

FY 2007 New Jersey Board of Public Utilities Budget Testimony

I. Introduction

Created by Governor Woodrow Wilson in 1911, the mission of the Board is to ensure the provision of safe, adequate and proper utility and regulated service at reasonable rates, while enhancing the quality of life for the citizens of New Jersey and performing these public duties with integrity, efficiency and responsiveness. The Board regulates public utilities in the State, including electric, gas, telecommunications, water and wastewater companies. The Board also regulates portions of the cable industry. Currently, there are five commissioners at the Board, the honorable Fredrick F. Butler, Connie O. Hughes, Joseph L. Fiordaliso, Christine V. Bator, and myself.

Over the last decade the role of the Board has changed dramatically, as aspects of the utility industries have been opened to competition. These newly competitive markets are experiencing major consolidations with mergers and acquisitions now consuming much of the Board's attention. In the telecommunications industry, the Board has worked on mergers/transfers of control involving six major telecommunications providers including Verizon/MCI, Sprint/Nextel, and AT&T/SBC. In the water industry, the Board recently approved RWE-Thames of Germany's purchase of NJ American Water.

In the energy industry, the Board has approved the merger between FirstEnergy of Ohio and JCP&L in 2001, AGL of Georgia's purchase of NUI Corp (Elizabethtown Gas) in 2004, and is reviewing the current petition of PSEG and Chicago-based Exelon. During this period the Board is also working to minimize the impact of rising energy costs. In 2006, the Board administered its fifth annual wholesale electric auction that has helped the State improve its national ranking in energy costs. As more states lift mandated caps on their energy prices, New Jersey's standings are expected to improve even further.

As the Board works to ensure that the consolidated companies in these industries continue to provide safe, adequate and proper service at reasonable rates, new types of knowledge and expertise are needed. The relationships that the Commissioners have developed with national and international regulators have helped provide us with unique first-hand information on holding companies seeking to merge with New Jersey utilities.

While our authority is often seen as strictly 'utility regulators,' our work is inextricably tied to world events such as tight energy supplies, emerging technologies, and growing demands on scarce resources, the environment, economic development, technology, domestic security, sustainable development, and Smart Growth. As a result of the Board's efforts over the last few years, New Jersey is now considered a national leader in energy policy, including electric restructuring, energy efficiency and renewable energy.

In 2005, the Board and the Department of Environmental Protection successfully completed negotiations with six other states of an agreement to cap power plant emissions of greenhouse

gases. The agreement, signed by Governor Codey, the first of its kind in the United States, will reduce carbon dioxide emissions, which is essential to addressing global warming. In 2006, the Board won its fourth EPA award for energy efficiency program accomplishments. Just this past April, New Jersey won national praise for the Board's approval of rules establishing a goal requiring that 20% of the state's energy come from Class I renewable sources by 2020. And, last year, the national Solar Energy Industries Association called New Jersey, the "solar capital of the nation."

Further, as New Jersey utilities are increasingly operated by parent companies located across state and international boundaries, the Board now employs corporate governance standards in corporate restructuring, including mergers and acquisitions filings, which ultimately help to insulate ratepayers from potentially harmful business practices.

The Board itself has also been recognized for its business practices. In 2005, the Center for Public Integrity ranked the New Jersey Board of Public Utilities among the top four utility commissions for openness in government and making financial disclosure information accessible to the public. The Board is hopeful that recent progress will continue to yield benefits as we remain diligent in our efforts to protecting the interests of ratepayers by securing our utility infrastructure, keeping rates reasonable and ensuring appropriate customer service.

II. Budget

To achieve our mission, the Board has requested a fiscal year 2007 direct appropriation of \$25.8 million, which is approximately \$1 million *less* than last year. The funding for our budget is obtained from an assessment on the utility and cable companies along with federal grants and salary and operating costs for the NJ Clean Energy Program and Office of the Business Ombudsperson. No general state revenue funds are appropriated for the operation of the Board. In fact, the Board is a source of revenue for the state, as almost \$7.3 million in fines and penalties collected by the Board since Fiscal Year 2003 have been deposited into the General Fund.

