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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

INFRASTRUCTURE INVESTMENT AND RECOVERY

Proposed New Subchapter: *N.J.A.C.* 14:3-2A

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.* ______________

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

BPU Docket Number: AX17050469

Proposal Number: PRN 2017-___

Comments may be submitted through _______2017, 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: AX17050469

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

PO Box 350

Trenton, NJ 08625-0350

The agency proposal is as follows:

Summary

The Board of Public Utilities (Board) is hereby proposing a new Subchapter for the implementation of an Infrastructure Investment Program (IIP) that will allow a utility to construct, install, or remediate utility plant and facilities related to reliability, resiliency, and/or safety to provide safe and adequate service. The IIP is a regulatory initiative intended to create a financial incentive for utilities to accelerate the level of investment needed to promote the timely rehabilitation and replacement of certain non-revenue producing components that enhance reliability, resiliency, and/or safety.

Proposed new *N.J.A.C. 14:3-2A.1* establishes the purpose, scope, and general provisions for new Subchapter 2A.

Subsection (a) provides that the proposed new subchapter establishes a regulatory mechanism for IIPs, which allow for accelerated investment in the construction, installation, and rehabilitation of certain non-revenue producing utility plant and facilities to enhance safety, reliability, and/or resiliency. Furthermore, *subsection* (a) provides that the subchapter generally allows a utility, through an IIP to obtain accelerated recovery on qualifying investments, subject to the terms of the subchapter and any additional conditions set by the Board in approving individual IIPs.

Subsection (b) sets forth the purpose of the IIP, which is to encourage and support accelerated construction of certain utility plant and equipment needed for continued system safety, reliability, resiliency, and sustained economic growth in New Jersey.

Subsection (c) sets forth that the Board shall require frequent and detailed reporting of expenditures in IIPs.

Proposed new *N.J.A.C. 14:3-2A.2* establishes project eligibility.

Subsection (a) provides a list of the general requirements for IIP eligible projects.

Subsection (b) sets forth a non-exhaustive list of the types of projects that may be eligible IIP projects.

Subsection (c) establishes that a utility shall maintain capital expenditures on projects similar to those in the utility's approved IIP. These capital expenditures shall amount to at least ten (10) percent of any approved Infrastructure Investment Program.

Proposed new *N.J.A.C. 14:3-2A.3* establishes annual baseline spending levels.

Subsection (a) provides that a utility shall, within its IIP petition, propose annual baseline spending levels to be maintained by the utility throughout the length of the proposed IIP.

Subsection (b) sets forth data submission requirements to justify proposed annual baseline spending levels.

Subsection (c) provides that the Board, within its order approving an IIP, shall set forth the factors used to establish the approved annual baseline spending levels for each year of the IIP.

Subsection (d) sets forth that only expenditures that are in excess of annual baseline spending levels, and meet all other IIP requirements, shall be eligible for accelerated recovery pursuant to *N.J.A.C.* 14:3-2A.6.

Proposed new *N.J.A.C. 14:3-2A.4* establishes IIP length and limitations.

Subsection (a) sets forth that a utility may petition the Board for an IIP extending for a period of five (5) years or less.

Subsection (b) establishes the Board's discretion to limit the size of a proposed IIP.

Subsection (c) sets forth that a utility that offers more than one regulated service may file separate petitions to establish separate IIPs for each regulated service offered by the utility.

Subsection (d) sets forth that a water utility shall not simultaneously maintain an IIP and utilize the Board's Distribution System Improvement Charge (DSIC).

Subsection (e) sets forth that Allowance for Funds Used During Construction (AFUDC) of an IIP project shall be permitted until that project is placed in service.

Subsection (f) sets forth that year-to-year variations in an Infrastructure Investment Program's approved annual budget of up to ten (10) percent shall be permitted, but variations in excess of ten (10) percent shall require Board approval.

Proposed new N*.J.A.C. 14:3-2A.5* establishes IIP minimum filing and reporting requirements.

Subsection (a) sets forth that all IIPs shall be voluntary and not required by the Board.

Subsection (b) sets forth a list of items that shall be filed with a utility's IIP petition to the Board.

Subsection (c) establishes that the Board, in evaluating an IIP petition, may require a utility to provide supplemental information beyond what is required in subsection (b) above, and/or may require the utility retain an independent monitor. This subsection also details some components that shall be included in reports from an independent monitor should the Board require one.

Subsection (d) sets forth public hearing requirements.

