



Agenda Date: 02/20/13
Agenda Item: 2L

STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
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ENERGY

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND ATLANTIC CITY ELECTRIC COMPANY'S REQUEST FOR DEFERRAL ACCOUNTING AUTHORITY FOR STORM DAMAGE RESTORATION COSTS;)	ORDER
)	
)	
)	DOCKET NOS. EO11090518
)	AND GO11090519
)	
IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY'S REQUEST FOR DEFERRAL ACCOUNTING AUTHORITY FOR STORM DAMAGE RESTORATION COSTS)	DOCKET NOS. EO12110995
)	AND GO12110996

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Martin C. Rothfelder, Esq., Public Service Electric and Gas Company

BY THE BOARD:

On August 26, 2011, the New Jersey Board of Public Utilities ("Board") received a joint petition filed by Public Service Electric and Gas Company ("PSE&G" or "Company") and Atlantic City Electric Company ("ACE") seeking authorization for deferred accounting treatment of incremental storm damage restoration costs. The filing was made just prior to Hurricane Irene with the October 2011 snow storm following not long afterwards. ACE later withdrew its petition and consolidated its request into its then pending rate case. On November 5, 2012, the Board received an additional petition from PSE&G seeking authorization to defer incremental storm costs related to Superstorm Sandy.

In the petitions, PSE&G attested that the storm related incremental expenses that the Company sought to defer would only include actual and prudently incurred restoration costs associated with the Company's distribution systems in New Jersey not otherwise recovered through rate base or insurance, and incurred for overtime, outside contractor costs, foreign/mutual assistance and directly related expenses, including but not limited to meals and materials, resulting from qualifying individual storms. According to the petitions, no ongoing, routine, non-emergency costs would be included in the deferred accounts for storm damage. The Company further asserted that the appropriate amortization period for such deferred expenses would need

to be addressed in future rate cases. Finally, the Company asserted that, if the petitions are approved, PSE&G will be put in a position similar to that of Jersey Central Power and Light¹ ("JCP&L") and Rockland Electric Company² ("Rockland") with respect to the authority to defer incremental storm damage costs.

By Order dated December 19, 2012 ("December 19 Order"), the Board authorized PSE&G to defer on its books, for accounting purposes only, actually incurred prudent otherwise unreimbursed incremental storm restoration costs not otherwise recoverable through base rates or insurance, provided that PSE&G files a petition for a base rate case within two years from the December 19 Order.

PSE&G'S REQUEST FOR RECONSIDERATION

On January 4, 2013, PSE&G filed a motion for reconsideration of the December 19 Order ("Motion") pursuant to N.J.S.A. 14:1-8.6 requesting the Board to: (i) reconsider the condition to file a base rate petition within two years from the date of the December 19 Order; and (ii) clarify that PSE&G is authorized to defer on its books and records only actually incurred otherwise unreimbursed, incremental storm restorations costs not otherwise recoverable through base rates or insurance; leaving the prudence determination of the deferred costs to be addressed when PSE&G seeks recovery of those costs in a rate case.

PSE&G maintains that requiring the Company to file a base rate case in two years is an unprecedented and inappropriate regulatory action, particularly in light of the Company's exemplary performance during the storms. PSE&G argues that the Board has only ordered a utility to file a base rate case by a date certain twice, and neither case is on point.

According to PSE&G, the Board granted the request of the Maxim Sewerage Corp. for permission to implement deferred accounting related to an increase in sewerage treatment cost and, consistent with the terms of the request, ordered that "the Company file either a base rate case or [a Purchased Sewerage Treatment Adjustment Clause] within one year from the date of this Order to resolve these deferrals." In the Matter of the Petition of Maxim Sewerage Corporation for Approval to Implement Deferred Accounting, Docket No. WO95120660 (Agenda Date: June 4, 1996) Maxim did not file a base rate case because it opted to file to adjust its PSTAC, including this deferred amount. PSTAC filings generally occur annually, and the Board subsequently issued an order adjusting Maxim's PSTAC rates, which included the deferred costs.