In keeping with Governor Corzine's commitment to financial responsibility, the Board is aligning its processes and objectives to live within our means, and under this budget, we have made a commitment to do so. This year, we plan to operate a smaller budget with a 16 FTE reduction in our approved hiring level, which will mean more sharing of responsibilities among staff, saving ratepayers almost \$800,000. In addition, the Board will no longer fund the New Jersey Sustainable State Institute Energy Targets Project, which was funded at \$240,000.

III. Energy

- **Improving New Jersey's electric costs**
- **Managing the PSEG/Exelon merger, which would create the nation's largest electric and gas company.**
- **Administering energy benefits to almost 140,000 low-income ratepayers.**

Energy Rates

In enacting the Electric Discount and Energy Competition Act in 1999, the Legislature found that permitting the competitive electric power generation and supply marketplace to operate

without traditional utility rate regulation would produce a wider selection of services at competitive market-based prices. The Act therefore authorized the Board to permit competition in the electric generation marketplace. The Act also capped electric utility rates for a four-year period.

Other states that deregulated their electric utilities, and temporarily capped rates, suffered severe rate shocks when the caps were lifted. In New Jersey, however, the Board's handling of the end of the four-year rate caps on August 1, 2003, helped to minimize rate shock. We structured the auction for Basic Generation Service (which serves New Jersey residential customers) to bring New Jersey customers the benefit of the wholesale power market. The auction obtains wholesale power through a series of three-year contracts, so that spikes in the wholesale markets are averaged over three years instead of making their impact all at once. These measures are continuing to benefit New Jersey customers as wholesale electric prices are rising in step with natural gas prices.

Had the Board used one-year contracts, rates for residential customers would have increased by an average of 37.9 percent on June 1, 2006 and 66.6 percent since August 2003. Using the three-year contracts, overall residential electric rates in New Jersey will go up 12.7 percent on June 1, 2006, which will be a total average increase of 17.6 percent since rate caps came off in 2003.

In contrast, in Maryland, residential customers of Baltimore Gas & Electric face a 72 percent increase in electric rates this summer. In Delaware, residential customers of Delmarva Power saw rates increase 59 percent beginning May 1, while in Virginia, Delmarva is seeking a 50 percent increase.

Since 2002, the Board has also been working with businesses to help them reduce their energy bills. We are in the process of hiring a business ombudsperson, as directed by the Legislature, to be a liaison and help businesses manage their energy usage and take advantage of available energy programs. The Board also holds business/energy conferences annually that highlight the availability of new technologies and financial incentives.

PJM (Pennsylvania, New Jersey, Maryland) Regional Transmission Organization)

BPU commissioners are active in the work of PJM, the regional transmission organization that coordinates the movement of wholesale electricity in all or parts of New Jersey, Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia. PJM also determines regional and utility specific transmission needs, adequacy of electric supply, solutions to congestion, and reliability standards. Further, PJM monitors the grid to determine whether market power exists. Our involvement with PJM has enabled the Board to procure energy at more reasonable rates and avoid major increases in electric costs for New Jersey ratepayers.

Further, we have participated in regional and national policymaking where New Jersey's interests are at stake. The significant expansion of the PJM Interconnection over the past several years that has helped electricity customers in the PJM region save more than \$500 million a year, with approximately \$68.5 million to New Jersey's electric customers. By participating in organizations like the National Association of Regulatory Utility Commissioners (NARUC), the

Mid-Atlantic Association of Regulatory Utility Commissioners (MACRUC) and the Organization of PJM States (OPSI), we have been instrumental in the development and oversight of a number of the energy policies currently in place at PJM which have resulted in significant and tangible benefits for NJ.

PSEG/Exelon Merger

The merger petition of PSEG and Exelon would create the nation's largest utility company. This is expected to have a major impact not only on the energy market in New Jersey, but throughout the nation. New Jersey law requires the Board to evaluate the effect of a proposed acquisition on competition, rates, employees, and the provision of safe and adequate service. Unfortunately, the Federal Energy Regulatory Commission (FERC) abdicated a large portion of their responsibility and decided not to hold public hearings on the matter, leaving the Board to ensure that this merger is prudent and will have a positive benefit for ratepayers.

