



STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

IN THE MATTER OF A REQUEST BY ATLANTIC CITY)
ELECTRIC COMPANY FOR APPROVAL OF TARIFF)
PAGES RELATED TO IMPLEMENTATION OF)
VETERANS' ORGANIZATIONS RATES PURSUANT TO)
N.J.S.A. 48:2-21.41 AND DEFERRED ACCOUNTING)
AUTHORITY FOR COSTS AND LOST REVENUE)
RELATED THERETO)

ORDER

DOCKET NO. ER19010062

Parties of Record:

Philip J. Passanante, Esq., on behalf of Atlantic City Electric Company
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

BACKGROUND

P.L. 2018, c. 77 (the "Act") was signed into law on August 10, 2018. The law requires that a public utility shall charge a veterans' organization a residential rate for service delivered to the property at which the veterans' organization primarily operates, if the residential rate is lower than the commercial rate for service at that property. The law further states, that a public utility, in consultation with the New Jersey Board of Public Utilities ("Board" or "BPU"), shall establish a reasonable procedure by which an organization may certify itself as a veterans' organization with the public utility.

ACE PETITION

On January 15, 2019, Atlantic City Electric Company ("ACE" or "Company") filed a petition with the Board seeking review and approval of the Company's draft tariff sheets reflecting changes to the requirements for veterans' organizations in accordance with the Act. Additionally, ACE submitted a proposed application form for veterans' organizations to complete in order to have the request processed.

According to the petition, if the application meets the requirements of N.J.S.A. 48:2-21.41 and the veterans' organization furnishes satisfactory proof of eligibility to the Company, the application will be approved and the eligible customer will begin receiving service under the special provision beginning with the billing cycle that commences after receipt of the application.

The veterans' organizations deemed eligible ("eligible customers") will continue to be billed under their current rate schedule. On a monthly basis, ACE will review the eligible customers' bills to determine if the comparable distribution charges under Rate Schedule RS (residential service) are lower than the distribution charges under the eligible customers' current tariff rate schedule. If the distribution charges under the Rate Schedule RS are lower than the distribution charges under the eligible customers' current rate schedule, a credit will be placed on the customer's account.

ACE requested authority to defer on its books actually incurred costs associated with the implementation of the requirements for veterans' organizations and not otherwise recovered through its currently approved base rates. The Company stated that the appropriate amortization period for such deferred expenses would be addressed in the Company's next base rate case or in another appropriate rate recovery proceeding. ACE requested recovery of carrying charges on the deferred balances, calculated based upon ACE's weighted average cost of capital ("WACC") that was approved by the Board on September 22, 2017 in its last base rate case in Docket No. ER17030308.

ACE also sought recovery from any loss of distribution revenues which include customer charges, delivery charges and demand charges, as a result of applying the lower residential rate to the eligible customers' accounts.

RATE COUNSEL COMMENTS

By letter dated January 28, 2019, the New Jersey Division of Rate Counsel ("Rate Counsel") filed comments stating that it does not object to the Company's proposed tariff changes. However, Rate Counsel opposed ACE's requests for deferred accounting for direct costs, carrying charges and recovery of lost revenues associated with implementation of the Act. (Rate Counsel Comments at 2).

Rate Counsel noted that not all utilities have estimated a dollar amount of administrative costs associated with implementing the Act and some utilities have stated that the direct costs may be minimal. Rate Counsel further stated that it is unknown how many veterans' organizations will participate in the program and the dollar value of any potential savings. (*Id.* at 3). Rate Counsel maintained that any analysis of the prudence of the cost of one utility's program compared to another will be difficult to determine. Furthermore, Rate Counsel questioned the prudence of the proposed estimated direct costs, especially considering that the calculation will be conducted on an annual basis. (*Id.*)

Rate Counsel asserted that the Board should not allow ACE, or any utility, to defer direct costs and create a regulatory liability for ratepayers where direct costs could be found to be imprudent. Rate Counsel maintained that the review of any direct costs should be undertaken as part of the complete examination of the Company's expenses during its next base rate case. Rate Counsel recommended that, as part of the Company's next base rate case, the Board should review the direct costs, the number of participants charged the new rate, the amount of actual charges that were paid by the veterans' organizations under the new tariff, and any other relevant data to determine the prudence of the Company's expenses. (*Id.* at 3 to 4). Rate Counsel also opposed the Company's ability to recover the direct costs carrying charges at its present WACC, stating that the estimated costs are speculative and carrying costs would be inappropriate given that the direct costs are still subject to a prudence review. (*Id.* at 4).

