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July 11, 2018

VIA HAND DELIVERY

Hon. Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
Trenton, New Jersey 08625-0350

**Re: I/M/O the Petition of Atlantic City Electric Company for
Approval of Amendments to its Tariff to Provide for an
Increase in Rates and Charges for Electric Service
Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, and
for Other Appropriate Relief (2018)
BPU Docket No. ER18060638**

Dear Secretary Camacho-Welch:

Please accept this letter in lieu of a more formal brief by the Division of Rate Counsel ("Rate Counsel") in Response to Atlantic City Electric Company's ("Atlantic" or the "Company") Opposition to Rate Counsel's Motion to Dismiss the Company's Petition dated July 3, 2018. Please date stamp the additional copy as "filed" and return it in the enclosed self-addressed, stamped envelope. Thank you for your consideration and attention to this matter.

ARGUMENT

I. The Board should reaffirm the Elizabethtown requirement that utilities file rate cases with 6 months actual and 6 months projected data.

It is a long standing Board Policy that a public utility should include in its base rate case Petition six months of actual and six months of projected data. I/M/O Elizabethtown Water Co. Rate Case, BPU Docket No. WR8504330, May 23, 1985 (“Elizabethtown”).¹ How this long standing policy will be implemented in a post interim rate regulatory world is the issue before the Board in the present case. Atlantic asserts that the Board should apply the holding of Elizabethtown with more “flexibility” in light of the new interim rate regulation adopted by the Board earlier this year. N.J.A.C. 14:1-5.12. Rate Counsel, on the other hand, asserts that the Board should apply the Elizabethtown test year actual requirements more strictly in order to ensure the continued fairness of the ratemaking process.

As discussed fully in Rate Counsel’s initial motion, there is valid concern that the interim rate regulation may take away any incentive for the utility to file a Petition that accurately reflects the Company’s actual and expected test year results because the regulation permits the utility to increase rates in an amount of the Company’s choosing and potentially over-collect from ratepayers, thereby providing a ratepayer loan to the utilities. There are real world consequences to paying such phantom rates. If low income customers cannot pay the higher interim rates set by the utility, their services can be shut off. As noted in the Company’s

¹ In the Elizabethtown Order, the Board states that rate cases “should contain when filed, six months of actual test year data and six months estimated data or at a minimum five months actual and seven months estimated data.” (Order, p. 2). While this language is somewhat ambiguous as to whether six months or five months of actual data is required, Rate Counsel asks that the Board require six months in order to allow the case to be fairly litigated or settled within the nine month suspension period.

discovery response in its last Base Rate Case, the utility claims a high rate of unemployment in its service territory, See, discovery response from Atlantic's 2017 base rate case RCR-CI-142 attached hereto as Attachment A. A subsequent refund means very little after food has spoiled in refrigerators for lack of electric service. In the meantime, the utilities will have a perverse incentive to delay the base rate case proceeding to continue over-recovering as long as possible. While ratepayers may someday get refunds with interest, not all ratepayers are in a position to withstand a period when they are essentially being forced to loan money to the utility.

The law permitting public utilities to institute interim rates after the suspension period is undisputed. N.J.S.A. 48:2-21. However regulators have an obligation to limit the negative effects of such rates and not allow utilities to harm ratepayers with unrealistic interim rates. Incentives that once encouraged the public utility to work cooperatively with Rate Counsel and Board Staff to avoid litigation and settle rate cases have been eliminated with the passing of the interim rate regulation. Indeed, it is now in the public utilities' interest to prolong the process because as the Company concedes, the risk of delay in rate case proceedings has shifted to the shoulders of the ratepayers. See, Atlantic Reply page 7. Because the utilities had incentive to move the proceeding quickly in the past, they were more inclined to cooperate with discovery and settle matters to implement rates more quickly. With the interim rate regulation, this is no longer true. With both the test year and the amount of interim rates picked exclusively by the Company, delay now works to the benefit of the Company.

Rate Counsel is aware that the Board has not always applied the Elizabethtown minimum filing requirement, even over Rate Counsel objections.² However, the Board recently issued an

² See Attachment B, I/M/O Rockland Electric Company, BPU Dkt. No. ER16050428.

Order applying these requirements even after the issuance of the interim rate regulations.³

Similarly, in 2012, the Board reaffirmed the Elizabethtown decision, but ordered JCP&L in that case to file a base rate case petition with a fully historic 2011 test year.⁴

Thus, Elizabethtown is still good policy and Rate Counsel submits that it should be applied strictly post interim rate regulation. By reaffirming the Board's decision in Elizabethtown to require 6 months of actual data the Board can at least level the playing field to a certain extent and help restore incentives to promote settlement and the prompt litigation of base rate cases. This is essential to protect the interests of ratepayers, especially the poor.