The review, analysis and evaluation of the filing are taking a significant commitment of time and resources by the Board. Only after a careful and thorough review of the evidence and information placed before it by the companies, other concerned parties and its staff will the Board render a final decision. While the Board is required by law to examine, at a minimum, the impact of the proposed merger on these four factors, we will go above and beyond these factors to ensure that the merger is in the best interest of New Jersey ratepayers. In 2006, the Board revised portions of its rules dealing with mergers by establishing that, "the Board shall not approve a merger, consolidation, acquisition and/or change in control unless it is satisfied that positive benefits will flow to customers and the State of New Jersey" N.J.A.C. 14:1-5.14(c)

Some topics of concern include market power, estimates of "synergy" savings resulting from the merger and corporate governance issues. The merger must also be reviewed by FERC, the federal Department of Justice (DOJ) and the Nuclear Regulator Commission (NRC) and by other state utility commissions affected (Illinois and Pennsylvania). Although DOJ and NRC still have to consider the merger, the Board is the last state regulatory body that has to act on the proposed acquisition due in large part to the fact that New Jersey is the most impacted by the proposed acquisition.

Energy Master Plan

The country has been impacted by rising electric, natural gas and gasoline prices over the last few years. There are a variety of factors that have caused these increases and New Jersey has been impacted along with every other state. The timing of the development of the next State Energy Master Plan is especially critical, as it will provide a much needed course to deal with current and future energy needs. We have begun preparing the plan with the other State agencies that are required to be part of the Energy Master Plan Committee (BPU – Chair, Community Affairs, Environmental Protection, Health and Senior Services, Human Services, Transportation, Treasury, and Public Advocate. Agriculture will also be participating).

The plan is intended to provide both direction and guidance for implementing statewide energy policies related to production, distribution, consumption and conservation of energy in New Jersey for the period up to 2020. This entails the evaluation of fuels used for electricity, heating, and transportation. It is expected to be completed by October 2007. Technically required every

three years, the last comprehensive Energy Master Plan was completed in 1991; however, in 1995 an abbreviated version was adopted that addressed electricity as a major issue. A new plan is long overdue and necessary given the rising cost of energy. The Plan will provide options and solutions that will take into account the long term effects of energy policy decisions and investments, and the impacts on economic growth, quality of life, the environment, energy security, and costs to consumers.

Aiding the Low-Income Community

The Board has consistently addressed the needs and interests of our most vulnerable residents—keeping the low-income ratepayer interests at the forefront of policy and planning. We have implemented a number of programs including weatherization and direct aid to help the low-income citizens of New Jersey who have a difficult time paying their bills.

New Jersey's Universal Service program is nationally recognized as one of the best energy assistance programs in the country, helping make utility bills more affordable for NJ's neediest families. Currently, the total amount of USF benefits issued by all utilities is \$108 million to over 136,000 recipients.

Since 2002, 31,014 low-income families were enrolled in "Comfort Partners" and received free energy efficiency home improvements that save energy and permanently lower their home energy costs. In 2005, 6,403 families participated in the program.

IV. New Jersey Clean Energy Program

- **Program incentives helping to grow NJ's economy through jobs and supporting new technology.**
- **Since 2002, the practices implemented by the Clean Energy Program have created lifetime benefits that will eliminate 21,813 metric tons of NOx and 46,317 metric tons of SOx, which leads directly to improved health and air quality for all NJ residents.**
- **Cumulative, energy savings measures installed is enough to power over 162,00 homes saving the entire state approximately \$2.4 billion in avoided costs.**
- **By implementing the energy efficiency and renewable energy programs, the State has avoided the need to build a 450 MW power plant and associated transmission lines and distribution facilities.**

New Jersey's Clean Energy Program benefits the state's residents and businesses through lower energy bills, substantial environmental and public health improvements and a stronger economy. Recognized as one of the best in the nation, New Jersey's Clean Energy Program ('CEP') offers incentives and programs to encourage energy efficiency and support for renewable energy technologies. The Clean Energy Program was created and continues to operate in consultation with national and international industry experts.