Rate Counsel similarly opposed ACE's request to recover lost revenues associated with complying with the Act since it is not certain at this time whether any of the utilities affected by

the Act will, in fact, lose revenues. Rate Counsel stated that the Company cannot be certain how many participants will apply and qualify. Rate Counsel further characterized the revenue difference as "assumed" since it is impossible to know if veterans' organizations will use more or less energy as a result of the approval for the tariff. Rate Counsel asserted that those behavior changes associated with energy use would make any mathematical calculation of the difference between residential and commercial bills inaccurate since the customers would not have the knowledge that they are in a new rate class. (Id. at 5).

Finally, Rate Counsel emphasized that the Act does not contemplate lost revenue to the utilities and asserted that the Board can review any expenses and potential losses as part of ACE's next base rate case. (Ibid.)

NEW JERSEY UTILITIES JOINT COMMENTS IN RESPONSE TO RATE COUNSEL

On February 7, 2019, New Jersey Natural Gas Company ("NJNG"), on behalf of the New Jersey Utilities,¹ filed joint comments in opposition to Rate Counsel's objection to deferred accounting treatment, carrying charges, and lost revenues associated with implementation of the Act. The New Jersey Utilities submitted that the Board should reject Rate Counsel's position. (New Jersey Utilities Comments at 2).

The New Jersey Utilities stated that following Rate Counsel's line of reasoning, the Board could never allow a utility to defer any costs on its balance sheet to allow for future recovery of those deferred costs. (Id. at 3). The New Jersey Utilities argued that this goes against long-standing Board precedent as well as Rate Counsel's prior positions in various rate proceedings. (Ibid.) The New Jersey Utilities asserted that in the two most recent base rate proceedings filed by PSE&G, Rate Counsel's expert witness Andrea C. Crane testified that a utility "has an obligation to seek a deferred accounting order from the regulatory authority" should a utility wish to defer a cost for ratemaking purposes and acknowledged that a utility can recover prudently incurred deferred costs in a future base rate case, where the Board has provided "prior authorization for deferral."^{2 3} The New Jersey Utilities stated that Rate Counsel appears to accept this position, at least in part, in its January 2019 Comments in this proceeding, wherein Rate Counsel stated that "as part of the Company's next base rate case, the Board should review the direct costs, the number of participants charged the new rate, the amount of actual charges that were paid by the Veteran's Organizations under the new tariff, and any other relevant data to determine the prudence of the Company's expenses." (Ibid.)

The New Jersey Utilities state that they are not currently seeking cost recovery and agreed that these costs are subject to a prudence review in the context of a future base rate proceeding. However, the New Jersey Utilities believe that Rate Counsel would oppose costs associated

¹ The February 7, 2019 Letter was filed on behalf of ACE, Elizabethtown Gas Company, Jersey Central Power and Light Company, NJNG, Public Service Electric and Gas Company ("PSE&G"), Rockland Electric Company, and South Jersey Gas Company.

² See In re the Petition of PSE&G For Approval of an Increase in Electric and Gas Rates and for Changes In The Tariffs for Electric and Gas Service, B.P.U. N.J. 14 Electric And B.P.U. N.J. No. 14 Gas Pursuant To N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1 and for Approval of Gas Weather Normalization: a Pension Expense Tracker and for Other Appropriate Relief, BPU Docket No. GR09050422, Direct Testimony of Andrea C. Crane at p. 67-68.

