



Public Utility Law Section Newsletter

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PA and NJ Take Different Approaches to Spur Investments in Natural Gas Infrastructure

by Mark Lazaroff

Natural gas utilities in New Jersey and Pennsylvania are required to make continual upgrades to their infrastructure systems to ensure the safe and reliable delivery of natural gas. In particular, they need to replace aging bare steel and cast iron mains. Over the past few years, both states have adopted measures to incentivize accelerated utility investment in natural gas infrastructure. There has been a renewed focus on creating policies that encourage utilities to make such investments in the wake of accidents involving natural gas infrastructure and the damage inflicted on energy infrastructure by Superstorm Sandy.

In general, utilities may earn a return on assets included in their rate base in a base rate case. Several natural gas utilities have sought and obtained authority from the Pennsylvania Public Utility Commission (PUC) and the New Jersey Board of Public Utilities (BPU) for ratemaking recognition of upgrades made to natural gas

infrastructure in-between rate cases. Both states have allowed utilities to make investments in infrastructure and recover the appropriate returns from ratepayers on an accelerated basis.

New Jersey

New Jersey made a concerted push for utility infrastructure investments after the release of the state's 2008 *Energy Master Plan* (EMP). The EMP called for the development of a "21st century energy infrastructure," that would ensure the future reliability of New Jersey's energy infrastructure. In addition to modernizing its energy infrastructure, the state sought investments that would: 1) provide an immediate stimulus to New Jersey's economy by creating jobs; and 2) provide continued economic benefits into the future. It did this through a series of administrative rulings, and did not seek special statutory authorization.

The statements of the various authors contained within this issue are their individual opinions and should not be viewed as those of the Public Utility Law Section, the New Jersey State Bar Association or any other agency or organization.

The BPU called upon natural gas utilities to submit proposals conforming to the principles set forth in the EMP. Utilities were asked to identify potential infrastructure improvements that: 1) were necessary system upgrades; 2) would create immediate jobs; and 3) would have a sustained positive impact on New Jersey's economy (qualifying projects). By way of example, the BPU approved petitions submitted by New Jersey Natural Gas (NJNG) and South Jersey Gas (SJG) in 2009 to implement accelerated infrastructure improvement programs. This enabled the utilities to recover the costs associated with qualifying projects from ratepayers on a current basis.

Subsequent petitions by both utilities to add qualifying projects were approved in 2012 and are ongoing. In approving these accelerated infrastructure programs, the BPU authorized varying forms of ratemaking and accounting mechanisms that allow the natural gas utilities to earn a return on and return of their investments in natural gas infrastructure between rate cases.

Pennsylvania

In contrast to New Jersey's administrative solution, Pennsylvania has taken a legislative approach to address its infrastructure needs. Both models are achieving the goal of accelerating investments in natural gas infrastructure.

Pennsylvania only instituted a formal natural gas accelerated infrastructure program in the past year. In Feb. 2012, Governor Tom Corbett signed Act 11 of 2012 into law. Act 11 established a formal natural gas accelerated infrastructure program that opened up the distribution improvement charge (DSIC) to natural gas utilities.¹ The DSIC enables utilities to recover the costs of their investments from ratepayers as they upgrade infrastructure, instead of waiting for a base rate proceeding. The new DSIC program provides investors and utilities with uniformity and certainty.

Concerns over the safety of Pennsylvania's natural gas distribution infrastructure, coupled with the successful utilization of the DSIC to accelerate the replacement of aging sections of the commonwealth's

water infrastructure, led to the passage of Act 11. The new law gave natural gas utilities the option to petition the commission for approval of a DSIC beginning on Jan. 1, 2013. The DSIC is now available to water and wastewater utilities, electric distribution companies, and natural gas distribution companies.

To be eligible for the DSIC, Act 11 requires utilities to submit a long-term infrastructure improvement plan (LTIIP). The LTIIP must include a five- to 10-year forecast providing: a detailed description of the types and ages of property eligible to be replaced; a proposed schedule for repairs; projected annual expenditures and measures to ensure the utility's plan is cost-effective; and importantly, an explanation of how the plan will accelerate the replacement of aging infrastructure and maintain safe and reliable service.

