

BEFORE THE STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

_____)	PETITION
In the Matter of)	
COVID-19 Related Arrearages)	
_____)	BPU Docket No.:
)	

In the Matter of COVID-19 Related Arrearages

The New Jersey Division of Rate Counsel hereby petitions the Board of Public Utilities for relief as follows:

I. Background

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared COVID-19 a “public health 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.”¹

In response to the COVID-19 pandemic, on March 9, 2020, New Jersey Governor Phil Murphy signed Executive Order No. 103 (“EO 103”)² in order to ensure the continuity of government services and protect the public during the State of Emergency. In that order, Governor Murphy stated:

¹ World Health Organization, *COVID-19 Public Health Emergency of International Concern (PHEIC) Global Research and Innovation Forum: Towards a Research Roadmap*, February 12, 2020, available at [https://www.who.int/publications/m/item/covid-19-public-health-emergency-of-international-concern-\(pheic\)-global-research-and-innovation-forum](https://www.who.int/publications/m/item/covid-19-public-health-emergency-of-international-concern-(pheic)-global-research-and-innovation-forum)

² E.O. 103 and all other executive orders are available online at <https://nj.gov/infobank/eo/056murphy/>

I authorize and empower the executive head of any agency or instrumentality of the State government with authority to promulgate rules to waive, suspend, or modify any existing rule, where the enforcement of which would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary for the duration of this Executive Order, subject to my prior approval and in consultation with the State Director of Emergency Management and the Commissioner of [Department of Health]. Any such waiver, modification, or suspension shall be promulgated in accordance with NJSA App. A:9-45.

EO 103, p. 6.

On March 13, 2020, the Board announced that the State’s public electric and gas utilities had universally agreed to suspend service shutoffs given the statewide public health emergency and the effort currently underway in response to the COVID-19 pandemic.

On March 20, 2020, New Jersey Lieutenant Governor and Department of Community Affairs Commissioner Sheila Y. Oliver, New Jersey Department of Environmental Protection Commissioner Catherine R. McCabe, and Board President Joseph L. Fiordaliso issued a joint statement which asked, among other things, “that every water system, private or public, including those operated by our municipal governments, commit to a suspension of any water shut offs for reasons of non-payment, safe connection of anyone previously shut off, and a suspension of the use of liens as a collection practice until the outbreak of COVID-19 has subsided.”³

On April 13, 2020, Governor Phil Murphy signed executive Order No. 126, which prohibits cable and telecommunications providers from terminating internet and voice

³ The joint statement referenced is available at <https://www.state.nj.us/dep/watersupply/pdf/dep-dca-bpu-ask-water-suppliers.pdf> .

service due to nonpayment until at least 30 days after the current public health emergency ends.⁴

On August 21, 2020, Governor Phil Murphy announced that the State’s public water, gas, and electric utility companies regulated by the Board all agreed to extend their voluntary moratoria preventing shutoffs to both residential and commercial customers until October 15th. The utilities will offer residential and commercial customers a Deferred Payment Agreement (“DPA”) of at least 12 months and up to 24 months without requiring a down payment. Customers could start seeing shutoff notices in September.⁵

II. Board Jurisdiction

The New Jersey Board of Public Utilities (“Board”) is empowered to ensure that regulated public utilities provide safe, adequate and proper service to the citizens of New Jersey. N.J.S.A. 48:2-23. Pursuant to N.J.S.A. 48:2-13, the Board has been vested by the Legislature with the general supervision and regulation of and jurisdiction and control over all public utilities, “so far as may be necessary for the purpose of carrying out the provisions of [Title 48].” The courts of this State have held that the grant of power by the Legislature to the Board is to be read broadly, and that the provisions of the statute governing public utilities are to be construed liberally.⁶ The Board is also vested with the authority, pursuant to N.J.S.A. 48:2-19, to

⁴ Executive Order No. 126, signed April 13, 2020 available at <https://nj.gov/infobank/eo/056murphy/pdf/EO-126.pdf>

⁵ *Governor Murphy Announces Financial Assistance to Protect Residential and Commercial Utility Customers*, press release from Governor Phil Murphy’s office on August 21, 2020, available at <https://www.nj.gov/governor/news/news/562020/approved/20200821a.shtml>

⁶ See, e.g., *In re Public Service Electric and Gas Company*, 35 N.J. 358, 371 (1961); *Township of Deptford v. Woodbury Terrace Sewerage Corp.*, 54 N.J. 418, 424 (1969); *Bergen County v. Dep’t of Public Utilities*, 117 N.J. Super. 304, 312 (App. Div. 1971).

investigate any public utility, and, pursuant to N.J.S.A. 48:2-16 and 48:2-40, to issue orders to public utilities.