³ See In re the Petition of PSE&G for Approval of an Increase in Electric and Gas Rates and for Changes in the Tariffs for Electric and Gas Service, B.P.U. N.J. 16 Electric And B.P.U. N.J. No. 16 Gas and for Changes in Depreciation Rates Pursuant To N.J.S.A. 48:2-18, N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1 and for Other Appropriate Relief, BPU Docket Nos. ER18010029, GR18010030, Direct Testimony of Andrea Crane at p. 53-54.

with the Veteran's tariff if they are not within the company's test year if deferred accounting is not permitted. (Id. at 4). The New Jersey Utilities further asserted that the board has historically approved utilities' requests to defer costs that are not otherwise recovered through a Company's currently approved base rates. (Ibid.) The New Jersey Utilities maintained that approval of the requested accounting treatment would not preclude a prudency review of the actual costs related to veterans' organizations in each of the companies' future rate cases, however, denying the requested accounting treatment on the other hand would reduce the Company's revenues as a result of external forces, i.e., a legislatively imposed mandate. (Id. at 5). For the same reasons, the New Jersey Utilities asserted that Rate Counsel's position on carrying charges is without merit and should be rejected by the Board. (Ibid.)

With respect to lost revenue, the New Jersey Utilities assert that it is a fact that they will lose revenue as a result of the act, and any belief by rate counsel to the contrary is mistaken. Under the tariffs utilities will at least annually compare veteran's commercial tariff rates to resident rates. If the residential service charges for the review period are lower than the comparable billed charges under the utility's commercial rate schedule, a credit will be applied to the account in the amount of the difference to the bill for delivery service. They asserted that any credits required to be provided to adjust to residential rates under the veterans' tariff are lost revenues to the utilities. The amount of those lost revenues will be determined in a future base rate case. (Id. at 5 to 6). Rate Counsel asserted in its comments that it "is opposed to allowing the Company to defer any 'lost' distribution revenue since customer behavior regarding energy usage can be influenced as a result of approval for the veterans' organization tariff therefore making any perceived difference an unmeasurable variable, and the language of the Act does not include a mechanism for utility recovery of revenues."

The New Jersey Utilities believe it should be noted that the Board has approved deferred accounting for costs that were not quantifiable at the time of the Board's approval, but that would be quantifiable and finally established in later proceedings. See, e.g., In re the Request of Public Service Electric and Gas Company for Deferred Accounting Treatment of Coal Tar Clean-up Costs, BPU Docket No. G089070658 (August 8, 1989). (Id. at 6).

RATE COUNSEL REPLY COMMENTS

On February 15, 2019, Rate Counsel submitted a reply in response to the New Jersey Utilities' February 7, 2019 letter. Rate Counsel continued its assertion that deferred accounting is inappropriate in the implementation of the Act, as it has not met the standards established by the Board. (Rate Counsel Reply Comments at 2). Rate Counsel contended that the New Jersey Utilities' argument that the Board is compelled to grant deferred accounting when requested must be rejected. Rate Counsel acknowledged that the Board has permitted deferred accounting in cases where a particular set of circumstances is presented, but maintained that the utilities' petitions have failed to show a similar set of circumstances exists as a result of the implementation of the Act. (Id. at 3).

Rate Counsel stated that the regulatory rate setting process uses base rate cases to make a determination of just and reasonable rates. In such reviews, all components of ratemaking are evaluated and the regulators balance the various components when deriving authorized rates for service. (Ibid.) Rate Counsel further indicated that when deferred accounting is proposed, in effect, the utility is seeking a change in the effective level of rates. This level is based typically on just one element of the rate setting formula and does not look at other utility costs that may have decreased to be recovered at a later date. In this case, Rate Counsel believes that the utilities are claiming the need for deferred accounting based solely on the Act without knowing how many veterans' organizations, if any, will avail themselves of a new rate or how

much it could cost to administer the program. Moreover, Rate Counsel stated that there may be cost savings that the utilities now enjoy that more than offset the possible cost increases due to the Act. (ibid.)

