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January 31, 2020

Via Hand Delivery and Electronic Mail [rule.comments@bpu.nj.gov](mailto:rule.comments@bpu.nj.gov)

Aida Camacho-Welch, Secretary  
New Jersey Board of Public Utilities  
ATTN: BPU Docket Number: AX19060729  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, New Jersey 08625-0350

Re: I/M/O the Board's Proposed Amendments and New Rules Concerning  
Discontinuance and Restoration of Utility Service,  
N.J.A.C. 14:3-3A.1.1, -3A.2 and -3A.4  
BPU Docket No. AX19060729

Dear Secretary Camacho-Welch:

Please accept an original and ten (10) copies of comments being filed on behalf of the Division of Rate Counsel ("Rate Counsel") in response to the proposed rules published in the New Jersey Register in connection with the Board of Public Utilities' ("Board") Proposed Amendments and New Rules Concerning Discontinuance and Restoration of Utility Service, N.J.A.C. 14:3-3A.1.1, 3A.2 and 3A.4 (the "Rule Proposal"). The Rule Proposal was published in the December 2, 2019 New Jersey Register, 51 N.J.R. 1755(a). We enclose one additional copy of these comments. Please stamp and date the copy as "filed" and return it with our courier. Thank you for your consideration and assistance.

### **Introduction**

Rate Counsel thanks the Board for the opportunity to submit these comments. We support the Rule Proposal's protections from discontinuance of service to customers who use life-sustaining electrical equipment or have a medical emergency that would be aggravated by the loss of utility service. Our office anticipates that the Rule Proposal, with the additional changes recommended below, will more effectively protect medically vulnerable people and prevent another tragedy such as Linda Daniels' death.<sup>1</sup> Rate Counsel looks forward to continuing to work with the Board and other stakeholders to improve ratepayer protections for discontinuance and restoration of utility service.

Rate Counsel recommends six additional amendments to the Rule Proposal to further protect medically vulnerable customers: 1) clarifying that the Rule Proposal protects premises with either a "medical customer" who uses life-sustaining electrical equipment or a customer with a "medical emergency" that would be aggravated by the discontinuance of utility service (referred to collectively herein as "medically vulnerable customers"); 2) extending the protection from disconnection for non-payment from 60 days to 90 days afforded to electric customers under the law to customers of gas and water utilities as well; 3) requiring water utilities, and electric and gas utilities as well, to solicit information on customers who use life-sustaining electrical equipment; 4) allowing a "licensed medical professional with prescriptive authority" or his or her designated agent to provide a written statement of the existence of a medical emergency or the use of life-sustaining electrical equipment, its estimated duration and that discontinuance of service will aggravate the condition; 5) protecting utility customers' private

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<sup>1</sup> May 13, 2019 Statement to Assembly Committee Substitute for Assembly Nos. 4430 and 4555.

medical information; and 6) providing notice to medically vulnerable customers when electric, gas or water utility service is discontinued for any reason, planned or unplanned, so they can make necessary arrangements.

### **Background**

On July 5, 2019, the legislature enacted “Linda’s Law,” P.L.2019, c.154, codified as amendments to N.J.S.A. 48:2-29.48 through N.J.S.A. 48:2-29.53.<sup>2</sup> Linda’s Law prohibits electric public utilities from discontinuing service for non-payment for 90 days to households that provide information indicating a resident uses life-sustaining equipment powered by electricity. Currently, all utilities are prohibited from discontinuing service to residential customers for non-payment for 60 days if a residence has a “medical emergency ... which would be aggravated by a discontinuance of service,” N.J.A.C. 14:3-3A.2(i).

On December 2, 2019, the Board published the Rule Proposal regarding service provided by all utilities. In particular, it would amend three provisions relating to the discontinuance and restoration of service: N.J.A.C. 14:3-3A.1.1 (definitions); N.J.A.C. 14:3-3A.2 (discontinuance for non-payment) and N.J.A.C. 14:3-3A.4 (additional notice requirements for discontinuance of residential and special customers). 51 N.J.R. 1755(a). Rate Counsel respectfully submits the following comments to the Board.

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<sup>2</sup> With the exception of Section 6, Linda’s Law became effective on January 1, 2020. Section 6 requires the Board to adopt implementing rules within 180 days of enactment of Linda’s Law. N.J.S.A. 48:2-29. That Rule Proposal is the subject of these comments.