PSE&G continues that the other case is the Board's 2012 decision to order JCP&L to file a base rate case, following the filing of a petition by the New Jersey Division of Rate Counsel ("Rate Counsel") requesting that the Board order the company to file for base rate review. At the outset of that case, the Board expressly noted that "a rate case is expensive and invasive," and that "it is imperative that all appropriate parties have an opportunity to provide input into the

¹ In re Petition of Jersey Central Power and Light Company for Approval of an Amendment of its Tariff to Provide for an Increase in its Rates and Charges for Electric Service – Phase II, BPU Docket No. 831-110 (November 1983).

² In re the Verified Petition of Rockland Electric Company for Approval of Changes in Electric Rates its Tariffs for Electric Services, its Depreciation Rates and for Other Relief, BPU Docket ER09080668 (May 2010).

question before a final decision is made.”³ The Board subsequently indicated that it was only the number, complexity, and interrelated nature of the issues that had been raised on the record, including JCP&L's failure to file a case since 2002, and allegations regarding that company's earnings, unsatisfactory reliability, and underinvestment in New Jersey since that time, that supported the Board's decision to require JCP&L to file a base rate case.⁴

PSE&G argues that there is nothing in the current record like the complex and interrelated factors which triggered the Board to order JCP&L to file a base rate case. PSE&G completed a base rate case in 2010, and maintains that no one has questioned its service reliability or investment in the State including the Company's extensive preparation and restoration efforts in relation to Hurricane Sandy.

PSE&G also asserts that other utilities have petitioned the Board for deferral of actual and prudent costs associated with storm preparation and recovery and have had their petitions granted without the requirement to file a time-specific base rate case. The Company cites In re Jersey Central Power and Light, BPU Docket No. 831-109, Order approving Stipulation, November 15, 1983, where the Board authorized JCP&L to defer actually incurred uninsured storm damage expenses on its books, and In re Rockland Electric Company, BPU Docket No. ER09080668, Order approving Stipulation, May 12, 2010, where the Board authorized Rockland Electric Company to defer incremental storm damage costs for individual storms that cause disruption for 10% or more customers in an operating area or if customers are without service for more than 24 hours and incremental costs for the storm exceed \$130,000. PSE&G maintains that neither of these cases referred to a time specific rate base case filing or any specific storm.

PSE&G states that it has been able to bear the storm costs of the past two years, and the expenditures have not affected customers to date; however, investors should not bear the ultimate expense of the unforeseen storm expenses. By requiring the Company to file a rate case no later than two years from December 19, 2012, arguably the Board is requiring customers to bear these costs sooner than PSE&G might independently determine necessary.

PSE&G argues that the inevitable cost in time and resources required by an unplanned time specific rate case will significantly impede the company in focusing on its post Sandy restoration and rebuilding efforts. PSE&G states the company's estimated storm costs “do not reflect potential reimbursement through insurance, agreements with joint owners of certain property (e.g., some utility poles are jointly-owned with Verizon), or federal funds that might be available through Community Development Block Grant (“CDBG”) funds. It also does not include potential future costs to permanently repair PSE&G's damaged infrastructure or to modify the infrastructure to reduce the risk of damage from future storms.” Motion at 9. In short, PSE&G asserts that imposing an enforced timeframe on the Company's next base rate case creates

³ In re 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, Docket No. EO11090528, Order (November 30, 2011), at 2.

⁴ See In re the Rates and Charges of Jersey Central Power and Light Company, Docket No. EO11090528, Petition of the New Jersey Division of Rate Counsel (September 7, 2011) (“Rate Counsel Petition”), at 5 (alleging that in the absence of a review of JCP&L's base rates since its most recent base case was resolved in mid-2005, the company had begun to under-invest in necessary infrastructure, as evidenced by a decline in service reliability, thus necessitating a base rate case); In re the Rates and Charges of Jersey Central Power and Light Company, Docket No. EO11090528, Transcript of Board Agenda Meeting (July 18, 2012) at 4-6, and Board Order (July 31, 2012), at 11-13.

unnecessary pressure at a critical time, and presents a major distraction from the task of analyzing how best to mitigate costs and invest in PSE&G's systems to effectively deal with the new normal that these storms have created. Motion at 10. Finally, the Company states it has been providing the Board with periodic timely updates of the actual storm costs.