Furthermore, the Board is specifically authorized to prohibit public utilities from discontinuing, curtailing or abandoning any service. The Board may withhold permission to shut off service until after a hearing to determine if the discontinuance, curtailment or abandonment will adversely affect public convenience and necessity. A public utility may only terminate service for a violation of the terms of its approved tariffs on file with the Board after giving the customer at least three days' notice of such termination unless otherwise provided for by orders of the Board. N.J.S.A. 48:2-24. Therefore, the Board has the authority to order utilities to maintain service to customers, even if customers are unable to pay their bills during this unprecedented public health and economic crises caused by COVID-19.

Indeed, the New Jersey Supreme Court has upheld the authority of the Board to require utilities to continue to provide services, even when unprofitable, upon a finding of public necessity. When doing so, the Supreme Court held the “public need of the services rendered is the predominating and controlling element.”⁷ Because there is such a tremendous public need to continue utility services during and following the pandemic, especially while so many low and middle income residents are struggling to find and keep jobs and pay essential bills, the Board should exercise its authority to require utilities to continue providing services.

III. Rate Counsel Standing

Rate Counsel is a statutory party and intervenor in matters involving the regulatory oversight of utilities, pursuant to N.J.S.A. 52:27EE-48(a). The Division of Rate Counsel may

⁷ *Pennsylvania R. Co. v. Public Utilities Comm'rs Bd.*, 11 N.J. 43, 51 (1952).

initiate any proceeding before the Board when the director determines that a change in a required service is in the public interest.⁸ As such, Rate Counsel, on behalf of New Jersey ratepayers, has the right to request and petition the New Jersey Board of Public Utilities to issue an order placing a moratorium on utility shut offs; initiating an investigation into the scope of late payments, uncollectible billed amounts and participation in payment assistance programs during the COVID-19 pandemic and the best practices to address these late payments.

IV. Ongoing Health and Economic Crises:

Before the COVID-19 public health emergency, many ratepayers already faced difficulty paying their bills. For example, the U.S. Energy Information Administration reported that nearly a third of US households faced challenges paying energy bills or keeping their homes heated or cooled in 2015, as did 50% of households with less than \$20,000 in annual income.⁹ Also, 25 million households reported forgoing food and medicine to pay energy bills in at least some months and seven million had to forgo food and medicine almost every month.¹⁰ Furthermore, 52% of African American and 44% of Latino households experienced household energy insecurity.¹¹ In 2019, the Federal Reserve reported that 40% of households would have difficulty with an unexpected expense of \$400 and 30% would be unable to pay their bills.¹²

COVID-19 continues to wreak havoc on both the health and financial well-being of New Jersey ratepayers. As of September 13, 2020, the per capita death rate of COVID-19 in New

⁸ N.J.S.A. 52:27EE-48(a).

⁹ UNITED STATES ENERGY INFORMATION ADMINISTRATION, *Residential Energy Consumption Survey (RECS)*, 2015 available at <https://www.eia.gov/consumption/residential/reports/2015/energybills/>

¹⁰ *Id.*

¹¹ *Id.*

¹² UNITED STATES FEDERAL RESERVE, *Report on the Economic Well-Being of U.S. Households in 2018 – May 2019*, available at <https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-dealing-with-unexpected-expenses.htm>

Jersey was 180 per 100,000 citizens, the highest of any US state.¹³ According to the United States Centers for Disease Control and Prevention (“CDC”), as of September 13, more than 16,000 New Jerseyans have died as a result of COVID.¹⁴ New York is the only state with a higher death toll.¹⁵ Additionally, New Jersey has the eighth highest number of confirmed COVID-19 cases in the country, with over 196,000 cases.¹⁶

Likewise, COVID-19 has caused severe financial hardship in New Jersey. Since the number of COVID-19 cases in New Jersey began growing quickly in mid-March, 1.56 million New Jerseyans have applied for unemployment.¹⁷ For the week ending September 5, the New Jersey Department of Labor and Workforce Development received 22,703 new unemployment claims, a 12.5 percent increase over the prior week.¹⁸ Governor Phil Murphy has said the current economic crisis “can only be rivaled by two other times in our state’s entire 244-year history – the Great Depression and the Civil War.”¹⁹ He also said “[a]lmost everybody is hurting, but

¹³ *Covid in the U.S.: Latest Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last visited Sept 13, 2020).

¹⁴ As of September 15, 2020, CDC lists the total death count for NJ at 16,034, including 14,245 confirmed deaths and 1,789 probable deaths. UNITED STATES CENTERS FOR DISEASE CONTROL AND PREVENTION, *United States COVID-19 Cases and Deaths by State*, available at <https://covid.cdc.gov/covid-data-tracker/#cases>

¹⁵ *Id.* As of September 15, New York’s death toll was 32,753. California had the third highest death toll with 14,385.