According to Rate Counsel, once the Board approves deferred accounting for expenses, and the regulatory asset has been created, preventing the utility from placing the regulatory asset into rates in essence shifts the burden to other parties to show that the utility is not entitled to recovery. (Id. at 4). Rate Counsel maintained that regulatory accounting should be limited to very specific circumstances, which have been approved by the Board in prior matters where the utility can show financial need and potentially extraordinary or volatile circumstances exist. (ibid.)

Rate Counsel indicated that the Board has permitted deferred accounting on a case-by-case basis and stated that the Board noted Board Staff's position on this issue in 1990 when Staff argued that: "deferred accounting is a departure from traditional ratemaking, which the Board has authorized only in limited circumstances and that extraordinary circumstances would have had to exist in order to support deferred accounting in that instance." Rate Counsel also cited instances where the Board granted deferred accounting, including where an environmental problem was creating a health and safety risk which required a significant financial investment in comparison to a utility's revenues and where major weather events caused damage to energy infrastructure in the State. (Id. at 4 to 5).

Rate Counsel went on to cite where other state utility commissions have provided guidance for the facts and circumstances which would allow deferred accounting, including in Minnesota, Colorado and Texas. (Id. at 5 to 6). Rate Counsel further cited to an AARP white paper on deferred accounting which states that deferred accounting is generally limited to expenses that are: 1) largely outside the control of the utility; 2) unpredictable and volatile; and 3) substantial and reoccurring, with the potential to adversely impact the utility's financial health. (Id. at 6 to 7).

Additionally, Rate Counsel asserted, in their comments, that the utilities omitted a key part of Andrea Crane's testimony in the 2018 PSE&G base rate case. Specifically, the utilities asserted that Ms. Crane would have supported deferred accounting if the board granted "prior authorization for the deferral." Contrary to the utilities' claim, Rate Counsel cited Ms. Crane's testimony on the same page wherein Ms. Crane noted the same "financial health" litmus test as cited in AARP's white paper for evaluating deferred accounting. (Id. at 7). Rate Counsel maintained that if the storms for which deferred accounting was sought in the base rate case generated significant expenses to the utility, deferred accounting may have been appropriate if it was requested. (ibid.)

In the instant veterans' organization tariff filings, while the Act was outside of the utilities' control, Rate Counsel argued that the petitions do not present: 1) a significant financial impact on the company's financial health; and 2) an existence of extraordinary or volatile circumstances. Accordingly, Rate Counsel maintained that the utilities fail to meet the standards for deferred accounting. (ibid.)

With respect to the financial impact, Rate Counsel stated that to determine whether the veterans' organization tariffs will have a substantial impact on the financial health of the utility, the utilities must present: 1) the administrative cost; and 2) the claimed lost revenues of applying the Act. Rate Counsel noted that the largest dollar amount for administrative expenses cited by any of the utilities was \$150,000 by PSE&G, which is an insignificant amount in comparison to its revenues and sales. Further, JCP&L's estimated administrative cost of

\$40,000 is also insignificant in comparison to the size of JCP&L. The other utilities did not find the expected administrative expenses to be significant enough to even warrant providing a numeric estimation. Additionally, none of the utilities provided an estimated number of veterans' organizations in their territory or provided an estimate of the amount of lost revenues for each company. (*Id.* at 8). Accordingly, Rate Counsel asserted that the utilities' petitions lack any evidence which would suggest that the utilities' financial health is at risk as a result of the veterans' tariff. (*Ibid.*)

Rate Counsel also stated that, in the past, Board Staff has stated that extraordinary circumstances must be present in order to permit a utility to qualify for deferred accounting, including major and unexpected fluctuations in fuel and purchased power costs. Rate Counsel maintained that the utilities have not provided any evidence which demonstrates that implementing the Act constitutes volatile or extraordinary circumstances. Rate Counsel also stated that in other instances where the Board has approved deferred accounting, there was a health and safety issue or a major storm that impacted the company and thousands of customers. Rate Counsel maintained that the instant circumstances do not have a similar magnitude. (*Id.* at 9). Rate Counsel reiterated that there is simply not enough evidence to compel the Board to set aside traditional ratemaking for an undetermined number of veterans' organizations to potentially save an undetermined amount in energy bills. (*Ibid.*)