In the last four years, the Clean Energy Program has been transformed from a marginally successful program into a national model. In fact, in October 2005, President Fox was honored as one of three "Solar Energy Champions of the Year" by the national Solar Energy Industries Association (SEIA).

New Jersey has been independently recognized as possessing the best renewable energy program in the country, specifically in the area of solar energy. Rhone Resch, President of the national Solar Energy Industries Association (SEIA): “New Jersey’s model is far and away the best framework for a successful program—you can see that when the barriers are removed, renewable energy can provide a significant portion of our energy needs. We encourage other states to adopt this proven model for a flourishing, well-regulated solar energy market.” Carol Tombari, a senior project leader at the National Renewable-Energy Laboratory in Golden, Colorado: “Experts consider New Jersey to have the best combination of financial incentives and policies to encourage renewable energy.”

In 2005 alone, the overall combination of energy efficiency and renewable energy from projects installed resulted in enough energy to meet the electric needs of over 50,000 homes and the gas heating needs of 6,100 homes, providing over \$50 million savings in one year. The total savings since 2001 is conservatively estimated at *\$2.4 billion* in direct avoided cost savings to NJ ratepayers, businesses and government.

The Clean Energy Program has had a number of successful initiatives:

Regional Greenhouse Gas Initiative

For the past two years the DEP Commissioner and I have participated in the Regional Greenhouse Gas Initiative, the first agreement in of its kind joining seven northeastern states to cut carbon emissions. The agreement signed in early 2006 by 7 Governors, including Governor Codey, will stabilize carbon dioxide emissions from the region's power plants at current levels from 2009 through 2014, followed by a 10% reduction in emissions to be phased in through 2018. Maryland has recently enacted legislation that requires the Governor to include the state as a full participant in RGGI not later than June 30, 2007, and legislation pending in Massachusetts would have that state join RGGI as well. As a direct result of my participation, along with the leadership Governor Codey provided, NJ will earn an estimated \$20 million annually from revenues of emission credits that will go towards existing energy efficiency programs or help fund new clean energy initiatives.

Renewable Energy Portfolio Standard (RPS)

The legislatively mandated RPS requires electric suppliers to include a certain percentage of renewable electricity in their total sales. In April, the Board adopted rules to expand the RPS to 20 percent of Class I renewables (solar, wind, sustainable biomass, low impact tidal and wave action) by 2020 with a 2 percent, or 1500 MW solar set aside. The RPS also requires 2.5 percent of Class II renewables (resource recovery and small hydro sources).

Atlantic City Wind Farm

In December 2005, the state’s first major wind farm and the East Coast’s first coastal wind farm opened. Located at the Atlantic County Utilities Authority, the wind farm features five 1.5 MW wind turbines built on existing industrial-use land. The facility is expected to produce enough emission-free electricity to power 2,500 homes each year.

Solar Installations

There are now over 1,200 solar installations up from only six in 2001 which have led to hundreds of new NJ jobs in a young and growing industry. To accommodate such demand, there has been major growth in the number of companies installing solar on homes and business, from two companies in 2002 to over 100 companies today.

Energy Star Homes

In 2005, a record 8,009 homes were built and certified to New Jersey ENERGY STAR Home standards, representing over 16 percent of all new homes built in New Jersey last year. Since 2002, 20,800 homes have been built to such standards. This reduces the energy bills for these homeowners. These improvements will result in savings of 377 million kwh of electricity and 129 million therms of natural gas statewide.

Smart Start Buildings

In 2005, 2,389 businesses participated in the SmartStart Buildings program to lower their energy costs that will produce yearly savings to their operating budgets. Since 2002, 21,394 businesses have participated in the SmartStart Buildings program. These improvements will result in saving 11 billion kwh of electricity and 69 million therms of natural gas, which yields cost savings to these businesses and helps them save on their operational expenses.

Energy Star Rebates

In 2005, 42,218 homes received Energy Star rebates for air conditioners and furnaces. This brings the total, since the inception of the program in 2001 to 193,536. These rebates will result in saving 1.7 billion kwh of electricity.