Subsection (e) sets forth that a utility with an approved petition for an IIP shall file supportive semi-annual status reports with the Board and the Division of Rate Counsel for project management and oversight purposes. This subsection also lists the minimum information that shall be included in the semi-annual reports.

Proposed new *N.J.A.C 14.3-2A.6* addresses recovery of IIP expenditures.

Subsection (a) sets forth that a utility may petition the Board for annual or semi-annual rate recovery for facilities constructed and placed in service under an IIP.

Subsection (b) sets forth that accelerated recovery filings under an IIP shall seek at least ten (10) percent of overall IIP expenditures.

Subsection (c) provides that expenditures made prior to Board's approval of an IIP shall not be eligible for accelerated recovery.

Subsection (d) sets forth that accelerated recovery of expenditures shall be recovered through a separate clause of the utility's Board approved tariff.

Subsection (e) sets forth that rates approved by the Board for recovery of expenditures under an Infrastructure Investment Program shall be provisional, subject to refund and interest. This subsection further states that prudence of IIP expenditures shall be determined in the utility's next base rate case.

Subsection (f) sets forth that a utility shall file its next base rate case not later than five (5) years after the Board's approval of the IIP.

Subsection (g) sets forth that a utility may continue to file for accelerated recoveries during the approved Program period notwithstanding the filing of the utility's next base rate case.

Subsection (h) sets forth that an earnings test shall be required.

Subsection (i) sets forth that if the calculated ROE exceeds the allowed ROE from the utility's last base rate case by fifty (50) basis points or more, accelerated recovery shall not be allowed for the applicable filing period.

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Social Impact

The proposed new rule will have a positive social impact because an IIP is a regulatory tool that would complement the existing regulatory framework in New Jersey. Furthermore, it would improve service reliability and resiliency through planned replacements and reduce service interruptions, emergency replacements, and attached emergency costs, which can run multiple times over the level of planned costs. The proposed new rule may help to ensure that the people of New Jersey will receive safe, adequate, and proper utility service at reasonable rates.

Economic Impact

The proposed new rule will have an economic impact. The purpose of an IIP is to provide a rate recovery mechanism that encourages and supports necessary accelerated rehabilitation and replacement of critical utility infrastructure. As provided for in the rule, this investment would occur in a systematic and sustained way to advance the accelerated rehabilitation and replacement of utility distribution infrastructure needed for continued safe, reliable, and resilient service and sustained economic growth in the State of New Jersey.

Federal Standards Statement

No Federal standards analysis is required because the proposed new rule is not being 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

The proposed new rule may have an impact on the generation of jobs in New Jersey. Rutgers University reports that for every $1 million of utility infrastructure project spending, a total of 7.9 full-year jobs are created in New Jersey, assuming key materials are manufactured in New Jersey. A total of 6.5 full-year jobs per $1 million in utility infrastructure project spending are created if key materials are manufactured outside of New Jersey, according to the report.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

The proposed new rule 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 one-hundred (100) full-time employees. With regard to impacted utilities, large or small, the new rule will only impose requirements if a utility chooses to file a petition in support of an IIP.

Housing Affordability Impact Analysis

The proposed new rule 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 scope of the rule is limited to the implementation of an IIP.

Smart Growth Development Impact Analysis

The proposed new rule will not have any significant impact on smart growth.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

SUBCHAPTER 2A. INFRASTRUCTURE INVESTMENT AND RECOVERY

14:3-2A.1 Infrastructure Investment Program – Purpose, scope, and general provisions

(a) This subchapter establishes a regulatory mechanism concerning Infrastructure Investment Programs, which allow utilities, to accelerate their investment in the construction, installation, and rehabilitation of certain non-revenue producing, utility plant and facilities that enhance safety, reliability, and/or resiliency. Through an Infrastructure Investment Program approved by the Board, a utility may obtain accelerated recovery of qualifying investments, subject to the terms of this subchapter, and any other conditions set by the Board in approving an individual utility's Infrastructure Investment Program.

(b) The purpose of an Infrastructure Investment Program is to provide a rate recovery mechanism that encourages and supports necessary accelerated construction, installation, and rehabilitation of certain utility plant and equipment. As set forth under this subchapter, such investment would occur in a systematic and sustained way to advance construction, installation, and rehabilitation of utility infrastructure needed for continued system safety, reliability, and resiliency, and sustained economic growth in the State of New Jersey.

(c) The Board shall require frequent and detailed reporting of expenditures during all phases of an Infrastructure Investment Program, as set forth in this subchapter, in order to ensure prudent investment and compliance with this subchapter.

