decision. The purpose of a CTA is to ensure that the ratepayers who pay a utility’s Federal income tax expense share in the tax benefits that members of the consolidated tax filing receive.

Proposed new N.J.A.C. 14:1-5.12(a)11 establishes a filing requirement for petitioners to include all necessary information, documents, and analysis for the Board to determine an appropriate CTA in a base rate case. The new paragraph also adjusts some parameters to be followed when calculating a CTA.

As the Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

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Social Impact

The proposed new paragraph will have a non-appreciable social impact as the proposed amendment involves utility rate-making policy.

Economic Impact

There may be an economic impact to utility rate payers and utilities as a result of this proposed amendment. The rule requires that utilities share with ratepayers a portion of any tax savings earned through a utility’s consolidated tax filing. The vast majority of states have abolished the CTA. The amendment also provides applicable utilities with a five-year look back period, a sharing allocation of the tax savings, and the elimination of transmission income from the CTA calculation.

Federal Standards Statement

No Federal standards analysis is required because the proposed amendment is not proposed in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

Jobs Impact

It is not anticipated that the proposed amendment will result in the creation of new jobs or the loss of existing jobs. The proposed amendment will not have an impact on any other sector of the economy of the State of New Jersey.

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Agriculture Industry Impact

The Board does not expect any agriculture industry impact from the proposed amendment.

Regulatory Flexibility Statement

The proposed amendment will not impose any recordkeeping, reporting, or other compliance requirements on small businesses. A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 full-time employees. With regard to utilities that qualify as small businesses under the Act, this amendment simply provides clarity to an existing statutory right that may be exercised by utilities voluntarily and, as such, will not impose any requirements on small businesses.

Housing Affordability Impact Analysis

The proposed amendment will have no impact on the affordability of housing in New Jersey and will not evoke a change in the average costs associated with housing because the proposed amendment pertains to CTA calculations.

Smart Growth Development Impact Analysis

The proposed amendment should not have any significant impact on smart growth and will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the proposed amendment pertains to CTA calculations.

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Full text of the proposal follows (additions indicated in boldface **thus**):

SUBCHAPTER 5. PETITIONS

14:1-5.12 Tariff filings or petitions which propose increases in charges to customers

(a) Tariff filings or petitions for the purpose of making effective or making revisions, changes, or alterations of existing tariffs which propose to increase any rate, fare, toll, rental, or charge or so to alter any classification, practice, rule, or regulation as to result in such an increase, other than filings to effectuate the operation of an existing fuel or raw materials adjustment clause, shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, contain all applicable information and data set forth in N.J.A.C. 14:1-5.11 and, in addition, shall contain the following information and financial statements which shall be prepared in accordance with the applicable Uniform System of Accounts:

1.–10. (No change.)

11. If a company is part of a family of companies that files a consolidated Federal income tax return, that company shall include in its petition a consolidated tax adjustment (CTA) calculation using the rate base method, which allows the parent company to keep certain tax savings, while requiring the petitioner to reflect the savings by reducing the rate base upon which the utility’s return is determined. The CTA calculation must include all supporting information and documents necessary for the Board to determine and implement an appropriate CTA calculation pursuant to this section. A CTA provides a mechanism that the Board will utilize in rate cases, so that ratepayers should share a

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Required information and supporting documents include, but are not limited to, a schedule showing each affiliate company’s taxable income/loss by year, an indication whether the affiliate is a regulated utility company or not, the statutory Federal income tax requirement for each year, if any, and the alternative minimum tax requirement for each year, if any.

The review period for the CTA calculation shall be for five consecutive tax years, including the complete tax year within the utility’s proposed test year. The calculated CTA shall be allocated, so that the rate base adjustment may be reduced by up to 25 percent of the full CTA. The transmission portion of an electric distribution company’s income shall not be included in the calculation of CTA.

(b)-(e) (No change.)