V. Cable and Telecommunications

- **Providing expertise on proposed statewide cable franchise legislation.**
- **Approved mergers of Verizon/MCI and AT&T/SBC.**
- **Remaining active in FCC matters that affect New Jersey ratepayers.**

As currently witnessed in the proposed statewide franchise process, dramatic changes in the telecommunications landscape have occurred over the last several years, including changes to promote increased competition in the telecommunications and video marketplace. Further, recent decisions by the Federal Communications Commission (FCC), the Federal Courts, and Congress have markedly reduced the states' direct role in regulation, while simultaneously increasing the FCC's oversight creating a necessity for the Board to become more involved in national discussions about telecommunications issues. In addition, the telecommunications industry in 2005-2006 proved to be a hotbed of activity with mergers/transfers of control involving five major telecommunications providers

Proposed Statewide Franchise Legislation

Legislation has been proposed that would allow a statewide franchise, which should increase competition in the cable industry. Anticipating these types of trends, the Board has participated in symposia, conferences and workshops to increase and share its expertise. We have been able to provide valuable input during this legislative process so that the Legislature can create a structure that provides for effective competition. Consumers should benefit from our efforts which will help them navigate the complexities of rate structures and service delivery in cable.

Verizon/MCI Merger

On December 2, 2005, the Board approved the merger between Verizon Communications and MCI, which had been the subject of a comprehensive review by Board's staff and the Ratepayer Advocate. The comprehensive analysis and review determined the merger had met all statutory requirements and would promote increased investment in advanced telecommunications services. The Board determined that the combined company should be in a stronger financial position than either petitioner on its own and that an influx of Verizon capital to MCI's subsidiaries should also place the subsidiaries in a stronger position and benefit their current customers. The Board also expected that such financial fortitude will result in added network investment in New Jersey and nationwide, as well as newer and more rapidly deployed services for New Jersey enterprise consumers. The Board acknowledged this potential for added investment in New Jersey facilities as crucial to delivering tangible benefits to New Jersey telecommunications consumers and the economy of the State. The combined entity's enhanced ability to utilize such investment to build its network and produce more services for New Jersey businesses should, in the long term, stimulate economic activity that will benefit the State.

In its approval of the merger, the Board determined that the change in ownership will provide the new company the ability to be an effective competitor due to each firm's specific strengths and market focus, without producing potentially anti competitive behavior in the market. Under the terms of the merger agreement, MCI, a long distance provider, will become a wholly-owned subsidiary of Verizon and the rates, terms or conditions provided in New Jersey by either company will not change. The Board also ordered the companies to comply with a number of protections for ratepayers concerning service and costs. This includes prohibiting Verizon from seeking any increase in state-approved rates for unbundled network elements (UNEs) for a period of two years from the merger closing date. UNEs are certain elements of Verizon's network that are purchased and used by competitors to provide service to customers. Verizon must also deploy and offer stand-alone DSL without requiring customers to purchase voice telephone service for at least two years.

AT&T/SBC merger

The Board approved the merger between AT&T and SBC Communications on August 17, 2005. Reviewed by the Board's staff and the Ratepayer Advocate, it was concluded that the merger would result in a positive impact on competition, customer rates and service reliability and there would be a better environment for job retention.

Sprint/United Telephone Transfer of Control

On February 22, 2006, the Board approved the transfer of control of United Telephone from its parent company, Sprint to a newly created entity established to own and manage the local telephone operations formerly owned by Sprint. The new entity, known as EmbarQ was established to operate Sprint's local telephone operations in the 18 states where it provides service. In New Jersey, United Telephone provides local telephone service in Sussex, Warren, Hunterdon, Somerset and Morris counties. After an intensive investigation by Board's staff and the Ratepayer Advocate, and a stipulation of settlement reached by the parties, the Board concluded the transfer was in the public interest. However, the Board insisted upon a number of conditions to protect ratepayers that were included in the settlement. Specifically, United NJ will

freeze its regulated intrastate tariff service rates until January 1, 2009. Likewise, United NJ will expand its existing low income Lifeline credit program, will develop and implement a discount program for services provided to schools and libraries and will continue its broadband deployment program.