RATE COUNSEL RESPONSE

On January 14, 2013, Rate Counsel filed a response to the Motion ("Response"). Rate Counsel asserts that PSE&G's Motion has alleged no errors of fact or law, merely its dissatisfaction with the Board's decision which fails to satisfy the standards for reconsideration.

Rate Counsel states that a motion for reconsideration "shall state . . . the alleged errors of law or fact relied upon" in seeking reconsideration. N.J.A.C. 14:1-8.6. Generally, a party should not seek reconsideration merely based upon dissatisfaction with a decision. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the action was arbitrary, capricious or unreasonable. D'Atria, supra, 242 N.J. Super. at 401." Response at 2.

Rate Counsel argues that the Motion states no claims of errors in fact or in law, and that the Motion is based on its belief that the Board's decision "is an unprecedented and inappropriate regulatory action." Motion at 2. Rate Counsel does not agree with PSE&G's analysis of the Maxim Sewerage case, and offers that although the Board gave Maxim two options for identifying and resolving the issue of the deferred costs; the Board did order a time specific rate case in this instance. Therefore, the Board's action here is not unprecedented.

Additionally Rate Counsel argues that the Board's action in requiring PSE&G to file a rate case complies with its broad discretion in the use of its ratemaking authority. In re N.J. Am. Water Co., 169 N.J. 181 (2001), to ensure that rates charged to ratepayers are just and reasonable. N.J.S.A. 48:2-21. Thus, the Board's stricture that the deferred costs be reviewed within two years in the context of a base rate case is not an arbitrary action on the part of the Board but rather is a reflection of the Board's adherence to its statutory mandate to fix just and reasonable rates. N.J.S.A. 48:2-21." Response at 4.

Rate Council reviewed the cumulative storm cost estimates of up to \$129,000,000 to \$234,000,000.00 that PSE&G has cited for Irene, the 2011 October snow storm, Sandy and the subsequent 2012 Nor'easter. Rate Council expresses its sincere concern that seeking to defer costs of this magnitude to a date uncertain may prevent adequate review. Board Staff and Rate Council's scrutiny of the prudence of these costs may be compromised if costs are not verified until whenever recovery is sought in a future rate case. Response at 5.

Rate Counsel maintains that what PSE&G is seeking is not "equal treatment" but is in reality special treatment for storm costs outside of the context of a base rate case. Rate Counsel counters PSE&G's argument that the Board's 1983 Order authorizing JCP&L to defer "actually incurred uninsured storm damage expenses on its books" is a precedential result. Rate Council explains that JCP&L agreed in the context of a base rate case, to defer actually incurred uninsured storm damage expense on its books rather than include in base rates a normalized level of uninsured storm damage expenses based on a ten year rolling average. Rate Counsel also counters that deferred accounting aspects in the orders regarding Rockland Electric

Company, the company storm damage reserve was first established in the Rockland's 2002 base rate case,⁵ and was reviewed in the 2006 Rockland base rate case⁶ and again in the 2009 base rate case.⁷

Rate Counsel notes that Atlantic City Electric Company's request to defer costs associated with Hurricane Irene was consolidated with its 2011 base rate case⁸ demonstrating that the Board's normal course has in fact been for these deferrals to be addressed in base rate cases within a reasonable period of time. Rate Counsel concludes that what PSE&G is seeking here is not "regulatory parity" but extraordinary treatment of costs in addition to the normalized level of storm damage costs already being paid by PSE&G ratepayers, and the ability to postpone indefinitely the review of those costs. Therefore, the Board's decision to place limitations on this request was not unreasonable. Response at 6 – 7.