### **Rate Counsel Comments**

#### **Summary**

**The Board of Public Utilities is proposing amendments at N.J.A.C. 14:3-1.1, 3A.2 and 3A.4, to provide greater clarity that all utilities regulated by the Board are prohibited from discontinuing service to customers using life-sustaining equipment upon the utility receiving proper verification that life-sustaining equipment is in use in the customer's residential premises.**

**Comments:** The Board's existing regulations already prohibit any utility from discontinuing service to premises with a "medical emergency" that would be aggravated by the discontinuance of utility service. See N.J.A.C. 14:3-3A.2(e)(4) and 14:3-3A.2(i). Linda's Law prohibits only electric utilities from discontinuing service for non-payment to "medical customers" who use electrically powered life-sustaining equipment, to avoid "aggravating" their condition. In the Rule Proposal, however, the Board expanded this concept by extending this prohibition to all utilities. This is consistent with the intent of both Linda's Law and current Board rules. For this reason, Rate Counsel supports this extension of protection to discontinuance of any utility service. Utility service other than electricity may be medically necessary for a customer. For example, a respiratory condition may be aggravated in cold weather by the loss of gas service for heat. Similarly, a person who uses home dialysis equipment requires both electricity and clean water to use that equipment.

#### **N.J.A.C. 14:3-3A.1.1 Definitions**

The Rule Proposal applies where a "medical emergency" exists. The term "medical emergency," however is not defined by the Rule Proposal or the underlying statute. The statute's protections extend to "medical customers," which is defined as, "a residential electric public

utility customer of record who uses life-sustaining equipment powered by electricity, as determined by the board, at the customer's address and affirmatively responds to a request for information pursuant to [N.J.S.A. 48:2-29.49].” N.J.S.A. 48:2-29.48.

The undefined term “medical emergency” suggests a time-limited condition, i.e., one that has recently occurred and may resolve in the short term.

Rate Counsel recommends amending the Rule Proposal to ensure protection from service discontinuance for any “medical customer” with a long-term or short-term need for life-sustaining electrical equipment that would be aggravated by discontinuance of utility service.

This can be addressed by adding the following new definition to the Rule Proposal:

**“‘Medical emergency’ means a medical condition, including but not limited to chronic conditions or the long-term use of life-sustaining medical equipment, or a short-term condition that would be aggravated by a discontinuance of utility service.”**

“Medical certification status”

The Rule Proposal establishes a requirement that all utilities must develop customer outreach plans to apply for “medical certification status,”<sup>3</sup> an undefined term. To ensure consistency throughout the Rule Proposal, Rate Counsel recommends adding the following definition of the term “medical certification status” to the Rule Proposal:

**“‘Medical certification status’ means that the utility has been reasonably notified that a ‘medical emergency’ exists within the residential premises.”**

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<sup>3</sup> N.J.A.C. 14:3-3A.4(e).

“Utility”

Linda’s Law defines a “utility” to mean only an electric utility,<sup>4</sup> whereas the Board statute and current Board rules define a “public utility” to include all utilities, including but not limited to electric, gas and water.<sup>5</sup> The Summary of the Rule Proposal states that the regulation is intended to extend the safeguards from discontinuance of service to all utilities regulated by the Board. Rate Counsel recommends that these protections be explicitly expanded to include gas and water utilities. To clarify the scope of these protections, Rate Counsel recommends adding the following definition to the Rule Proposal:

**“‘Utility’ means any electric, gas or water public utility company.”**

“Licensed medical professional”

Linda’s Law authorizes the Board to determine the types of “licensed medical professionals” who may sign a “medical certification” needed to document, if requested, that the person is a “medical customer” protected from discontinuance of electric service.<sup>6</sup> The Rule Proposal includes a proposed definition of a “licensed medical professional”:

**“‘Licensed medical professional’ means a health care provider with prescriptive authority.”**

A “health care provider with prescriptive authority” may be too limited. Rate Counsel recommends adding to this phrase, “... or that professional’s authorized agent or representative.” That addition would reflect the fact that an agent or representative of the “licensed medical

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<sup>4</sup> N.J.S.A. 48:2-29.48.

<sup>5</sup> N.J.S.A. 48:2-13; N.J.A.C. 14:3-1.1.