VII. Security and Reliability

- **New Jersey's Best Practices a national model for securing utility infrastructure.**

One of the Board's most crucial responsibilities is developing Homeland Security Best Practices of the critical Electric, Natural Gas, Water, and Telecommunications Sectors. The Board was the first State department to develop and complete Best Practices Documents regarding utility infrastructure for their respective industry sectors and have them approved by the New Jersey Domestic Security Preparedness Task Force and the Governor. This plan has been presented as a national model and we have also provided training to other state utility commissions. I am an active participant on the NJ Domestic Security Preparedness Task Force. We are also working with utilities to ensure that the security at critical utility infrastructure facilities is properly upgraded.

In addition, Board representatives actively on the Joint US/Canada Northeast Blackout Task Force, created in response to the August 13, 2003 Northeast blackout, which significantly affected 50 million people in Canada and the United States, including 845,000 NJ customers. The Task Force made a series of recommendations, including mandatory reliability standards, which were subsequently incorporated into the new Federal Energy Policy Act of 2005.

As a result of our participation in the task force, as well as expert consultants hired after the July 5, 2003 blackout at the Jersey Shore, we directed First Energy of Ohio, the parent company of JCP&L, to implement reliability improvements for their entire system in NJ and appointed a reliability master to oversee the project. Since this time, JCP&L has made significant investments in its electric system. Between 2003 and 2005, the Board directed that JCP&L spend an additional \$96 million on capital improvements, including transformers and substations, and \$50 million on operations and management.

VI. Customer Service

Utility Report Card

In 2006, we plan to propose new rules that will require public utilities and cable television companies to collect and report performance data that is related to the services they provide. A utility report card will provide the Board, consumers, and other interested parties with up-to-date information on regulated entity performance in the key areas of customer service, safety and reliability, pricing and financial matters, customer satisfaction and universal service. The Board will apply the new rules to all public utilities and cable companies that provide service to at least 20,000 residential customers in New Jersey. The Utility Report Card will be a useful resource to spur improvements by regulated entities and to educate consumers prior to selecting a utility or cable provider where there is competition.

Customer Assistance Division

In 2005, the Board saved or recovered nearly \$1.1 million in credits or refunds based on customer complaints. In addition, in 2003, the Board assumed primary responsibility in investigating all alleged telephone slamming complaints. Slamming is the unauthorized switch of a customer's service to another provider. State legislation passed in 2001 required the Board to assume responsibility for these complaints, which were previously handled by the Federal Communications Commission. In 2005, the Board settled more than 250 complaints of slamming and collected nearly \$545,525 in fines for violations involving 5 companies. In addition, the Board received another 226 billing complaints and saved NJ consumers \$151,217 by contacting telephone carriers on behalf of customers.

Office of Cable Television

In 2005, the Board settled basic rate cases yielding \$3.14 million in subscriber savings in 2005 in the form of bill credits, reduced rates and forgone rate increases that were proposed but agreed not to be charged. Subscribers also benefited from another \$1.1 million in revenues, which the Board negotiated for violations of state statutes, administrative code and Board Orders. Over half of these funds have been collected in 2006. Complaint investigators also yielded \$323,861 in additional subscriber refunds.

VII. Conclusion

In closing, this has been a productive year for the Board. In the constantly changing environment of utility and cable regulation, the New Jersey Board of Public Utilities will continue to be on the cutting edge to ensure safe, adequate and proper service at reasonable rates. We plan to meet our mission in the most effective, efficient and ethical manner possible. We have taken major strides to make New Jersey a leader in the development and utilization of renewable energy.

Over the next year, we will be focusing on energy, including completing the review of the PSE&G/Exelon merger and developing the Energy Master Plan and performance standards for utilities. We will continue to address the growing convergence of technologies in the telecommunications and cable industries. We also plan to expand the number of utilities being audited. Finally, we will continue to strive to be a national leader in the energy efficiency and renewable energy fields, and address important consumer issues.