¹⁶ 196,968 cases reported as of September 15. *Id.*

¹⁷ Press Release, NEW JERSEY DEPT. OF LABOR & WORKFORCE DEVELOPMENT, *New Unemployment Claims Tick Up Slightly to 22,700 Last Week*, Sept. 10, 2020, available at https://www.nj.gov/labor/lwdhome/press/2020/20200910_paymentsupdate.shtml

¹⁸ *Id.*

¹⁹ Phil Murphy (@GovMurphy), Twitter (Aug. 25, 2020, 10:26 AM), <https://twitter.com/govmurphy/status/1298265560325615626> (stating “Besides setting off an unprecedented public health crises, #COVID19 unleashed an economic crisis that can only be rivaled by two other times in our state’s entire 244-year history – the Great Depression and the Civil War. #NJBudget”).

particularly, low-income workers and their families have been crushed. Small businesses have been crushed. ... The impact has been staggering across the board.”²⁰

Analysts agree. One study by StratoDem Analytics estimates that, due to the spread of COVID-19, New Jersey’s gross domestic product took an economic loss at an annualized rate of 34.6% in the second quarter of the year, the period covering April to June. The United States as a whole saw a 32.9% drop during the same time period.²¹ According to research by the University of New Hampshire’s Carsey School of Public Policy, compared to the Great Recession of December 2007 – June 2009, New Jersey has now lost more than double the number of jobs during the current pandemic, 200,300 versus 490,000, respectively.²² New Jersey’s unemployment rate was around 3.8% in February 2020. Unemployment then went to 16.3% in April, 15.4% in May, 16.8% in June, and 13.8% in July.²³ Moreover, as the chart below shows, the most job losses in New Jersey occurred in the lowest-paying industries.²⁴

²⁰ *New Jersey Gov. Phil Murphy: Economic Impact Has Been ‘Staggering Across The Board’*, National Public Radio (Sept. 8, 2020) available at <https://www.npr.org/sections/coronavirus-live-updates/2020/09/08/910788634/new-jersey-governor-on-the-coronavirus-in-his-state>

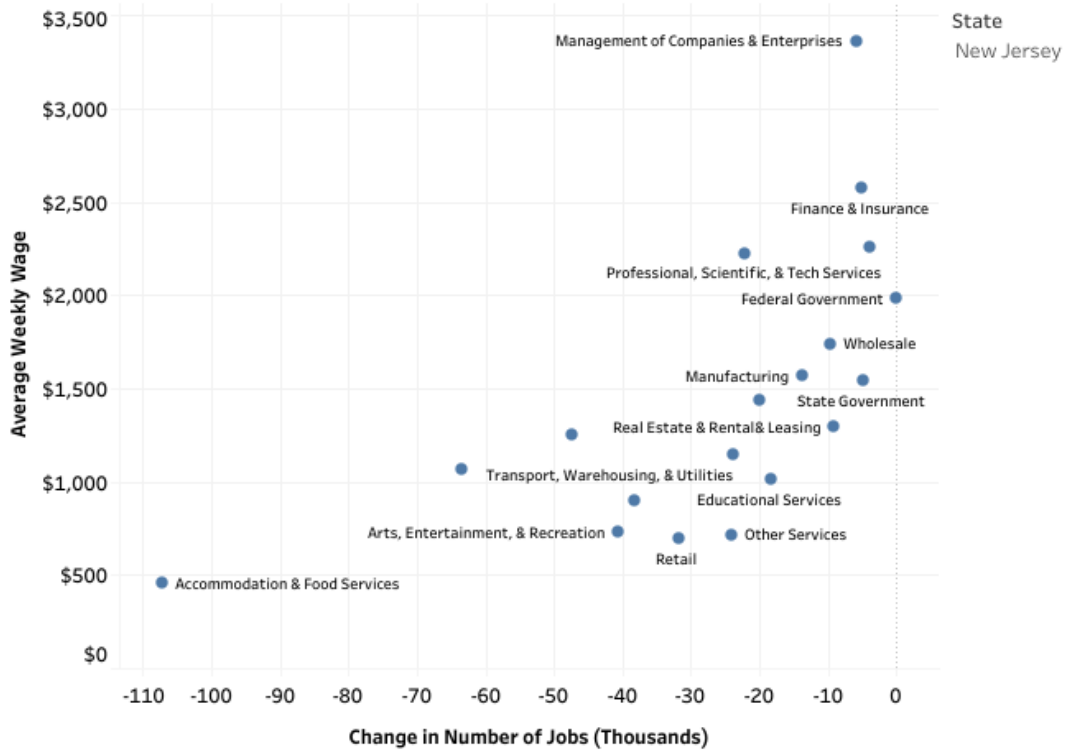
²¹ *Coronavirus slammed N.J.’s economy. See how hard your county was hit*, NJ.COM, (Aug. 16, 2020), available at <https://www.nj.com/coronavirus/2020/08/coronavirus-slammed-njs-economy-see-how-hard-your-county-was-hit.html>