<sup>6</sup> N.J.S.A. 48:2-29.49(b).

professional,” such as a registered nurse (without prescriptive authority), may be the person who actually provides the documentation for the customer’s use. Rate Counsel anticipates that this addition would make it easier to obtain the necessary documentation, while reducing the risk of unqualified claims. Accordingly, Rate Counsel recommends adding the underlined phrase to the definition in the Rule Proposal:

**“‘Licensed medical professional’ means a health care provider with prescriptive authority or that professional’s authorized agent or representative.”**

**N.J.A.C. 14:3-3A.2 Discontinuance for nonpayment**

**A. Amendment to extend prohibition on discontinuance for non-payment from 60 to 90 days, N.J.A.C. 14:3-3A.2(i).**

**Discontinuance of residential service for nonpayment is prohibited for up to [60] 90 days initially if a medical emergency exists within the residential premises, which would be aggravated by a discontinuance of service. The following conditions apply to this [60-day] 90-day prohibition on discontinuance:**

Linda’s Law prohibits discontinuing residential electric service to “medical customers” for non-payment for a period of 90 days.<sup>7</sup> The Rule Proposal extends the current Board rules’ prohibition on utilities discontinuing residential service for non-payment to an initial period of 90 days (from the current 60 days) where a “medical emergency exists ... which would be

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<sup>7</sup> N.J.S.A. 48:2-29.49(b).

aggravated by a discontinuance of service.”<sup>8</sup> Rate Counsel supports the extension of this protection to 90 days and to all electric, gas and water utilities.

**B. Signature of “Licensed medical professional” rather than “physician” acceptable where written statement is required, N.J.A.C. 14:3-3A.2(i)(2), N.J.A.C. 14:3-3A.2(j) and N.J.A.C. 14:3-3A.2(k).**

**2. The utility may require the customer to submit a written [physician’s] statement by a licensed medical professional to the utility, stating the existence of the emergency, its nature and probable duration, and that discontinuance of service will aggravate the medical emergency;**

Rate Counsel supports this change. As discussed above, with an expanded definition of “licensed medical professional,” ratepayers will be able to more easily obtain the necessary documentation, while reducing the risk of unqualified claims.

Disclosure of customers’ individual medical information to utility companies.

Under the Board’s current rule, the written statement, when required by the utility, must state the existence of the medical emergency, the nature of the medical emergency, its probable duration and that “discontinuance of service will aggravate” the medical emergency.<sup>9</sup> The disclosure of personal medical information must be consistent with both federal and State law.

The Rule Proposal does not acknowledge that “the nature of the medical emergency” need not include the person’s actual medical diagnosis, but should state either that the person

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<sup>8</sup> N.J.A.C. 14:3-3A.2(i).

<sup>9</sup> N.J.A.C. 14:3-3A.2(i)2.



uses life-sustaining electrical equipment or is experiencing a medical emergency that would be aggravated by discontinuing utility service, as well as an estimate of the probable duration of the need for life-sustaining electrical equipment. This should provide the information needed to prevent discontinuance of service, while preventing disclosure of the person's medical diagnosis.

If public utilities are allowed to demand disclosure of a person's medical diagnosis, the Board should require through formal rulemaking that utilities first implement confidentiality safeguards of customers' "individually identifiable health information." The disclosure of a person's medical diagnosis without such safeguards could result in that disclosure being deemed a HIPAA violation or could inhibit the provision of medical documentation necessary to protect the customer. It may be less burdensome for the public utility to receive information from the licensed medical professional merely stating that their patient / utility customer has a medical emergency that would be aggravated by the loss of utility service or relies on life-sustaining equipment, without providing that individual's specific diagnosis. This level of information would comply with the Rule as currently proposed.

The process of extending the 90-day protection from disconnection.

**3. The utility may require submittal of a recertification by the licensed medical professional as to the continuing nature of the medical emergency after 30 days;]**

The Rule Proposal eliminates the utility's authority to require submittal of a recertification by the licensed medical professional, as to the continuing nature of the medical emergency, after 30 days.<sup>10</sup> Rate Counsel supports this change.

