



State of New Jersey
DIVISION OF THE RATEPAYER ADVOCATE
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February 17, 2006

VIA HAND DELIVERY

Kristi Izzo, Secretary
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

RE: Proposed Amendments to N.J.A.C. 14:4-4
Public Utility Holding Company Standards
BPU Docket No. AX05070641

Dear Secretary Izzo:

Please accept for filing an original and ten copies of these comments by the Division of the Ratepayer Advocate ("Ratepayer Advocate") concerning the proposed rules located at N.J.A.C. 14: 4-4, promulgated by the Board of Public Utilities ("Board" or "BPU"), which address the diversification activities of New Jersey public utilities and companies owning such utilities. Please stamp the additional copy and return to the waiting courier.

We thank the Board for the opportunity to comment on this matter. The Ratepayer Advocate believes that protection of New Jersey ratepayers is of paramount importance during all proceedings involving the control of any New Jersey utility. The Ratepayer Advocate supports the Board's proposed new subchapter, N.J.A.C. 14:4-4.

We do, however, offer the following comments and suggestions, which we feel will enhance the protections afforded to ratepayers under this subchapter.

BACKGROUND

Part of the federal Energy Policy Act of 2005 (EPAAct 2005) repealed the Public Utility Holding Company Act of 1935 (PUHCA), effective February 8, 2006. PUHCA regulated holding companies owning gas or electric utilities by restricting their diversification into non-utility businesses. The EPAAct 2005 also enacted the Public Utility Holding Company Act of 2005 (PUHCA 2005) and directed the Federal Energy Regulatory Commission (FERC) to propose rules implementing it, which it did on December 8, 2005. The EPAAct 2005 also directed the FERC to report to Congress any proposed statutory amendments, which were also submitted on December 8, 2005. The FERC then received requests for reconsideration, upon which it has not acted on as of February 6, 2006. As of this date, the FERC has until March 8, 2006 to reconsider its recommendations or extend the deadline again.

These new rules proposed by the Board prohibit a holding company that owns a New Jersey electric or gas utility from investing more than twenty five percent of the combined assets of its utility and related subsidiaries into unrelated utility businesses. They also prohibit a non-utility holding company from purchasing a New Jersey utility, unless the company divests a sufficient amount of non-utility assets.

The Ratepayer Advocate fully supports the Board's proposal to regulate the ownership of the utilities it regulates, and to ensure that the regulated utility is not used to subsidize the holding company. The Ratepayer Advocate feels such proposals are especially necessary in light of the recent issues involving the former parent of the

Elizabethtown Gas Company. See: *I/M/O NUI Utilities, Inc. (D/B/A Elizabethtown Gas Company) and AGL Resources for Authority Under N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 of a Change in Ownership and Control*, BPU Docket No. GM04070721 (Order, November 17, 2004).

RECOMMENDATIONS

In addition to supporting the proposed new subchapter, the Ratepayer Advocate recommends that the Board further amend N.J.A.C. 14:4-4 so that the ratepayers are afforded additional protections. As we stated in our October 24, 2005 letter of preliminary comments on this matter, state Utility Commissions should have unfettered access to utility company books and records to protect ratepayers from potential holding company abuses and that the holding companies should be required to file cost allocation agreements with the state Commissions. The Ratepayer Advocate letter attached the October 14, 2005 comments of the National Association of State Utility Consumer Advocates (NASUCA) detailing these two points.

While PUHCA 2005 is purported to be a “books and records access” statute, the Ratepayer Advocate urges the Board to adopt its own requirements so that it does not have to rely upon whatever may or may not be adopted by Congress or the FERC. With regard to cost allocation, while PUHCA 2005 allows a state commission to request the FERC to review and authorize the allocation of costs between service companies and public utilities, it does not allow the state commission to do so.¹

It would be most unfortunate if the Board had to hope for the FERC to act on its requests. Last year, when the FERC expeditiously approved the merger between Exelon Corporation and Public Service Enterprise Group, Inc., parties wishing to be heard had

¹ Pub. L. No. 109-58, § 1275(b).

only sixty days to file comments. The FERC acceded to the unprecedented concept of “virtual divestiture”, content to rely upon the companies’ assurances. Despite many requests from outside parties (including the Board and the Ratepayer Advocate) for an evidentiary hearing regarding the creation of the nation’s largest utility, the FERC denied all of them. Numerous entities filed requests for a rehearing, which were also promptly denied. Fortunately, the Board is providing a forum for the requisite evidentiary hearing.

While the rulemaking process proceeds in Washington, D.C., the Ratepayer Advocate respectfully requests that the Board adopt further protections so that it may act on its own in the future and not depend upon possible future federal rules.

Respectfully Submitted,

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Ratepayer Advocate

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