



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
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www.nj.gov/bpu/

ALL UTILITIES

IN THE MATTER OF THE NEW JERSEY BOARD OF) ORDER
PUBLIC UTILITIES' RESPONSE TO THE COVID-19)
PANDEMIC)
) DOCKET NO. AO20060471

PARTIES OF RECORD:

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- Janine G. Bauer, Esq.**, Szaferman, Lakind, Blumstein & Blader, P.C. on behalf of AARP
- Dominick DiRocco, Esq.**, Elizabethtown Gas Company and South Jersey Gas Company
- Joshua Eckert, Esq.**, Jersey Central Power & Light Company
- Andrew Dembia, Esq.**, New Jersey Natural Gas Company.
- Matthew Weissman, Esq.**, Public Service Electric and Gas Company
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- Jeffrey Fuller**, Lake Lenape Water Company
- Henryk Schwarz**, Mt. Olive Villages Water Company and Mount Olive Villages Sewer Company
- Robert H. Oostdyk, Jr., Esq.**, Murphy McKeon P.C., on behalf of the Borough of Butler

BY THE BOARD:¹

BACKGROUND AND PROCEDURAL HISTORY

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the coronavirus disease of 2019 ("COVID-19") a "public health

¹ Commissioners Guhl-Sadovy and Abdou abstained from voting on this matter.

emergency of international concern,” which means “an extraordinary event which is determined to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response.” On March 9, 2020, Governor Phil Murphy signed Executive Order No. 103, declaring a State of Emergency and a Public Health Emergency in response to the COVID-19 pandemic, in order to ensure the continuity of government services and protect the public.²

On July 2, 2020, the New Jersey Board of Public Utilities (“Board” or “BPU”) issued an Order authorizing the State’s utilities to create a COVID-19 regulatory asset by allowing the deferral of incremental and prudently incurred COVID-19-related costs.³ The deferral period began on March 9, 2020, and was to conclude upon the latest of the following dates: 1) September 30, 2021; 2) 60 days after Governor Murphy declared that the Public Health Emergency was no longer in effect; or 3) in the absence of such a declaration, 60 days from the time the Public Health Emergency automatically terminated pursuant to N.J.S.A. 26:13-3(b)(“Regulatory Asset Period”).⁴

The July 2020 Order required:

1. Each utility with a COVID-19 regulatory asset account to file with the Board quarterly reports, together with a verification by an authorized representative, detailing its COVID-19-related costs and offsets; and
2. All affected utilities to file a petition with the Board by December 31, 2021, or within 60 days of the close of the Regulatory Asset Period either addressing any potential rate recovery of the utilities COVID-19 regulatory asset, including any prudence determinations, and the appropriate period of recovery for any approved amount of the regulatory asset and any associated savings; or, in the alternative, requesting that the Board defer consideration of COVID-19 regulatory asset rate recovery until a future base rate case.

On October 28, 2020, the Board retained this matter and designated President Joseph Fiordaliso (“President Fiordaliso”) as the Presiding Commissioner, authorized to rule on all motions that arise during the pendency of these proceedings, and to modify any schedules that may be set, as necessary, to secure a just and expeditious determination of the issues.⁵ The October 2020 Order also expanded the scope of this docket to examine all COVID-19 pandemic-related issues by way of a generic proceeding, which allowed for a public comment period through November 30, 2020.

On January 28, 2021, President Fiordaliso issued an Order establishing a Procedural Schedule and granting AARP’s Motion to Intervene.⁶ On March 16, 2021, President Fiordaliso granted

² EO 103 and all other executive orders referenced in this Order are available online at https://nj.gov/infobank/eo/056murphy/approved/eo_archive.shtml

³ In re the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic, BPU Docket No. AO20060471, Order dated July 2, 2020 (“July 2020 Order”).

⁴ Id.

⁵ In re the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic, BPU Docket No. AO20060471, Order dated October 28, 2020 (“October 2020 Order”).