14:3-2A.2 Project eligibility

(a) Eligible projects within an Infrastructure Investment Program shall be:

1. Related to safety, reliability, and/or resiliency;
2. Non-revenue producing;
3. Specifically identified by the utility within its petition in support of an Infrastructure Investment Program; and
4. Approved by the Board for inclusion in an Infrastructure Investment Program, in response to the utility's petition.

(b) Projects within an Infrastructure Investment Program may include:

1. The replacement of gas Utilization Pressure Cast Iron mains with elevated pressure mains and associated services;
2. The replacement of mains and services that are identified as high risk in a gas utility's Distribution Integrity Management Plan;
3. The installation of gas Excess Flow Valves where existing gas service line replacements require them, excluding Excess Flow Valves installed upon customer request pursuant to 49 CFR 192.383;

4. Electric distribution automation investments, including, but not limited to, Supervisory Control and Data Acquisition equipment, cybersecurity investments, relays, reclosers, Voltage and Reactive Power Control, communications networks, and Distribution Management System Integration;
5. The installation of break-predictive water sensors and wastewater sensors to curtail combined sewer overflows; and
6. Other projects deemed appropriate by the Board.

(c) A utility shall maintain its capital expenditures on projects similar to those proposed within the utility's Infrastructure Investment Program. These capital expenditures shall amount to at least ten (10) percent of any approved Infrastructure Investment Program. These capital expenditures shall be made in the normal course of business and recovered in a base rate proceeding, and shall not be subject to the recovery mechanism set forth in N.J.A.C. 14:3-2A.6.

14:3-2A.3 Annual baseline spending levels

(a) A utility seeking to establish an Infrastructure Investment Program shall, within its petition, propose annual baseline spending levels to be maintained by the utility throughout the length of the proposed Infrastructure Investment Program. These expenditures shall be recovered by the utility in the normal course within the utility's next base rate case.

(b) In proposing annual baseline spending levels, the utility shall provide appropriate data to justify the proposed annual baseline spending levels, which may include historical capital expenditure budgets, projected capital expenditure budgets, depreciation expenses, and/or any other data relevant to the utility’s proposed baseline spending level.

(c) Upon approving a utility's proposed Infrastructure Investment Program, the Board shall establish, within its order approving the Program, annual baseline spending levels for each year of the Infrastructure Investment Program. In establishing the annual baseline spending levels, the Board shall set forth, within its order approving the Program, the factors used to establish the annual baseline spending levels. The Board, in its discretion, may consider a utility’s historical capital expenditure budgets, projected capital expenditure budgets, depreciation expenses, or any other data deemed relevant by the Board in establishing the annual baseline spending levels.

(d) Only expenditures that are in excess of the annual baseline spending levels established by the Board and that meet the other requirements of this subchapter shall be eligible for accelerated recovery pursuant to N.J.A.C. 14:3-2A.6.

14:3-2A.4 Infrastructure Investment Program length and limitations

(a) A utility may petition the Board for approval of an Infrastructure Investment Program extending for a period of five (5) years or less.

(b) The Board may limit the size of a particular Infrastructure Investment Program due to its anticipated impact on rates, or for any other reasons in the Board’s discretion.

(c) A utility that offers more than one regulated service may file separate petitions to establish separate Infrastructure Investment Programs for each regulated service offered by the utility. Under these circumstances, each Infrastructure Investment Program approved by the Board shall be subject to its own respective spending cap.

(d) A water utility shall not simultaneously maintain an Infrastructure Investment Program and utilize the Board's Distribution System Improvement Charge (DSIC), set forth in N.J.A.C. 14:9-10.1, et seq. Before filing a petition in support of a proposed Infrastructure Investment Program under this subchapter, a water utility shall first close out any existing DSIC program.

(e) Allowance for Funds Used During Construction (AFUDC) shall be permitted under an Infrastructure Investment Program, but a utility shall not utilize AFUDC once Infrastructure Investment Program facilities are placed in service.

(f) Year-to-year variations in an Infrastructure Investment Program's approved annual budget of up to ten (10) percent shall be permitted, provided that the total Program budget is not exceeded. Variations in excess of ten (10) percent shall require Board approval.

14:3-2A.5 Infrastructure Investment Program minimum filing and reporting requirements

(a) All Infrastructure Investment Programs shall be voluntary, in that a utility shall not be required by the Board to establish an Infrastructure Investment Program.