²² Michael Ettlinger and Jordan Hensley, *COVID-19 Economic Crises: By State*, UNIV. OF NEW HAMPSHIRE CARSEY SCHOOL OF PUBLIC POLICY (Sept. 10, 2020), available at <https://carsey.unh.edu/COVID-19-Economic-Impact-By-State>

²³ *Id.*

²⁴ *Id.*

Chart 4: Average Weekly Wages and Change in Number of Jobs, February to July



This widespread economic damage will undoubtedly affect customers’ ability to pay their utility bills, causing further economic dislocation and public health risks. Regulated electric and gas public utilities in New Jersey recoup uncollectible amounts through the Societal Benefits Charge. This shifts the risk of uncollectibles from the utility to ratepayers. Simply asking ratepayers as a whole to absorb these costs may cause even more customers to be unable to pay their bills and exacerbate the very problem that needs to be solved. The problem is further exacerbated by the many utility filings currently before the Board requesting hundreds of millions of dollars in new and increased rates.²⁵

²⁵ See, e.g., *I/M/O the Updated Petition of Public Service Electric and Gas Company for Approval of its Clean Energy Future-Energy Cloud (“CEF-EC) Program on a Regulated Basis*, BPU Docket No. EO18101115, filed April 1, 2020 (seeking approval of an AMI Program with investment of **\$714 million** and operations and maintenance costs of **\$71 million** from 2021 to 2025); See also, *I/M/O Petition of Public Service Electric and Gas Company for Approval of Its Clean Energy Future-Electric Vehicle and*

There is a significant risk that if the Board does not investigate and attempt to address these issues, the problem will have a snowball effect. The result of these multiple increased

Energy Storage (“CEF-EVES”) Program on a Regulated Basis, BPU Docket No. EO18101111, filed October 11, 2018 (seeking approval to invest **\$370 million** on electric vehicle infrastructure and energy storage programs over six years); *See also, I/M/O Petition of Jersey Central Power & Light Company for Approval of An Advanced Metering Infrastructure (AMI) Program*, BPU Docket No. EO20080545, filed August 27, 2020 (seeking to spend **\$733 million** over twenty years including **\$458 million** during the first four years of its proposed AMI Program); *See also, I/M/O Petition of Jersey Central Power & Light Company for Review and Approval of Increases in and Other Adjustments to Its Rates and Charges for Electric Service, and For Approval of Other Proposed Tariff Revisions in Connection Therewith (“2020 Base Rate Filing”)*, BPU Docket No. ER20020146, filed February 18, 2020 (seeking a rate increase of **\$186.9 million** on an annual basis, for an overall average increase in rates of 7.8%); *See also, I/M/O Petition of Atlantic City Electric Company for Approval of the Smart Energy Network Program and Cost Recovery Mechanism and Other Related Relief*, BPU Docket No. EO20080541, filed August 26, 2020 (seeking approval for an AMI program with costs of **\$220 million** over a 39-month period); *See also, I/M/O Amended Petition of Atlantic City Electric Company for Approval of a Voluntary Program for Plug-in Vehicle Charging*, BPU Docket No. EO18020190, filed December 20, 2019 (seeking approval for a **\$42 million** program for Plug-In Vehicle infrastructure); *See also, I/M/O Petition of South Jersey Gas Company for Approval of Increased Base Tariff Rates and Charges for Gas Service, Changes to Depreciation Rates and Other Tariff Revisions*, BPU Docket No. GR20030243, OAL Docket No. PUC04830-20, Decision and Order Adopting Initial Decision and Stipulation, effective September 30, 2020 (Board approves SJG rate increase of **\$39.5 million**); *I/M/O Petition of New Jersey-American Water Company, Inc. for Approval of Increased Tariff Rates and Charges for Water and Wastewater Service; and other Tariff Modifications*, BPU Docket No. WR19121516, filed December 2019 (seeking a revenue increase of approximately **\$85 million** per year, or an overall average increase of 12%); *I/M/O Implementation of P.L. 2018, c. 17 Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs*, BPU Docket No. QO19010040, QO19060748 & QO17091004, all filed on Sept. 25, 2020 (six electric and gas utility EE filings requesting a total of approximately **\$862.8 million** over three years, with no cap on the customer bill impacts); *I/M/O Petition of Atlantic City Electric Company for Approval of its Energy Efficiency and Peak Demand Reduction Programs*, (seeking approval for an EE program with costs of **\$98.6 million** over three years); *I/M/O Petition of Elizabethtown Gas Company for Approval of New Energy Efficiency Programs and Associated Cost Recovery Pursuant to the Clean Energy Act and the Establishment of a Conservation Incentive Program*, (seeking approval for an EE program with costs of approximately **\$100 million** over three years); *I/M/O Petition of Jersey Central Power and Light Company for Approval of its Energy Efficiency and Peak Demand Reduction Programs*, (seeking approval for an EE program with costs of **\$230.1 million** over three years); *I/M/O Petition of New Jersey Natural Gas Company for Approval of Energy Efficiency Programs and Associated Cost Recovery Pursuant to the Clean Energy Act*, N.J.S.A. 48:3-87.8 *et seq.* and 48:3-98.1 *et seq.*, (seeking approval for an EE program with costs of approximately **\$249.1 million** over three years); *I/M/O Petition of Rockland Electric Company for Approval of its Energy Efficiency and Peak Demand Reduction Programs*, (seeking approval for an EE program with costs of **\$18 million** over three years); and *I/M/O Petition of South Jersey Gas Company for Approval of New Energy Efficiency Programs and Associated Cost Recovery Pursuant to the Clean Energy Act*, (seeking approval for an EE program with costs of approximately **\$167 million** over three years); *I/M/O Petition of New Jersey Natural Gas Company for Approval to Implement an Infrastructure Investment Program (“IIP”) and Associated Cost Recovery Mechanism Pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:3-2A*, BPU Docket No. GR19020278, filed Feb. 27, 2019 (seeking approval for an IIP with costs of approximately **\$507 million** over five years); all available at <https://publicaccess.bpu.state.nj.us/> (searchable by BPU Docket No.).