II. Rate Counsel's Motion seeks fairness, not delay.

Atlantic filed its Petition with a test year ending December 31, 2018. Because the Company filed using the 2018 test year the Company did not have more than 3 months of actual data when the Petition was filed. Atlantic Reply p.5. The Company also claims that it would not be able to re-file with six months of actual data until August 2018, and that requiring compliance with Elizabethtown is an unacceptable effort on the part of Rate Counsel to delay Atlantic's rate increase. Id. This argument is specious. The 12 month period to be used as a test year in a base rate case is strictly up to the utility to decide. Atlantic was free to file its petition with a test year

³ I/M/O the Petition of NJ American Water Company, Inc. for Approval of Increased Tariff Rates and Charges for Water and Sewer Service, Change in Depreciation Rates and Other Tariff Modifications, BPU Dkt. No. WR17090985, Order Denying Motion to Issue Order Rejecting the Company's Proposed Provisional Rates, June 22, 2018. ("2018 New Jersey American Water Base Rate Case").

⁴ See I/M/O the Petition of Rate Counsel Requesting a Board Order Directing Jersey Central Power and Light Company to File a Base Rate Case Petition and Establishing a Test Year of 2010, BPU Docket No. EO11090528 (7/31/12) and I/M/O The Verified Petition of Jersey Central Power and 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; and For Approval of an Accelerated Reliability Enhancement Program ("2012 Base Rate Filing") Order Adopting Initial Decision With Modification and Clarifications BPU Docket No. ER12111052 (3/26/15).

ending September 31, 2018 which would have enabled it to file at the same time and easily meet the 6 month actual data requirement. Or, it could have waited a short time to file until the actual data through June 30, 2018 was available.⁵ Atlantic chose not to do so in order to maximize the use of forecasted data, thereby creating the delay it claims is so detrimental. The Company claims that:

It is a simple truth that requiring more actual data as a threshold for initiating base rate case results in more delay to obtain recovery of investment that are providing service to customers. Company Reply paragraph I.C. page 5.

However the Company's statement rings hollow in light of the fact that Atlantic is in complete control of: 1) when it files its rate case; 2) what test year will be utilized; and 3) how long it will take for actual data to be available. Atlantic can choose to refile with the September 2018 test year or with actual data through June 2018 right now thereby avoiding any delay. The Company steadfastly refuses to do so and instead prefers to claim that it is a "victim" of Rate Counsel's motions.

The Company's accusations that Rate Counsel seeks to delay base rate case proceedings also rings hollow. Atlantic Reply p. 5. As can be seen on the attached chart, all but one base rate cases filed by public utilities and litigated by Rate Counsel within the last 5 years have been resolved within 9 to 10 months and all Atlantic's base rate cases have been resolved within 6 months. See, Schedule "Utility Base Rate Cases Filed the Last 5 years" attached to Rate Counsel's Comments to the Provisional Rate Increase Implementation Proposed Amendment

⁵ Obviously, the first six months of Atlantic's chosen test year have already passed. Atlantic seems to argue that it requires two months to calculate the actual data from the end of June. It has not been Rate Counsel's experience that two months are needed for updated data. In fact, in some cases the utilities have been able to provide updates within two weeks of the end of the month. This has been particularly true in the cases cited in the attached chart (Attachment B) where a tentative settlement has been reached but must await actual test year data to be finalized. It is unclear why Atlantic believes it cannot provide updates in less than two months.

N.J.A.C. 14:1-5.12, BPU Docket No. AX17050458 (Attachment C). Predictably, the one base rate case that is taking longer than necessary is the New Jersey American Water Company base rate case filed in September 2017 and litigated in 2018 with the utility putting in interim rates on June 15, 2018 in an amount greater than the record will support. 2018 New Jersey American Water Base Rate Case. Prior to the adoption of the interim rate, NJ American Water base rate cases consistently settled within an 8 month timeframe. However, the present case before the Board has taken quite a different track with a briefing schedule stretching out to Fall of 2018.

Although Rate Counsel has consistently argued for schedules that we believe are necessary to fully vet a case, we have always operated in good faith to process rate cases on a timely basis, as the attached chart shows. Now with utilities having the means to over-collect, there is even more of an incentive to not prolong cases- to the point where settlement discussions may need to be cut off in order to meet the litigation deadlines. Thus, Atlantic's accusations are simply unfounded.

III. Requiring 6 months of actual data strikes an appropriate balance, allowing the development of a record based on actual data without undue delay.