The PUC may approve infrastructure replacements identified in an LTIIP that "reflect an acceleration of infrastructure replacement over the utility's historic level of capital improvement," consistent with Act 11.

Utilities are also required to file a tariff with the DSIC petition, which will regulate how costs are recovered. The DSIC must be initially capped at five percent of a customer's bill and the formula for calculating the DSIC includes a return on equity component. A model tariff has been adopted by the PUC, with a return on equity equal to the rate approved in the utility's most recent base rate proceeding (if the proceeding occurred within the past two years). A PUC-established rate of return, determined on a quarterly basis, is used if a utility has not had a base rate case within two years. The PUC's most recent return on equity calculation for natural gas utilities is 10.1 percent, a percentage at the high range of most return on equity calculations in order to attract capital to Pennsylvania's natural gas infrastructure. ■

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Endnote

1. From the late 1990s through 2012 the DSIC was only available to water utilities.

Inside this issue

PA and NJ Take Different Approaches to Spur Investments in Natural Gas Infrastructure <i>by Mark Lazaroff</i>	1
Constitutional Right to Jury Trial Trumps Alternative Dispute Resolution Statute <i>by Dennis C. Linken</i>	4
What's in a Name? The Distribution System Improvement Charge <i>by Michael A. Sgro and Robert J. Brabston</i>	6
Farmland Solar Out to Pasture: BPU Approves SRECs for Only Three Out of 57 New Grid-Supply Solar Farmland Projects <i>by Kenneth J. Sheehan and Cynthia L. M. Holland</i>	8
BPU Focuses Attention on Utility Storm Response and Preparedness <i>by Alexander C. Stern</i>	10
Legislative Update <i>by James Laskey</i>	12
2013 BPU Regular Public Meetings	14

Constitutional Right to Jury Trial Trumps Alternative Dispute Resolution Statute

by Dennis C. Linken

In a recently handed down decision, the New Jersey Supreme Court declared unconstitutional a statutory provision, N.J.S.A. 48:2-80(d) (Section 80(d)), mandating that disputes of less than \$25,000 involving damage to public utility underground facilities be resolved through a dispute resolution process.¹ The Court concluded, without dissent, that Section 80(d) violated the right to a jury trial afforded under the New Jersey Constitution for such cases.²

The case was instituted by Jersey Central Power & Light Company (JCP&L), following damage to its underground facilities when a contractor, Melcar Utility Co., working on behalf of Verizon New Jersey Inc., cut JCP&L's lines. JCP&L brought suit in the New Jersey Superior Court, Law Division, Special Civil Part, alleging negligence on the part of Verizon and Melcar; Melcar subsequently brought a third-party action against Utiliquest, the entity hired by JCP&L to mark the location of JCP&L's underground facilities.

The legal framework of the case surrounded New Jersey's Underground Facility Protection Act (UFPA).³ Recognizing the potentially dangerous consequences that could occur as a result of damage to a public utility's underground facilities, the Legislature enacted the UFPA to establish a scheme of requiring mark-outs of such underground equipment prior to underground excavation or construction. This so-called one-call damage prevention system requires that an excavator provide notice to the one-call system at least three business days prior to the commencement of work.⁴ The UFPA then requires that, within three business days of receipt of a notice of intent to excavate, the owner of an underground facility "[m]ark, stake, locate or otherwise provide" the location of its underground facilities in the area of the planned excavation.⁵ Significant penalties are provided under the UFPA for failure to comply.

Under N.J.S.A. 48:2-80(d), an underground facility operator is liable to an excavator for damage sustained by the excavator as a result of a failure to mark or locate

the operator's underground facilities. By the same token, Section 80(d) imposes liability upon the excavator for any negligent damage to the underground facilities. Section 80(d) further provides that "[a]ny dispute arising out of the provisions of this Subsection, where the claim is less than \$25,000, shall be subject to an alternative dispute resolution process as established within the Office of Dispute Settlement in the Office of the Public Defender." The provision also permits—but does not mandate—an alternative dispute resolution process for amounts greater than \$25,000, and further provides that, in all cases, the parties can agree upon another alternative dispute resolution party, should they so choose.