financial burdens is that more ratepayers will have difficulty paying their utility bills. If a solution beyond asking other ratepayers to make up the difference is not arrived at, then bills will go up even more and more ratepayers will be at risk of falling into arrears. Those ratepayers include small businesses, whose ability to continue employing New Jersey residents may be compromised. Individuals and families who lose utility service face obvious health and safety risks, including an uninhabitable residence. In some instances, the loss of utility service constitutes a breach of a lease, with the risk of eviction. For tenants whose utility charges are included in their rent, absorbing the cost of arrears may make housing costs unaffordable, leading to further economic harm.

VI. Government Regulatory Actions Related to Utility Service during the Pandemic

Government agencies are beginning to take action to help the public recover from the financial fallout of COVID-19 and address the public health concerns associated with maintaining essential services during the pandemic. Public utility regulators in other states have already taken extensive actions to help ease the burdens caused by COVID-19 on ratepayers, often including non-residential customers. The BPU should consider similar programs as possible solutions for New Jersey.

For example, the CDC issued a temporary order halting all evictions through the end of 2020, finding that evictions are detrimental to public health control measures to slow the spread

of COVID-19.²⁶ The Commonwealth of Massachusetts also enacted a residential eviction or foreclosure moratorium, including a prohibition on late fees for non-payment of rent.²⁷

Numerous states have suspended the disconnection of essential utility services, whether voluntarily, by utility regulatory order, gubernatorial executive order or legislation. Some states have also defined “essential” utility services to include electric, natural gas, water, wastewater, telecommunications and broadband service.²⁸ A number of states now require utilities to offer affordable and flexible repayment plans with extended duration, similar to the extended DPAs that New Jersey utilities now offer voluntarily.²⁹ Some states now offer a payment assistance program that offers debt forgiveness for customers who face financial hardship, for example by forgiving a portion of arrearages for each timely payment received.³⁰ At least one state is

²⁶ Federal Register Notice: Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, updated September 2, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/covid-eviction-declaration.html>.

²⁷ “An Act Providing for a Moratorium on Evictions and Foreclosures During the COVID-19 Emergency,” Chapter 65 of the Acts of 2020, effective April 20, 2020.

²⁸ E.g., Indiana prohibited discontinuing any essential utility service (including natural gas, electric, broadband, telecommunication, water and wastewater), to any customer in the state for the duration of the COVID-19 public health emergency. Gov. Eric J. Holcomb, Executive Order 20-05, March 19, 2020, p. 2, available at https://www.in.gov/gov/files/EO_20-05.pdf.

²⁹ E.g., In Illinois, utilities must offer residential and commercial customers with a financial hardship a flexible and extended DPA of at least 12 months and up to 24 months, with no down payment, and may not charge residential customers a reconnection fee. All other customers will be charged a down payment of no more than 10% of their arrearage, and may select DPA periods up to 18 months. Illinois Commerce Commission, On Its Own Motion, I/M/O Moratorium on Disconnection of Utility Services during the Public Health Emergency Declared on March 9, 2020 pursuant to Sections 4 and 7 of the Illinois Emergency Management Agency Act, Docket No. 20-0309, Stipulation of Large Utility Group and Joint Consumer Parties, filed June 10, 2020, available at <https://www.icc.illinois.gov/docket/P2020-0309/documents/300399>. Other states that prohibit utilities from charging residential customers a reconnection fee at this time include Arizona, California, Connecticut, and Florida.