Atlantic seems to argue that it is entitled to contemporaneous recovery of its investments and that "regulatory lag" begins the day plant is used and useful. Atlantic Reply p. 6. This is not the law in New Jersey. Companies earn a return in exchange for making investments and the risk associated with subsequent recovery. If a particular investment is large enough to require it, the Company is free to file a rate case to recover that investment once the work is complete. Indeed, Atlantic has availed itself of this opportunity, filing five rate cases in the last five and a half years, attributing the timing of each to the substantial investment it has made in its

distribution system. It is clear that what Atlantic seeks is not prompt resolution of its rate cases, but a fundamental change in how rates are made in this state. It seeks to rely on forecasted test years, contemporaneous recovery of its investments, and effectively preapproval of prudence.⁶ This is inconsistent with New Jersey law and the regulatory compact. The Board should reject this back-door attempt to overturn the long-established law and policy of this state. See, Federal Power Com. v. Hope Natural Gas Co., 320 U.S. 591 602-5 (1944) (noting that a Commission was not bound by one particular ratemaking formula, and upholding the calculation of rate base based on "actual operations" rather than one "computed on the basis of reproduction cost."); Duquesne Light Co. v. Barasch, 488 U.S. 299, 309-310 (1989)(noting the constitutionality of the "prudent investment rule," in which "the utility is compensated for all prudent investments at their actual cost when made (their "historical" cost), irrespective of whether individual investments are deemed necessary or beneficial in hindsight. The utilities incur fewer risks, but are limited to a standard rate of return on the actual amount of money reasonably invested.")

Moreover, in making its argument, Atlantic completely ignores the long-established Supreme Court precedent in this state that rates are not to be based on hypothetical numbers. See In re Proposed Increased Intrastate Indus. Sand Rates, 66 N.J. 12 (1974) and I/M/O the Revision of Rates Filed by New Jersey Power & Light Co., 9 N.J. 498, 508 (1952) . While some forecasting is utilized in ratemaking, for example, combining several years of past data to calculate an appropriate level of storm, pension or labor costs, the Board has never utilized a

⁶ Atlantic has not only filed this base rate case, it simultaneously is seeking recovery of a proposed infrastructure plan that would shift recovery of half of its capital spending to a tracker, and preapproval of an electric vehicle program that would also be recovered outside of base rates. I/M/O the Petition of Atlantic City Electric Company for Approval of an Infrastructure Investment Program, and Related Cost Recovery Mechanism, Pursuant to N.J.A.C. 14:3-2A.1 et seq., BPU Docket No. EO18020196 and I/M/O the Petition of Atlantic City Electric Company for Approval of a Voluntary Program for Plug-In Vehicle Charging, BPU Dkt. No. EO18020190.

forecasted test year.⁷ This is for good reason. Atlantic does not have a stellar track record with forecasting the future.⁸

If forecasted data were to be used, it would be very difficult for the Board or Rate Counsel to truly test the Company's forecasts, and if Atlantic was to forecast incorrectly, principles prohibiting retroactive ratemaking could prevent ratepayers from obtaining refunds. As noted in Rate Counsel's motion, the Supreme Court in New Jersey Power and Light, supra, 9 N.J. 498, 517 found that requiring actual data is an important check on extravagant estimates. Thus, once again, Atlantic is seeking to shift its risk to ratepayers. However, the Company was unable to cite to any case law to support its argument and there are sound policy reasons to reject it. The Board should reject Atlantic's effort to overturn Elizabethtown and the precedent cited in Rate Counsel's motion. It should be required to refile with six months of actual data – which should now be available – so that it is in fact *possible* to process this rate case within the suspension period.

⁷ The Company cites one case from 1969 to argue the contrary, but failed to provide a copy of the relevant order to the Board or the parties. This is hardly precedent to overturn the subsequent 50 year history of using actual data or the Supreme Court cases cited by Rate Counsel.

⁸ For example, in a 2012 proceeding regarding Atlantic's Non-Utility Generation Charge ("NGC") the Board found that Atlantic under-recovered \$127 million resulting from the Company's inaccurate projections of revenues collected from customers and PJM revenues and costs. See, I/M/O the Petition of Atlantic City Electric Company to Reconcile and Update The Level of its Non-utility Generation Charge ("NGC"), its Societal Benefits Charge ("SBC") and Its Systems Control Charge ("SCC"), BPU Docket No. ER12020173.

CONCLUSION

For all of these reasons, Atlantic's June 15, 2018 Petition in this matter should be dismissed and the Board should order Atlantic not to refile until it can do so with at least six months of actual data.