**C. New section (l) to N.J.A.C. 14:3-3A.2**

**(l) When a public utility disconnects service to a master metered premise in which the landlord is the actual customer of record and the utility has been notified that a medical emergency exists by a tenant, the utility shall restore service for a period of seven days to allow the customer of record to resolve the non-payment issue and to provide the tenant with time to make alternative arrangements.**

Under the Rule Proposal, utility service to a master metered premise must be restored for seven days if the utility is notified that a resident in the master metered premise is experiencing a medical emergency, to allow the customer of record to resolve the non-payment and to allow the tenant time to make alternative arrangements.<sup>11</sup> In a master metered residence, where the landlord is typically responsible to pay for the master metered utility service, tenants may not have known of the landlord's delinquency. Accordingly, the tenant will face a serious health risk with little or no advance warning and only one week to respond. In this circumstance Rate Counsel recommends that, once the utility has been notified of a medically vulnerable tenant in the premises, the utility should restore service immediately.

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<sup>10</sup> N.J.A.C. 14:3-3A.2(i).

<sup>11</sup> Rule Proposal, new subsection N.J.A.C. 14:3-3A.2(l).

Moreover, seven days may be insufficient for a tenant with a medical emergency to resolve non-payment with a master meter (i.e. to resolve the landlord's arrears and/or establish escrow account(s)) or to make alternative arrangements (e.g. to move out). On the other hand, if the building has many tenants, a longer grace period could increase the utility's loss of revenue.

Rate Counsel does not oppose the effort in the Rule Proposal to protect tenants with a medical emergency from the consequences of a delinquent landlord. Rate Counsel also appreciates the statement in the Summary that the Rule Proposal intends to broaden the requirements for restoring service when a master meter is disconnected and a medical emergency exists. Nevertheless, this provision is unlikely to resolve these difficult situations. In fact, it is unclear if this situation can be resolved within the scope of the Board's jurisdiction and may require action by other agencies. Rate Counsel recognizes the difficult and fact-sensitive process of resolving delinquent master metered accounts.

The Rule Proposal should recognize this reality by allowing residences with a medical emergency to request an extension of the initial seven-day period, for good cause, from the Board. Pending Board resolution of the request, discontinuing utility service should be prohibited. This would parallel the process for requesting an extension of the 90-day protection from discontinuance.<sup>12</sup> Accordingly, Rate Counsel recommends adding the following sentence at the end of new section N.J.A.C. 14:3-3A.2(l) in the Rule Proposal:

**“Residences with a medical emergency may request an extension of the initial seven-day period, for good cause, from the Board. Discontinuance of utility service is prohibited pending Board resolution of the request for an extension.”**

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<sup>12</sup> See N.J.A.C. 14:3-3A.2(j).

**D. Soliciting information quarterly on customers using life-sustaining equipment on their premises, N.J.A.C. 14:3-3A.4(d).**

**Electric and gas utilities shall, [on a semi-annual basis,] solicit information from their residential customers quarterly, at a minimum, in order to determine the presence of any life-sustaining equipment on the customer's premises. This subsection does not apply to water, wastewater, or telecommunications public utilities.**

Rate Counsel supports the Rule Proposal to increase, from semi-annually to quarterly, at a minimum, electric and gas utilities' requirement to solicit information from their residential customers on the presence of life-sustaining equipment on their premises. This increased frequency should make it easier to identify residences with a medical emergency that may have emerged or changed significantly over the past three months, and to remind people to update their contact information for this important safeguard. Additionally, reports of the date the utility sent out the information to its customers and a copy of the communication should be provided to Rate Counsel and Board Staff each year.

Rate Counsel recommends extending the obligation to water utilities as well, by changing the phrase "electric and gas" in the first sentence to "electric, gas and water," and deleting, from the last sentence of the current rule, the words, "... water, wastewater, or..." As discussed above, the loss of water service can aggravate a medical emergency. Accordingly, Rate Counsel proposes adding to the Rule Proposal the underlined words and deleting the words in brackets:

**Electric, [and] gas and water utilities shall, [on a semi-annual basis,] solicit information from their residential customers quarterly, at a minimum, in order to determine the presence of any life-sustaining equipment on the**

**customer's premises. The utility company shall provide a yearly report to Board Staff and Rate Counsel of the dates it sent out the information to customers and provide a copy of the quarterly communication. This subsection does not apply to [water, wastewater, or] telecommunications public utilities.**

**E. Customer outreach plans, N.J.A.C. 14:3-3A.4(e).**

**(e) All utilities shall develop customer outreach plans that educate the public and customers on the procedures and guidelines to qualify and apply for medical certification status to be distributed to all customers quarterly.**

This provision of the Rule Proposal would require each utility to develop a customer outreach plan to educate the public and customers on the procedures and guidelines to qualify and apply for “medical certification” status, and to distribute the plan to all customers quarterly. Rate Counsel supports this proposal. Customer awareness of available assistance can be especially helpful to persons enduring a medical emergency, their families and other caregivers.