Finally, Rate Counsel argued that permitting deferred accounting for every request by a utility, because deferred accounting has been allowed in some circumstances, is not grounded in sound legal reasoning and, more importantly, will open the door to utilities for continuous requests of deferred accounting and less meaningful base rate cases. (*Ibid.*) Rate Counsel maintained that allowing deferred accounting, without clearer standards, erodes regulatory oversight and leads to a slippery slope trending toward single-issue ratemaking. Rate Counsel stated that the Board should continue to evaluate the amount of money requested for deferred accounting in light of the company's financial health while also considering whether the factual circumstances influencing the request are compelling enough to deviate from traditional ratemaking. (*Id.* at 9 to 10).

DISCUSSION AND FINDING

The Board has carefully reviewed the record in this matter including the petition and comments submitted by Rate Counsel and the New Jersey Utilities. Moreover, as represented by the Company, the modifications are intended to comply with the Act and do not propose changes to rates. Accordingly, the Board **FINDS** the proposed tariff modifications and application are reasonable, in the public interest and consistent with the Act.

The Board **HEREBY APPROVES** ACE's proposed tariff modifications and application related to service to veterans' organizations, effective March 15, 2019. The Board **HEREBY ORDERS** ACE to file revised tariff sheets by March 15, 2019.

The Board notes, as pointed out by Rate Counsel, that extraordinary circumstances must be present in order to permit a utility to qualify for deferred accounting. In the past, the Board has permitted deferred accounting in instances where the company was able to demonstrate there was a significant financial impact on the company's financial health and/or the existence of extraordinary or volatile circumstances to deviate from traditional ratemaking. The Company has not demonstrated that it has met these requirements. With respect to the requested deferred accounting related to implementation costs, the volume of applications received is unknown at this time. The Board believes that any review of implementation costs, including employees should be reviewed in the normal course of a base rate case. Accordingly, the

Board **HEREBY DENIES** ACE's request to defer on its books the implementation costs associated with the implementation of the Act.

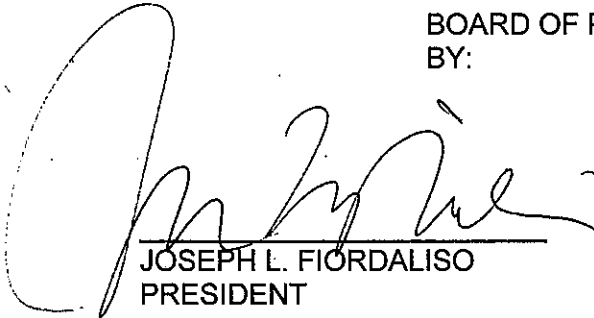
With respect to ACE's request to recover lost revenues associated with the implementation of the Act, the Board **HEREBY AUTHORIZES** ACE to request recovery of lost revenues associated with the implementation of the Act in its next base rate case. All parties have the right to review the requested recovery for accounting accuracy and prudence in the Company's next base rate case. To aid in this review, the Company is **HEREBY DIRECTED** to provide testimony related to the implementation of the Act in its next base rate case, including any claimed lost revenues.

The Company's costs will remain subject to audit by the Board. This Decision and Order shall not preclude nor prohibit the Board from taking any actions determined to be appropriate as a result of any such audit.

The effective date of this Order is March 9, 2019.

DATED: 2/27/19

BOARD OF PUBLIC UTILITIES
BY:



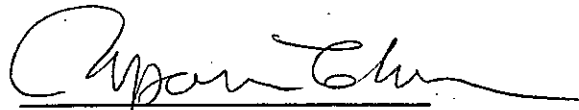
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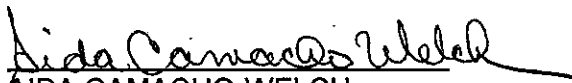
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UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 

AIDA CAMACHO-WELCH
SECRETARY

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

IN THE MATTER OF A REQUEST BY ATLANTIC CITY ELECTRIC COMPANY FOR
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