Rate Counsel submits that the Board's December 19 Order was perfectly clear and requires no further clarification. The Board allowed PSE&G " to defer on its books for accounting purposes only actually incurred prudent otherwise unreimbursed, incremental storm restoration costs not otherwise recoverable through base rates or insurance. . . . The prudence and recoverability of these costs will be determined in the Company's next base rate case. "

PSE&G's REPLY

On January 17, 2013, PSE&G filed a letter replying to Rate Counsel's Response. PSE&G argues that it is not seeking special treatment from the Board. The Rockland Electric and JCP&L Board orders referenced by PSE&G allowed those utilities to defer storm restoration costs and to file a base rate case at a time of their choosing, not a time-specific filing as by Board's requirement that PSE&G file a base rate case within the a two year period. Reply at 2. PSE&G disputes the magnitude of the deferred incremental storm restoration costs quoted by Rate Counsel and denies that the Company's current rates include a normalized level of storm restoration expenses. Reply at 4.

DISCUSSION AND FINDINGS

Following extensive review, the Board **FINDS** that it is within its discretion to order PSE&G to file a time-specific base rate case as a condition to authorizing PSE&G to defer actually incurred, prudent, unreimbursed, incremental storm restoration costs. However, as described below, the Board has determined to modify its Order in response to pertinent developments which were unknown at the time of the initial decision.

⁵ In re the Verified Petition of Rockland Electric Company for Approval of Changes In Electric Rates, its Tariff for Electric Service, its Depreciation Rates, and for Other Relief, BPU Docket No. ER02100724 (Final Decision and Order, April 20, 2004).

⁶ In re the Verified Petition of Rockland Electric Company for Approval of Changes In Electric Rates, its Tariff for Electric Service, its Depreciation Rates, and for Other Relief, BPU Docket No. ER02100724 (Decision and Order Approving Stipulation and Adopting Initial Decision, March 22, 2007).

⁷ In re the Verified Petition of Rockland Electric Company for Approval of Changes In Electric Rates, its Tariff for Electric Service, its Depreciation Rates, and for Other Relief, BPU Docket No. ER09080668 (Decision and Order Approving Stipulation and Adopting Initial Decision, May 12, 2010).

⁸ In re 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, BPU Docket No. ER11080469 (Oct. 23, 2012).

Absent a legislative restriction, administrative agencies have the inherent power to reopen or to modify and rehear prior decisions, e.g. In re Trantino Parole Application, 89 N.J. 347, 364 (1982). As to the Board, N.J.S.A. 48:2-4 expressly provides that the Board at any time may order a rehearing and/or extend, revoke or modify an order made by it. Tp. of Deptford v. Woodbury Terrace Sewerage Corp., 54 N.J. 418, 425 (1969). An administrative agency may invoke its inherent power to rehear a matter "to serve the ends of essential justice and the policy of law." Handlon v. Town of Belleville, 4 N.J. 99, 107 (1950). The power to reappraise and modify prior determinations may be invoked by administrative agencies to protect the public interest, and thereby to serve the ends of essential justice. Trap Rock Industries, Inc. v. Sagner, 133 N.J. Super. 99, 109 (App. Div. 1975).

As surmised by Rate Counsel, a primary driver of the December 19 Order's directive for a rate case within two years, was the Board's concern over the magnitude of the apparently unreimbursed storm costs that PSE&G seeks to defer for an indefinite period. In the time between the issuance of the December 19, 2012 Order and this review of PSE&G's Motion, the federal government has approved approximately \$50 billion in special storm relief funding for those states which sustained severe storm damage in the wake of multiple storms and natural disasters in 2011 and 2012, including but not limited to the storms affecting New Jersey: Irene, Sandy, the 2011 snowstorm and the 2012 fall nor'easter. H.R. 152, signed by President Obama in January, made \$16 billion available to cover "necessary expenses related to disaster relief, long-term recovery [and] restoration of infrastructure" through the U.S. Department of Housing and Urban Development (HUD), and other amounts for disaster relief. Unreimbursed storm costs recovered from these funds will not be recoverable in rate base, thereby saving the utility customers the additional burden of increased rates as a result of these devastating storms.

The Board understands that this federal funding through HUD and other federal programs may be available to assist the utilities to pay substantial, unanticipated storm related costs and thereby keep those costs from factoring into increased customer rates. This federal funding was approved and announced after the filing of the Board's December 19, 2012 Order, and after the filing of the Motion.