⁶ In re the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic, Presiding Commissioner Order Setting Procedural Schedule and Ruling on Motion to Intervene, BPU Docket No.

motions to participate filed by each of Legal Services of New Jersey, the Natural Resources Defense Council, and New Jersey Citizen Action.⁷

At a public stakeholder meeting held on February 8, 2021, stakeholders provided input regarding any steps the stakeholder deemed necessary to address pandemic related customer arrearages. On February 25, 2021, virtual public hearings were held at 4:30 pm and 5:30 pm. Pursuant to the Public Hearing Notice, the Board sought public comments to determine, among other things, “the appropriateness of any additional Board action to protect New Jersey ratepayers.”⁸

Through a series of Orders, the Board extended the Regulatory Asset Period until March 15, 2023, and the deadline to file for recovery of costs until July 17, 2023.⁹ The Board also ordered the utilities to file a formal plan detailing their accessing and use of state and federal funds, arrearage and disconnection reduction strategies, arrearage recovery efforts, savings due to COVID related changes, et al., during the Regulatory Asset Period.⁶

During the Regulatory Asset Period, the Staff of the Board of Public Utilities (“Staff”), the Division of Rate Counsel (“Rate Counsel”) and other interested parties participated in working groups focused on various issues related to this proceeding, including cost recovery.¹⁰ As a result of questions raised in the cost recovery working group, by Order dated July 20, 2022, President Fiordaliso directed interested parties to submit comments on 13 questions regarding issues pertaining to COVID-19 regulatory asset cost recovery. Comments responding to the questions, and in some cases, comments responding to previously filed comments, were filed by Atlantic City Electric Company, Middlesex Water Company, the New Jersey Utilities Association, New Jersey American Water Company, Inc., South Jersey Gas Company, Elizabethtown Gas Company, Public Service Electric and Gas Company, Aqua New Jersey, Inc., and Rate Counsel.

DISCUSSION AND FINDINGS

As the Board has stated before, this is a case of first impression.¹¹ Indeed, the Board authorized utilities to create COVID-19 regulatory assets because related costs were a result of “extraordinary circumstances” from a “non-recurring event.”¹² In recognition of the uniqueness of this situation, the Board sought input from interested parties regarding cost recovery through

AO20060471, Order dated January 28, 2021.

⁷ In re the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic, BPU Docket No. AO20060471, Order dated March 16, 2021.

⁸ Due to the COVID-19 pandemic, hearings were held virtually.

⁹ In re the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic, BPU Docket No. AO20060471, Order dated September 14, 2021; In re the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic, BPU Docket No. AO20060471, Order dated December 21, 2022 (“December 2022 Order”); In re the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic, BPU Docket No. AO20060471, Order Extending the Deadline for the Filing of Petitions for the Recovery of COVID-19 Regulatory Assets, Order dated May 10, 2023 (“May 2023 Order”).

⁶ See December 2022 Order.

¹⁰ In re the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic, BPU Docket No. AO20060471, Order dated July 20, 2022 (“July 2022 Order”).

¹¹ See e.g., May 2023 Order at 3.

¹² July 2020 Order at 3-4.

various means including, but not limited to, working groups and the submission of comments. The Board has considered the comments from stakeholders and acknowledges the unique COVID-19 cost recovery related challenges facing the utilities, which vary by utility, including utility scale, economic and financial circumstances and quantity of customer arrears. The Board also acknowledges the challenges facing ratepayers, such as the prospect of increased utility rates due to COVID-19 regulatory asset recovery being added to current household financial burdens.

After thorough review of the record in this matter, the Board **HEREBY ORDERS** that all filings for cost recovery of COVID-19 regulatory asset balances must be evaluated on a case-by-case basis, whether as part of a base rate case or a separate proceeding, to ensure an equitable determination specifically tailored for each individual utility seeking cost recovery.

The Board **FURTHER ORDERS** that a utility must, as part of any filing for cost recovery of COVID-19 regulatory asset balances independent of a base rate case proceeding:

1. Propose a new, separate, special-purpose clause or rider that clearly defines the purpose and scope of the regulatory asset balances being proposed for recovery;
2. Propose rate design that applies a volumetric rate(s) to all applicable customer classes;
3. Propose a reasonable amortization period for the regulatory asset balances, taking into consideration the financial impact on ratepayers' bills;
4. Include carrying costs at a reasonable rate for any over- or under-recovery; and
5. Include all other necessary supporting documentation.

The Board **HEREBY FINDS** that a utility's compliance with the above requirements does not guarantee Board approval of requested COVID-19 regulatory asset cost recovery.

If a utility filed for cost recovery of COVID-19 regulatory asset balances prior to the date of this Order, the Board **HEREBY INSTRUCTS** the utility to amend its filing to comply with the above mandated requirements or, consistent with the July 2020 Order, the utility may withdraw the filing and pursue recovery in the context of a base rate case.

The effective date of this Order is June 7, 2023.

DATED: June 7, 2023

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



DR. ZENON CHRISTODOULOU
COMMISSIONER



MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:



SHERRI L. GOLDEN
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

**IN THE MATTER OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES' RESPONSE TO THE COVID-19
PANDEMIC**

DOCKET NO. AO20060471

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