³⁰ E.g., Illinois gives residential customers financial assistance as long as they consistently pay a percentage of their energy bill. Id.

Massachusetts has instituted an arrearage forgiveness program for small commercial customers. Massachusetts Department of Public Utilities, Order on Small Commercial Arrearage Forgiveness Program, (adopting and approving the proposal by the Customer Assistance and Ratemaking Working Group), D.P.U. 20-58-C, Sept. 3, 2020, available at <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/12631784>.

conducting an extended inquiry into customer assistance measures by its utilities.³¹ One state caps the percentage of its customers whom each utility may disconnect for nonpayment.³²

Other states are encouraging or requiring utilities to increase their outreach to customers to advise them of the availability of DPAs and of funds available from payment assistance

³¹ In Massachusetts, the Department of Public Utilities (“DPU”) is conducting an inquiry into establishing policies and practices regarding customer assistance and ratemaking measures for electric and gas companies in response to the effects of the COVID-19 pandemic. Notice of Inquiry into Establishing Policies and Practices for Electric and Gas Companies Regarding Customer Assistance and Ratemaking Measures in Connection to the State of Emergency Regarding the Novel Coronavirus (“COVID-19”) Pandemic, D.P.U. 20-58 (May 11, 2020) (“NOI”), available at <https://docplayer.net/amp/187557784-The-commonwealth-of-massachusetts.html>. The DPU established a Working Group of the major electric and gas utilities and consumer advocacy groups to assist the DPU in establishing appropriate policies and practices. NOI at 4. The DPU directed the Working Group to promptly file an initial report containing consensus recommendations for customer assistance policies and practices, NOI at 5, and to develop a consensus ratemaking proposal to support customer assistance initiatives and to maintain the financial integrity of the utilities in response to COVID-19. NOI at 10.

The Working Group has continued to submit a series of reports to the DPU on the implementation and modification of those customer assistance and ratemaking measures. E.g., the Working Group’s First Report outlines its uncontested recommendations for extended payment plans, waiver of late fees, arrearage management plans (equivalent to DPAs in New Jersey), customer outreach, continuation of the statewide shutoff moratorium, and certain additional recommendations (First Report, May 29, 2020, pp. 6-20, available at <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/12189391>). The DPU has reviewed and approved those reports in a series of orders. For example, the DPU has ordered the electric and gas utilities in the Working Group to file monthly arrearage tracking spreadsheets. Order on Customer Outreach Plan from the First Report of the Customer Assistance and Ratemaking Working Group, D.P.U. 20-58, June 26, 2020, p. 8. The entire series of Working Group reports and DPU Orders is available at <https://eeaonline.eea.state.ma.us/DPU/FileRoom/dockets/get/?number=20-58&edit=false>.

³² California has capped annual residential customer disconnections at the recorded 2017 percentage for each utility, and directed reductions through 2024. California Public Utilities Commission, Order Instituting Rulemaking to Consider New Approaches to Disconnections and Reconnections to Improve Energy Access and Contain Costs, Rulemaking 18-07-005, “Phase I Decision Adopting Rules and Policy Changes to Reduce Residential Customer Disconnections for the Larger California-Jurisdictional Energy Utilities,” Decision 20-06-003, June 11, 2020 (“June 11 PUC Decision”), p. 145, available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M340/K648/340648092.PDF>. The California legislature had already directed the Public Utilities Commission (“PUC”) to establish rules to reduce customer disconnections. California Senate Bill No. 598, Chapter 362, approved Sept. 28, 2017, available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB598. However, the COVID-19 pandemic state of emergency led the PUC to issue emergency customer protections and shaped the PUC’s rulemaking process under SB 598. June 11 PUC Decision, pp. 29 - 30 and 146.

programs such as the Low Income Home Energy Assistance Program (“LIHEAP”).³³ Customers are to be offered information and assistance, and in at least one state the utilities must enroll customers in applicable programs.³⁴ Unlike New Jersey, some states require LIHEAP funds to be applied to current monthly bills rather than to arrearages.³⁵ At least one state has received a certain amount of funding from the federal Coronavirus Aid, Relief, and Economic Security (“CARES”) Act³⁶ dedicated to the LIHEAP program.³⁷

Utilities in other states must now monitor and report data on customer arrearages, service disconnections, collection and credit-related activity, receipt of financial assistance funds, and DPAs.³⁸ Data on arrearages, service disconnections, collection and credit-related activity, and

³³ E.g., Mass. DPU, Order on Customer Outreach Plan from the First Report of the Customer Assistance and Ratemaking Group, D.P.U. 20-58-A, June 26, 2020, available at <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/12293649>.