Quarterly distribution of educational material to qualify and apply for Linda’s Law protections.

Rate Counsel supports the Rule Proposal’s requiring utilities to disseminate educational materials that sets forth the who qualifies and how to apply for protection under Linda’s Law on a quarterly basis. It may be efficient for utilities to coordinate this distribution with their quarterly solicitation of information on customers using life-sustaining equipment on their premises, in the Rule Proposal at N.J.A.C. 14:3-3A.4(d). Sending these communications at the

same time, and ensuring the information provided is complete and complementary, will save costs and may maximize customer education.

Medical emergencies and emergency loss of utility service.

Neither Linda's Law nor the Rule Proposal provides any express protection to medically vulnerable customers in the event of a discontinuance resulting from an emergency loss of utility service. Under Linda's Law, an electric utility is excused from discontinuing service to a medical customer if the discontinuance results from the utility's inability to provide service due to an "emergency," as therein defined in Linda's Law.<sup>13</sup>

A utility "emergency," such as a large hurricane or other event causing major damage to infrastructure, could result in lengthy and extensive service discontinuance.<sup>14</sup> The loss of electric, gas or water utility service could aggravate a medical emergency or imperil a user of life-sustaining equipment. Although the utility may not be able to resume service immediately, there is no reason for the utility to leave medically vulnerable customers "in the dark" about what has happened or what the utility anticipates. Whether the discontinuance of service is planned or unplanned, residents with a medical emergency need to know the nature and scope of the problem, how long the discontinuance will last, and if they need to make alternative plans.

Accordingly, Rate Counsel recommends that each electric, gas and water utility use the contact information gathered through its customer outreach to notify residents identified with a

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<sup>13</sup> N.J.S.A. 48:2-29.52; N.J.S.A. 48:2-29.48.

<sup>14</sup> For example, when Tropical Storm Irene hit New Jersey in 2011, over 1.9 million electric customers lost power, and full restoration of service was not completed until eight days later. I/M/O the Board's Review of the Utilities' Response to Hurricane Irene, Order accepting consultant's report and additional Staff recommendations and requiring electric utilities to implement recommendations, BPU Dkt. No. EO11090543, Jan. 23, 2013, p. 2.

medical emergency as soon as the utility knows of or anticipates a planned or unplanned discontinuance of utility service. The notification process should include media such as texting, e-mailing and “reverse 911” calling, to households with a medical emergency and their designated contact person(s) and appropriate municipal authorities. Rate Counsel recommends requiring each utility to provide copies of its plan to Board Staff and Rate Counsel 60 days before implementation. Board Staff and Rate Counsel can provide comments to the utilities in this timeframe.

Rate Counsel anticipates that providing this notice will not impose significant expense on regulated utilities.<sup>15</sup> Board rules already require each public utility to make good faith efforts to identify which of their customers are over 65 years of age and to notify them of discontinuance of service by telephone in addition to notice by regular mail.<sup>16</sup> This provision for older customers does not apply to utilities that make good faith efforts to contact all residential customers by telephone prior to discontinuance and file with the Board a statement of their procedure.<sup>17</sup>

Accordingly, Rate Counsel recommends adding the following underlined language to the customer outreach plans provision of the Rule Proposal:

**(e) All utilities shall develop customer outreach plans that educate the public and customers on the procedures and guidelines to qualify and apply for medical certification status to be distributed to all customers quarterly. The utility company shall provide a yearly report to Board Staff and Rate Counsel of the dates it sent out the information to customers. All utilities shall submit their customer outreach plan and related materials to Board**

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<sup>15</sup> Rate Counsel understands that some public utilities already have a similar procedure.

<sup>16</sup> N.J.A.C. 14:3-3.A.4(c).

<sup>17</sup> Id.

**Staff and Rate Counsel 60 days before implementation and distribution.**

**Board Staff and Rate Counsel shall provide any feedback to the utility within 60 days.**

**Conclusion**

Rate Counsel appreciates the opportunity to comment and anticipates that, subject to our comments above, implementing the Rule Proposal will help protect medically vulnerable customers from threats to their health due to discontinuance of utility service.

Respectfully submitted,

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