State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL
P.O. BOX 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

BRIAN O. LIPMAN
Director

Remarks of Brian O. Lipman, Director of Division of Rate Counsel, Regarding S3184 (Establishes "Resiliency and Environmental System Investment Charge Program.") Presented at the Senate Budget & Appropriations Committee Meeting,

March 6, 2023

Good afternoon. My name is Brian Lipman, and I am the Director of the Division of Rate Counsel. I would like to thank Chairman Sarlo and members of the committee for the opportunity to testify today on S3184, which establishes an additional surcharge on water rates with the creation of a Resiliency and Environmental System Investment Charge Program.

As you are aware, Rate Counsel is the statutorily mandated advocate for all of New Jersey ratepayers charged with representing and protecting the interests of all utility customers – residential customers, small business customers, small and large industrial customers, schools, libraries, and other institutions in our communities. We represent ratepayers not only on the state level, but federal as well and we're a party in cases where utilities seek changes in their rates or services for electric, gas, water, and telecommunications.

As the committee is aware, Rate Counsel submitted a letter outlining our concerns last week, and I hope that the committee had an opportunity to review that letter. I will not go into all the details from that letter, but rather will give a brief overview of our significant concerns with this bill. We also attached a prior letter to the Senate Economic Growth Committee submitted in November of last year. The bill has not been amended, our position remains the same, and <u>we urge this committee to not approve this bill out of committee.</u>

This bill will unnecessarily raise water and wastewater bills and take away important ratepayer protections. Traditionally, utilities recover their costs in a base rate case. In a base rate case, we get to look at all the expenses and importantly, all the revenue. It is a nuts to bolts review of the utility. Significantly, we look at revenue to ensure the utility is not overearning. Essentially, we figure out how much the utility really needs. That will not happen under this bill. A utility will be able to come in and show one, very specific set of expenses and then recover those expenses at an accelerated rate. If at the same time revenues go up for the utility—that is just a bonus for them. There is no way to determine if they need the capital at that time, we are just forced to pay it to them. This is not good fiscal policy and could very quickly lead to higher rates to fund higher profits for these utilities.

To the extent you are going to allow water and wastewater utilities to receive revenues in an accelerated fashion and before a full prudency review, you are lowering their risk and shifting that risk to the ratepayers. As part of this bill, you should require these utilities to take a lower return on equity. Most investor owned utilities in New Jersey earn a 9.6% return on equity ("ROE"). To be clear, that is for every dollar the invest, they receive $1.096 back from ratepayers. This high ROE is based upon the risk in investing in a water or wastewater utility. This bill significantly reduces that risk, placing a significant portion of it on ratepayers. Lower risk should equate to a lower return and if the committee is inclined to take this significant step away from traditional ratemaking, it should also require the utilities to earn a lower ROE.

Moreover, there is no proven need for this legislation. I want to be clear, the investor owned utilities in New Jersey are doing just fine. The BPU checks on their health and will not allow them to fall to financial ruin. There are procedures in place if something does go seriously wrong. The Board has regular base rate cases—that the utility chooses when to file. The Board has already implemented surcharge programs called the Distribution System Infrastructure Charge ("DSIC") and Wastewater System Improvement Charge ("WSIC") to allow accelerated recovery of specific water and wastewater investments. The Board also has Infrastructure Improvement Plan rules that the water and wastewater utilities can take advantage of if they find the terms of the DSIC or WSIC too restrictive—they do not. This bill is worse than a solution in search of a problem, this is giving away limited ratepayer funds to already profitable utilities.

Unlike the Board regulated DSIC and WSIC surcharges, the work eligible under this bill are extremely broad—essentially unlimited. This bill will in essence result in a rate increase for water and wastewater ratepayers every six months. Also, because the terms of the bill are so broad, it will actually impact our ability to settle base rate cases. When we settle a base rate case, it is almost always done as a black box—that is we do not state how we came to a revenue requirement number. For example, if the revenue requirement is $100 million, the Company may decide that $10 million of that is for chemicals. Rate Counsel may have built up the ledger to $100 million by allocating only $9 million and Board Staff may have decided $11 million. There is, however, no record of the actual amount because by the willingness of the parties to give and take internally we are all able to reach an agreed to revenue requirement without having to delineate exactly how we got there. Section b of the RESIC definition excludes any project already included in base rates. Under a black box settlement, we do not know exactly what is in rates. In order to make sure that there is no double recovery, we will no longer be able to settle base rate cases as we have. This will ultimately lead to more litigated cases with more costs to the ratepayers and longer lag between rate cases. This bill as written will drive inefficiencies in the Board rate case proceedings.

Finally, there are some technical issues with the bill I would like to highlight. First, section 2a allows a utility to recover any cost made, "or to be made." This implies that the utility may recover for items that are not already in service. Ratepayers should not pay for costs that are not used and useful. Many of these costs are estimates. Ratepayers should only pay for what is actually spent and what is actually used and useful. To allow ratepayers to "front" the money for costs that may occur turns utility ratemaking entirely on its head and places significant risk on ratepayers. Second, while I understand that the utilities want to be able to receive their money right away, 120 days is not sufficient time. The Board and Rate Counsel have limited

resources. We deal with every utility. The utility does not have the same resource limitations and worries only about itself. To do this correctly, especially if many of the water and wastewater utilities were to avail themselves of this process, we would need more time.

At the end, this bill is not only wholly unnecessary, but it will harm ratepayers. Bills will increase every six months. Service will not get better because of this bill. The only thing that benefits from this bill is the investor owned water utilities' profits. I urge you to not pass this bill out of committee. Thank you and I am available for any questions you might have.