³⁴ In California, residential customers may not be disconnected for nonpayment until the utility offers to enroll eligible customers in all applicable benefit programs administered by the utility. California Public Utilities Commission, Order Instituting Rulemaking to Consider New Approaches to Disconnections and Reconnections to Improve Energy Access and Contain Costs, Rulemaking 18-07-005, “Phase I Decision Adopting Rules and Policy Changes to Reduce Residential Customer Disconnections for the Larger California-Jurisdictional Energy Utilities,” Decision 20-06-003, June 11, 2020, p. 145, available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M340/K648/340648092.PDF>.

³⁵ E.g., California utilities may not disconnect a residential customer who has a LIHEAP pledge pending. Id., p. 146.

³⁶ Pub.L. 116-136.

³⁷ Congress appropriated an additional \$16 million of CARES Act funds to Arizona for its LIHEAP program. Arizona Corporation Commission, “Resources Available: \$16 Million in Low-Income Home Energy Assistance is Now Available to AZ Customers During COVID-19 Hot Summer Months, \$1 Million for Tribes,” Press Release, May 14, 2020, available at [https://azcc.gov/news/2020/05/14/resources-available-\\$16-million-in-low-income-home-energy-assistance-is-now-available-to-az-customers-during-covid-19-hot-summer-months-\\$1-million-for-tribes](https://azcc.gov/news/2020/05/14/resources-available-$16-million-in-low-income-home-energy-assistance-is-now-available-to-az-customers-during-covid-19-hot-summer-months-$1-million-for-tribes); U.S. Dept. of Health and Human Services, Administration for Children and Families, “Arizona Receives \$16.5 Million in Additional LIHEAP Funds,” Press Release, May 29, 2020, available at <https://liheapch.acf.hhs.gov/news/archive2020.htm>.

³⁸ E.g., Pennsylvania directed utilities to report “efforts to support customers through initiatives in customer service and billing policies and procedures in response to the COVID-19 pandemic and the ensuing recovery period.” Pennsylvania Public Utilities Commission, COVID-19 Customer Service, Billing, and Public Outreach Provisions Request for Utility Information, PA PUC Docket No. M-2020-

financial assistance funds by zip code is reported to identify populations more heavily impacted by utility bills as a result of COVID-19. Arrearage data includes the numbers of customers in arrears, the number facing disconnection, the total amount of arrears, the distribution of arrearage amounts among customers in arrears, and the distribution of customers in arrears by zip code. DPA data reports include the total number of customers enrolled in a DPA; number of new customers with a DPA; dollar amounts subject to a DPA; and number of customers who successfully completed the DPA.³⁹

VII. Relief Requested

Due to the ongoing public health and economic crises caused by the COVID-19 pandemic, Rate Counsel respectfully requests that the Board issue an Order including the following relief:

3020055, Secretarial Letter, May 29, 2020, available at http://www.puc.state.pa.us/about_puc/covid_19.aspx under “Secretarial Letters.”

³⁹ New Jersey, Illinois, Ohio and other states have existing programs that limit utility bills through Percentage of Income Payment Plans (“PIPPs”), but many of those have eligibility limits that render the program unavailable to many who have been impacted by the COVID-19 pandemic. The New Jersey Universal Service Fund is one such PIPP program. To be eligible, a household must have a gross annual income at or below 185% of the Federal Poverty Level, or \$47,640 for a family of four. Source: N.J. Department of Community Affairs, “Low Income Energy Assistance Program [and] Universal Service Fund, FFY 2020 Fact Sheet,” available at https://www.state.nj.us/dca/divisions/dhcr/offices/docs/usfhea_fact_sheet.pdf.

In Illinois, PIPP participants may also receive a reduction in any overdue payments for every on-time payment they make. 305 Ill. Comp. Stat. Ann. 20/18 (2020). Eligibility is limited to households with a gross annual income at or below 200% of the Federal Poverty Level, or \$52,400 for a family of four. Source: Illinois Department of Commerce and Economic Opportunity, Utility Bill Assistance, “Frequently Asked Questions” and “How to Apply,” available at <https://www2.illinois.gov/dceo/communityservices/utilitybillassistance/pages/faqs.aspx> and <https://www2.illinois.gov/dceo/CommunityServices/UtilityBillAssistance/Pages/HowtoApply.aspx>.

In Ohio, PIPP eligibility is limited to households with a gross annual income at or below 150% of the Federal Poverty Level, or \$39,300 for a family of four. Source: Ohio Development Services Agency, Energy Assistance Programs, “Percentage of Income Payment Plan Plus,” available at https://development.ohio.gov/is/is_pipp.htm.