(b) A utility requesting approval of an Infrastructure Investment Program shall include within its petition:

1. Projected annual capital expenditure budgets for a five (5) year period, identified by major categories of expenditures;
2. Actual annual capital expenditures for the previous five (5) years, identified by major categories of expenditures;
3. An engineering evaluation and report identifying the specific projects to be included in the proposed Infrastructure Investment Program, with descriptions of project objectives, detailed cost estimates, in-service dates, and any applicable cost-benefit analysis for each project;
4. An Infrastructure Investment Program budget setting forth annual budget expenditures;
5. A proposal addressing when the utility intends to file its next base rate case, consistent with N.J.A.C. 14:3-2A.6(f);
6. Proposed annual baseline spending levels, consistent with N.J.A.C. 14:3-2A.3(a) and (b);
7. The maximum dollar amount, in aggregate, the utility seeks to recover through the Infrastructure Investment Program; and
8. The estimated rate impact of the proposed Infrastructure Investment Program on customers.

(c) In considering a utility's petition in support of an Infrastructure Investment Program, the Board may require that the utility:

1. Provide any supplemental information, beyond the information required under N.J.A.C. 14:3-2A.5(b), that the Board deems necessary to evaluate the utility's petition in support of an Infrastructure Investment Program;
2. Retain an independent Program monitor, as a condition of approval of the utility's petition, to review and provide quarterly or semi-annual reports to the Board and to the Division of Rate Counsel, where the monitor shall be paid by the utility. If the Board requires an independent Program monitor, the monitor's reports shall address:
   - i. The effectiveness of Infrastructure Investment Program investments in meeting project objectives;
   - ii. The cost-effectiveness and efficiency of investments;
   - iii. The appropriateness of cost assignments; and
   - iv. Any other information required by the Board.

(d) Before the Board approves an Infrastructure Investment Program, the Board shall conduct a public hearing. Notice of the public hearing shall contain the maximum dollar amount the utility seeks to recover through its Infrastructure Investment Program and the utility's estimated rate impact.

(e) Following the Board's approval of a utility's petition in support of an Infrastructure Investment Program, the utility shall file supportive semi-annual status reports with the Board and the Division of Rate Counsel for project management and oversight purposes that, at a minimum, contain the following:

1. Forecasted and actual costs of the Infrastructure Investment Program for the applicable reporting period, and for the Program to date, where Program projects are identified by major category;
2. The estimated total quantity of work completed under the Program identified by major category. In the event that the work cannot be quantified, major tasks completed shall be provided;
3. Estimated completion dates for the Infrastructure Investment Program as a whole, and estimated completion dates for each major Program category;
4. Anticipated changes to Infrastructure Investment Program projects, if any;
5. Actual capital expenditures made by the utility in the normal course of business on similar projects, identified by major category; and
6. Any other performance metrics concerning the Infrastructure Investment Program required by the Board.

14:3-2A.6 Infrastructure Investment Program Recovery

(a) A utility may file for annual or semi-annual rate recovery for facilities constructed and placed in service under an Infrastructure Investment Program. "In service" means when a project approved for inclusion in a Infrastructure Investment Program is functioning in its intended purpose, is in use (i.e., not under construction) and useful (i.e., actively helping the utility provide efficient service).

(b) Each filing made by a utility seeking accelerated recovery under an Infrastructure Investment Program shall seek recovery, at a minimum, of at least ten (10) percent of overall Infrastructure Investment Program expenditures.

(c) A utility's expenditures made prior to the Board's approval of an Infrastructure Investment Program shall not be eligible for accelerated recovery.

(d) Rates approved by the Board for recovery of expenditures under an Infrastructure Investment Program shall be accelerated, and recovered through a separate clause of the utility's Board-approved tariff.

(e) Rates approved by the Board for recovery of expenditures under an Infrastructure Investment Program shall be provisional, subject to refund and interest. Prudence of Infrastructure Investment Program expenditures shall be determined in the utility's next base rate case.

(f) A utility shall file its next base rate case not later than five (5) years after the Board's approval of the Infrastructure Investment Program, although the Board, in its discretion, may require a utility to file its next base rate case within a shorter period.

(g) A utility may continue to file for accelerated recoveries during the approved Program period notwithstanding the filing of the utility's next base rate case.

(h) An earnings test shall be required, where Return on Equity (ROE) shall be determined based on the actual net income of the utility for the most recent twelve (12) month period divided by the average of the beginning and ending common equity balances for the corresponding period.

(i) For any Infrastructure Investment Program approved by the Board, if the calculated ROE exceeds the allowed ROE from the utility's last base rate case by fifty (50) basis points or more, accelerated recovery shall not be allowed for the applicable filing period.