Further, the Board will initiate a new generic proceeding to evaluate the prudence of extraordinary, storm-related costs incurred by all the regulated utilities as a result of the natural disasters New Jersey experienced in 2011 and 2012, thereby satisfying the Board's concern that delayed review of extraordinary costs be avoided. In this proceeding, the Board will determine the manner in which such prudent costs shall be recovered.

As stated above, the Board deems these changed circumstances pertinent to the reconsideration of its decision ordering PSE&G to file a rate case within two years for review of the storm related costs that the Board is authorizing the Company to defer.

Accordingly, the Board **HEREBY AMENDS** its December 19, 2012 Order to remove the requirement that PSE&G file a base rate case within two years of the decision, and **HEREBY ORDERS** that, as a condition for approval of the right to defer unreimbursed storm related costs on its books and records for accounting purposes only and without interest, PSE&G shall cooperate with staff as the Board reviews the prudence of storm-related costs in the generic proceeding and shall provide requested information including, but not limited to the following:

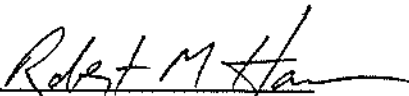
- 1) An estimate of the total of actually incurred unreimbursed, uninsured, incremental storm restoration costs;
- 2) For each cost identified, information as to the eligibility for, and probability of cost recovery from insurance, any governmental program or any other third party;
- 3) The costs and ratemaking treatment for those costs for which the company continues to request deferred accounting;
- 4) The tax treatment expected for each storm-related cost; and
- 5) How the company intends to report storm related costs for GAAP purposes.

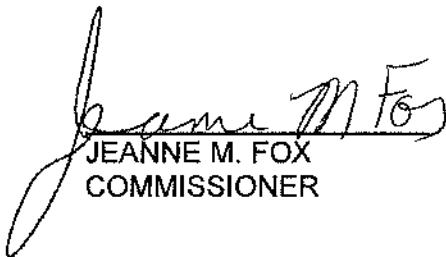
With respect to the Company's request for clarification, the Board **FINDS** that no further clarification is required. While the actual amount of the deferred costs that the Company will be authorized to recover from rate payers will not be determined until the Company seeks recovery of those costs through base rates, the Company is under a continuing obligation to ensure that only reasonable and prudent costs are recorded in its books and records. Utility expenses, to be allowable, must always be justified, and reflect the exercise by the utility of honest stewardship and diligence. In re Board's Investigation of Tel. Cos., 66 N.J. 476 (1975).

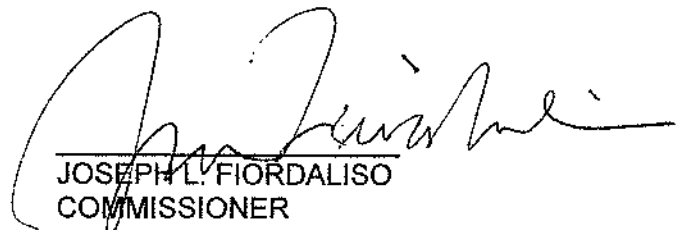
THEREFORE, except as specifically amended above, the Board **HEREBY AFFIRMS** the December 19, 2012 Order.

DATED: 2/20/13

BOARD OF PUBLIC UTILITIES
BY:

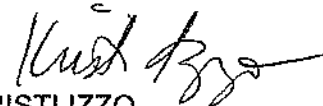

ROBERT M. HANNA
PRESIDENT

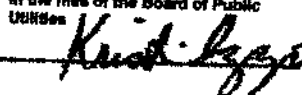

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


MARY ANNA HOLDEN
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities


Docket Nos. EO11090518 and GO11090519 – In the Matter of the Petition of Public Service Electric and Gas Company and Atlantic City Electric Company's Request for Deferral Accounting Authority for Storm Damage Restoration Costs; and

Docket Nos. EO12110995 and GO12110996 – In the Matter of the Petition of Public Service Electric and Gas Company's Request for Deferral Accounting Authority for Storm Damage Restoration Costs

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