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ALL UTILITIES

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

**Parties of Record:**

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**BY PRESIDENT JOSEPH L. FIORDALISO:**

**BACKGROUND:**

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 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 (“EO 103”)<sup>1</sup>, 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.

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.

Additionally 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 reconnection 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.”<sup>2</sup> The moratoria were voluntarily extended by the utilities until October 15, 2020.

On July 2, 2020, the Board issued an Order authorizing each of the State’s utilities to create a COVID-19 regulatory asset by deferring on their books and records the prudently incurred incremental costs related to COVID-19 beginning on March 9, 2020 through September 30, 2021, or 60 days after Governor Murphy issues an order, declaration, proclamation, or similar announcement that the Public Health Emergency is no longer in effect or, in the absence of such an order, declaration, proclamation or similar announcement, 60 days from the time the Public Health Emergency automatically terminates pursuant to N.J.S.A. 26:13-3(b), whichever is later (“July 2 Order”). The Board found that deferral of such costs is appropriate because the current catastrophic health emergency is outside the control of the utilities and is a non-recurring event. The Board ordered all deferred incremental COVID-19 related costs be offset by any federal or state assistance that the utility may receive as a direct result of the COVID-19 pandemic. The Board further ordered that all affected utilities maintain detailed records of the incremental COVID-19 related costs and savings during the COVID-19 pandemic and to file quarterly reports.

Additionally, the July 2 Order required that all affected utilities file a petition with the Board by December 31, 2021, or within 60 days of the close of the regulatory asset period, whichever is later. Any potential rate recovery, including any prudency determinations and the appropriate period of recovery for any approved amount of the regulatory asset and any associated savings, is to be addressed in this COVID-19 regulatory asset filing, or, in the alternative, a utility may request that the Board defer consideration of rate recovery in a future rate case. All costs remain subject to audit by the Board.

On October 2, 2020, Rate Counsel filed a petition for relief asking the Board to order a formal investigation into the scope of the COVID-19 public health emergency’s impact on ratepayers’ making of timely payments, a moratorium on the discontinuance of service for non-payment, and the development of appropriate arrearage and bill payment assistance plans (“Rate Counsel

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<sup>1</sup> EO 103 and all other executive orders referenced in this Order are available online at: <https://nj.gov/infobank/eo/056murphy/>.

<sup>2</sup> The joint statement referenced in this Order is available online at: <https://www.state.nj.us/dep/watersupply/pdf/dep-dca-bpu-ask-water-suppliers.pdf>

Petition"). The Rate Counsel Petition raised a number of other issues relating to COVID-19, including: its impacts on rate setting, rate design, and utility financial strength; low income and other utility bill assistance programs; regulatory compliance; collections and termination of service; and ensuring the continued provision of safe and adequate service at just and reasonable rates.

On October 14, 2020, BPU received a letter signed by AARP New Jersey, Anti-Poverty Network of New Jersey, Food & Water Action, Natural Resources Defense Counsel and New Jersey Citizen Action expressing their collective support for the Rate Counsel Petition.

The moratorium period was extended on October 15, 2020 through Executive Order 190 ("EO 190") to March 15, 2021, which prohibited the gas, electric, and water utilities from discontinuing any gas, electric, or water service to New Jersey residents due to nonpayment or from collecting any fee or charge imposed for late or otherwise untimely payments or service reconnections that have accrued, and will continue to accrue, during the public health emergency. EO 190 also required that any gas, electric, or water service that was discontinued due to nonpayment after the social distancing measures went into effect, including where the disconnection was for unpaid bills incurred prior to the current public health emergency, be reconnected at any occupied residence at no cost to the customer.

On October 28, 2020, the Board issued an Order expanding the scope of this docket to examine all pandemic related issues by way of a generic proceeding, which allowed for a public comment period through November 30, 2020 ("October 2020 Order").<sup>3</sup> The Order also designated President Fiordaliso or his designee as the presiding commissioner over this matter, who is authorized to rule on all motions that arise during the proceedings and modify any schedules that may be set as necessary to secure just and expeditious determination of the issues.

On January 11, 2021, a motion to intervene in this matter was received from AARP. No opposition was filed against AARP's motion. After reviewing the motion against the standard set out for intervention, AARP's motion for intervention was granted by Order dated January 28, 2021 by President Fiordaliso under the authority granted to him under the October 2020 Order.

On March 3, 2021, Governor Murphy further extended the moratorium period from March 15, 2021 to June 30, 2021 through Executive Order 229 ("EO 229"). EO 229 incorporated prohibitions for shut-offs and related fees from EO 190 as to gas, electric, and water utilities, and further directed cable and telecommunications companies to offer to customers who are delinquent on paying their bills options to resolve the outstanding balances prior to shut-off. EO 229 supersedes EO 190 to the extent there are any inconsistencies.

#### Motions to Participate

##### *LSNJ, NRDC, NJCA*

On February 5, 2021, Legal Services of New Jersey ("LSNJ"), Natural Resources Defense Council ("NRDC"), and New Jersey Citizen Action ("NJCA") each submitted Motions to Participate. Each claimed a significant interest in the outcome of the proceeding because recipients and members of their respective organizations will be economically impacted by the substantive policies and any programs established in this proceeding. Each also argued that their

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<sup>3</sup> On October 21, 2020, a Secretary's Letter was issued to Rate Counsel extending the time period for comments to November 30, 2020 pursuant to the Board's authority under N.J.A.C. 14:1-6.2(c).

respective experience and policy expertise relative to service availability and rates and cost recovery mechanisms on low- and moderate-income ratepayers will measurably and constructively advance this proceeding, and that their diverse membership is materially different from that of the existing parties in this matter. Finally, each also stated that its participation would not cause delay or confusion because it would abide by any schedule set for the proceeding.

No opposition or response to any of the parties' Motion to Participate was received by the Board.

## **DISCUSSION AND FINDINGS**

### **Motions to Intervene or Participate**

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider the following factors:

1. The nature and extent of the moving party's interest in the outcome of the case;
2. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

If the standard for intervention is not met, N.J.A.C. 1:1-16.5 provides for a more limited form of involvement in the proceeding as a "participant," if, in the discretion of the trier of fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion. Under N.J.A.C. 1:1-16.6(c), such participation is limited to the right to argue orally, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact.

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record involves consideration of a diversity of interests and must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervener's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, BPU Docket No. EM05020106 (June 8, 2005).

After consideration of the papers, and given the lack of any objections, I **HEREBY FIND** that LSNJ, NRDC, and NJCA have significant interests in this proceeding and that, as participants, LSNJ, NRDC, and NJCA are likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** LSNJ, NRDC, and NJCA participant status limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2) pursuant to the authority granted to me by the Board under the October 2020 Order.

All grants of participation are conditioned upon the execution of the Agreement of Non-Disclosure by the Participants, if applicable.

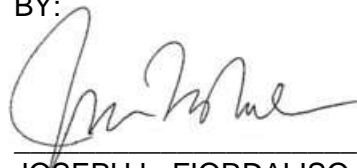
Lastly, in compliance with the Board's Order in Docket No. EO20030254, all parties are **HEREBY DIRECTED** to serve all documents electronically.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

This Order shall be effective on March 16, 2021.

DATED: March 16, 2021

BY:

A handwritten signature in black ink, appearing to read "Joe Fiordaliso", written over a horizontal line.

JOSEPH L. FIORDALISO  
PRESIDENT

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

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## Municipal Water Utilities\*

\*The municipals listed are regulated only in terms of the customers served outside of the municipality's limits and only for service issues, if the rates are equalized. Currently, the NJBPU-regulated municipal water systems all have equalized rates.

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