Respectfully submitted,

STEFANIE A. BRAND
DIRECTOR, DIVISION OF RATE COUNSEL

By: 
Ami Morita, Esq.
Deputy Rate Counsel

AM:lg

c: Service List (*via e-mail and regular mail*)

In The Matter Of The Petition Of Atlantic City Electric Company For Approval Of Amendments To Its Tariff To Provide For An Increase In Rates And Charges For Electric Service Pursuant To N.J.S.A. 48:2-21 And N.J.S.A. 48:2-21.1, And For Other Appropriate Relief (2017)

BPU Docket No. ER17030308

Response to DRC Data Requests – Set DRC-5
(07/06/2017)

Question No: RCR-CI-142

Is ACE aware of whether customers are having a difficult time paying their bills? If so, please describe the basis of that understanding (and include any relevant documents) and also describe the difficulties that customers confront, as understood by ACE, including, if known, the communities in which such customers reside.

RESPONSE:

ACE is well aware that some customers have difficulty paying their utility bills. This is a result of the high unemployment rate in the Company's service territory where 5 casinos closed within the last few years. ACE continues to work with Unite Here Local 54, a large casino hospitality workers union, on a weekly basis to assist those in need. ACE engaged in over 200 outreach events in 2016 (*see* RCR-CI-123, Attachment 1) where the Company assisted customers who were having difficulties or concerns with their utility bills. The effort continues in 2017: The Company participated in 122 outreach activities/events during the 1st quarter. *See* RCR-CI-149, Attachment 1 for details.

WITNESS: Michael S. Poncia



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June 7, 2016

VIA HAND DELIVERY

Irene Kim Asbury, Secretary
State of New Jersey, Board of Public Utilities
44 South Clinton Avenue, 10th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

**Re: I/M/O the Verified Petition of Rockland Electric Co. for
Approval of Changes in Electric Rates, Its Tariff for Electric
Service, and Its Depreciation Rates; Approval of an Advanced
Metering Program; and for Other Relief
BPU Docket No. ER16050428**

Dear Secretary Asbury:

Please accept this letter from the Division of Rate Counsel ("Rate Counsel") regarding the above-captioned matter. Please date stamp the additional copy as "filed" and return it in the enclosed, self-addressed, stamped envelope. Thank you for your consideration and attention to this matter.

Background & Argument

On May 13, 2016, Rockland Electric Company ("Rockland" or the "Company") filed a petition ("Petition") pursuant to N.J.S.A. 48:2-21 to increase its base rates for electric distribution service. The Petition seeks to increase base rates to produce additional revenues of approximately \$9.644 million annually, or 13.5% above present distribution revenues. The

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petition also seeks pre-approval to implement a proposed Advanced Metering Infrastructure (“AMI”), to change depreciation rates, and to make certain other tariff changes.

The proposed rate increase is based on a test year ending December 31, 2016; almost eight months beyond the Petition’s filing date. The Petition was filed using only three months of actual test year data – January, February and March 2016 - despite longstanding Board policy requiring six months actual test year data. Accordingly, Rate Counsel requests that the Petition be held in abeyance and not transferred to the Office of Administrative Law until the Company provides six months of actual test year data to the parties.

In I/M/O Elizabethtown Water Co. Rate Case, BPU Docket No. WR8504330, Board Order dated 5/23/85 (“Elizabethtown”), the Board set forth its policy for the appropriate test year to be used in base rate filings. The Board in Elizabethtown determined that rate case petitions should contain six months of actual data and six months of estimated data.¹ Id. at p. 2. In setting forth this requirement of six months actual test year data, the Board carefully reasoned that it “strikes the appropriate balance by enabling the parties to develop a substantive record based upon sufficient actual data, but also providing petitioner with the opportunity to propose rates which should reflect conditions at the time the Board makes a determination in this matter and during the period of future rates.” Id.

Since Rockland’s petition fails to provide six months of actual test year data as required by Elizabethtown, Rate Counsel respectfully requests that the Board hold Rockland’s petition in abeyance until receipt of this data. Board Staff and Rate Counsel should not be required to begin their examinations based on only three months of actual data; to do so would be an inefficient waste of resources, since the discovery process may have to be repeated in its entirety once these

¹ The Board in Elizabethtown also said that a “minimum” of five months actual data was acceptable. Id. at p. 2.