Disconnection and Restoration of Utility Service

- Open an investigation to determine the number of customers in arrears, the amount owed, and the scope of the COVID-19-related uncollectibles issue;
- Extend the voluntary moratorium on utility service shutoffs through April 1, 2021 for both residential and non-residential customers;
- Reconnect all utility customers disconnected for non-payment since March 15, 2020;
- Order the utilities to waive any fees or interest on late payments;
- Order the utilities to waive fees and deposits to establish or reconnect service for residential and small business customers experiencing financial hardship;
- Facilitate customers' showing of financial hardship by minimizing or waiving required documentation;
- New Jersey regulated utilities have agreed to offer DPAs of at least 12 months and up to 24 months with no down payment. Continue those extended DPA terms with no down payment for 180 days after the shutoff moratorium;
- Identify the best practices for helping ratepayers afford their utility bills, including a financial relief program, and direct implementation of those practices;
- Consider expanding eligibility for the Universal Service Fund and other programs for low-income and fixed-income customers, which cap the customer's utility bills at a percentage of their income, and establishing funding sources for the expanded program beyond charging other ratepayers via the Societal Benefits Charge ("SBC");
- Require utilities to offer to enroll customers with payment difficulties in all applicable payment assistance programs such as LIHEAP. If the customer accepts the offer of enrollment help, the utility must actually enroll the eligible customer;

- Explore other possible programs or changes to eligibility requirements to assist customers who are unable to pay their bills or arrearages;

Data Collection and Reporting

- Require utilities to record and publicly report the aggregate level of late payments, payment arrearages and shutoffs by utility, customer service class and zip code for at least the last two full calendar years (i.e., calendar years 2018 and 2019) to present, and continuing after the moratorium ends. Data should include number of customers in arrears, number facing disconnection, total amount of arrears, distribution of arrearage amounts among customers in arrears, and distribution of customers in arrears by zip code. Record and publicly report the level of service disconnections and collections activity by utility and zip code for at least the last two full calendar years (i.e., calendar years 2018 and 2019) through present, and continuing after the moratorium ends. Data should include number of customers disconnected, and distribution of disconnections by zip code;
- Require utilities to report data on DPAs, including: total number of customers enrolled in a DPA, number of new customers with a DPA, dollar amounts subject to a DPA, number of customers who successfully completed the DPA and number of unsuccessful DPAs;
- Require utilities to report data on the number of their customers who participate in payment assistance programs such as LIHEAP, Universal Service Fund, Lifeline, PAGE, TRUE, NJ Shares, and Fresh Start, as well as the amount of money that the utility receives from each of these programs, for at least the last two full calendar years (i.e., calendar years 2018 and 2019) through present, and continuing after the shutoff moratorium ends;
- Report the specific measures the utility is taking to help all customers, including non-English speaking customers, avoid disconnection for non-payment;

Rate Increases

- Suspend the filing of new base rate cases and infrastructure programs during the current public health emergency and until further order of the Board;
- Analyze the impacts of any proposed rate increase on disconnection rates when a utility applies to increase any rate;

Resources for Repayment Assistance

- Order utilities to apply LIHEAP funding received to participants' current monthly bills first, and not to retire arrearages first;
- Establish a debt forgiveness program for utility customers facing financial hardship and a source of funding to cover the arrearages outside of the SBC or other ratepayer funded programs;

Municipal Utility Authorities for Water Service

- Public water systems serving 60% of all water customers in New Jersey are publicly owned by a municipal utility authority ("MUA") rather than by private investors and, therefore, not subject to BPU regulation. While Rate Counsel concedes that municipal service falls outside the Board's statutory jurisdiction, thousands of MUA customers are at risk of losing service following the end of the voluntary utility shutoff moratorium. The Board should engage with the Department of Community Affairs, which does oversee the budgets of municipal utilities authorities to explore solutions for those customers; and

Payment Assistance Funding

- Rate Counsel asks the Board to undertake measures within its jurisdiction to increase funds allocated to financial assistance programs from federal CARES Act or other federal funds.

Conclusion

The Board is tasked with several overarching obligations: ensuring the continued safe provision of utility service to New Jersey residents and businesses, ensuring rates for service remain reasonable and affordable, and ensuring utility providers have adequate resources to continue the provision of safe and adequate service to their customers. The economic circumstances stemming from the COVID-19 pandemic threaten this rubric. Board leadership and action is now imperative to lessen the resulting harm to the public.

Rate Counsel respectfully submits that a plan with increased customer protections to prevent utility service disconnections is vital before service termination moratoriums are lifted. It is the intent of Rate Counsel that the proposed relief requested herein will open the discussion among the Board, utility service providers and Rate Counsel in developing a thoughtful and measured plan that protects both the interests of utility customers and utility providers. The relief requested is in the public interest.

For the foregoing reasons, Rate Counsel respectfully requests that the Board initiate a proceeding that will provide all interested parties the opportunity to address the important emergent issues raised in this Petition.

Respectfully Submitted,

/s/ Stefanie A. Brand
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Dated: October 2, 2020.