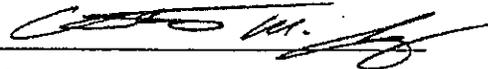
Ms. Irene Kim Asbury
June 7, 2016
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nine months of speculative forecasts are replaced with actual data. Rate Counsel notes that, while the Company controls the timing of its base rate filings, there is clear Board policy for test year filing requirements. Board policy requires the Company's base rate filing to encompass six months of actual data that was available at the time of filing. It is unreasonable for the Company to submit a deficient base rate case filing and then expect Board Staff and Rate Counsel to begin their reviews based on a largely forecasted test year that might bear no relation to actual test year data once those numbers are eventually received. Six months of actual test year data will be available at the end of June, only a few weeks away. Accordingly, the Company will not be prejudiced if the parties wait until receipt of six months of actual data before commencing discovery.

For all of these reasons, this matter should not be transferred to the Office of Administrative Law until Rockland satisfies the filing requirements set forth in Elizabethtown.

Respectfully submitted,

STEFANIE A. BRAND
DIRECTOR, DIVISION OF RATE COUNSEL

By: 

Christine M. Juarez, Esq.
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CMJ:lg

c: Service List *via e-mail and regular mail*

**I/M/O the Verified Petition of
Rockland Electric Company for
Approval of Changes in Electric Rates,
Its Tariff for Electric Service And Its
Depreciation Rates; Approval of an
Advanced Metering Program
BPU Dkt. No.: ER16050428**

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Utility Base Rate Cases Filed the Last 5 Years

Utility	BPU Docket No.	Petition Filed	Increase Requested	Filed Test Year Actuals/Projected	BPU Approved	Approx. No. of months
Atlantic	ERI17030308	March 30, 2017	\$70 m	5/7	September 22, 2017 \$40 m	6 months
	ERI16030252	March 22, 2016	\$79 m	9/3	August 24, 2016 \$45 m	5 months
	ERI14030245	March 14, 2014	\$61.7 m	12/0	August 20, 2014 \$19 m	5 months
	ERI12121071	December 11, 2012	\$71.5 m	9/3	June 21, 2013 \$25.5 m	6 months
JCP&L	ERI16040383	April 28, 2016	\$142.1 m	6/6	December 12, 2016 \$80 m	8 months
	ERI12111052	November 30, 2012	\$31.47 m	12/0	March 26, 2015 (\$115 m) Rate decrease	28 months ¹
Rockland	ERI16050428	May 13, 2016	\$9.6 m	3/9	February 22, 2017 \$1.7 m	9 months
	ERI13111135	November 27, 2013	\$19.3 m	6/6	July 23, 2014 \$13 m	8 months
PSE&G	No Base Rate Case filed in the last 5 years					
New Jersey Natural	GRI15111304	November 13, 2015	\$147.6 m ²	3/9	September 23, 2016, \$45m	10 months
South Jersey Gas	GRI17010071	January 27, 2017	\$74.875m	3/9	October 20, 2017 ³ ; \$39.5m	10 months

¹ Although the reply briefs were filed by the parties by February 24, 2014, the ALJ closed the record on June 30, 2014 and filed 4 requests for an extension for his initial decision which was filed with the Board on January 8, 2015, almost one year later to the benefit of the JCP&L.

² The 12 + 0 provided a revenue requirement of \$112.8 m.

³ A stipulation of settlement was submitted to ALJ Pellos on September 29, 2017. A final order from the BPU approving the settlement is expected at the October 20, 2017 Board Agenda meeting.

	GR1311137	November 13, 2013	\$62.6m ⁴	3/9	September 20, 2014 \$20m	10 months
Elizabethtown Gas	GRI6090826	August 31, 2016	\$19m	3/9	June 30, 2017 \$13.3 m	9 months
NIAWC	WRI5010035	January 9, 2015 *	\$66.2 m	4/8	Sept 11, 2015, \$22m	8 months
	WRI0040260	April 9, 2010 *	\$84.7 m	5/7	Dec 6, 2010, \$39.9 m	8 months
Acqua NJ	WRI11120859	December 9, 2011	\$4.2 m	5/7	April 11, 2012 \$1.75m	4 months
	WR09121005	December 18, 2009	\$7.2 m	5/7	June 7, 2010. \$4m	6 months
Middlesex Water Company	WRI13111059	November 8, 2013	\$10.6 m		June 18, 2014, \$4.248m	7 months
	WRI2010027	January 10, 2012	\$11.3 m		July 18, 2012, \$8,1m	7 months
UWNJ	WRI15101177	October 7, 2015	\$29.4 m		April 27, 2016, \$11m	6 months
	WRI13030210	March 11, 2013	\$29.9 m	5/7	Nov 22, 2013, \$11m	8 months

*Petition sought combined water and wastewater base rate increases.

⁴The 12 + 0 provided a revenue requirement of \$54.4 m.

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