On the day of trial, Melcar, the excavator, moved to dismiss the matter before the court for lack of jurisdiction, contending that, under N.J.S.A. 48:2-80(d), the case had to be heard by the Office of Dispute Settlement (ODS). Following subsequent briefing and argument, the court granted the motion and dismissed JCP&L's complaint without prejudice.

On appeal, the Appellate Division, in a short, unpublished opinion, affirmed the trial court's order. The Supreme Court thereafter granted JCP&L's petition for certification.

JCP&L contended that N.J.S.A. 48:2-80(d) does not require claims of less than \$25,000 to be submitted to the ODS, but rather that such a submission is permissible. In the alternative, JCP&L argued that if Section 80(d) were to be interpreted as mandating resolution by the ODS in such matters, the provision must be declared unconstitutional.

While the Supreme Court found the plain language of the statute evidenced a legislative intent to subject all Section 80(d) matters involving damages of less than \$25,000 to the ODS process, it also concluded that mandatory referral to the ODS violated the right to a jury trial afforded under the New Jersey Constitution. Noting that such protection applies to civil cases only where the right to a jury trial existed at common law,

and that it does not normally apply to cases in equity, the Court concluded that the nature of the action in question—a claim of negligence premised on a common law cause of action—necessarily invoked the constitutional right to a jury trial. The failure of the Legislature in enacting Section 80(d) to “ignore the right to a civil jury trial” could not be countenanced, nor, concluded the Court, could it insert such a right in the statute. Rather, a statutory ‘fix’ lay within the domain of the Legislature.

Accordingly, the Court reversed and remanded the matter for further proceedings before the Law Division. ■

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Endnotes

1. *Jersey Central Power & Light Co. v. Melcar Utility Co., et al.*, 212 N.J. 576 (2013).
2. N.J. Const. art. I, ¶9.
3. N.J.S.A. 48:2-73 to -91.
4. N.J.S.A. 48:2-82.
5. N.J.S.A. 48:2-80(a)(2).

What's in a Name?

The Distribution System Improvement Charge

by Michael A. Sgro and Robert J. Brabston

The distribution system improvement charge (DSIC) is a regulatory mechanism that allows water utilities to recover investment in specific types of water infrastructure improvements between base rate cases. The DSIC was created via rulemaking by the New Jersey Board of Public Utilities (BPU) and approved on May 1, 2012, effective June 4, 2012 (the date of publication in the *New Jersey Register*) as a new subsection of Chapter 9 of Title 14 of the Administrative Code.¹

The DSIC is intended to be a recurring program that “encourages and supports” accelerated infrastructure improvement. The New Jersey DSIC is aimed at improvements needed for “conservation, continued system safety and reliability, improved water quality, and sustained economic growth in the State of New Jersey.”² Eleven states currently have some sort of water and/or wastewater DSIC, with Pennsylvania being the longest standing at 15 years.³ The gas and electric utilities have a variety of similar mechanisms, which were created via petitions filed by the companies and approved by board orders; many of these mechanisms have been renewed or extended.⁴

The driving force behind the DSIC is the recognized need for accelerated water infrastructure investment. The *U.S. EPA Drinking Water Infrastructure Needs Survey and Assessment: Fourth Report to Congress* in 2009 (based on 2007 data) found the country’s 53,000 community water systems and 21,400 not-for-profit non-community water systems need to invest \$334.8 billion between 2007 and 2027.⁵

In New Jersey, the Environmental Protection Agency (EPA) estimates the drinking water infrastructure alone requires approximately \$8 billion in investment over the next 20 years; adding in the infrastructure needs for wastewater and storm water, the investment over that same 20 years rises to a staggering \$40 billion. The approximately 650 water utilities owned by private companies, municipal or other public authority systems, and small community water systems are facing these

massive investment challenges in order to provide safe and proper service. Within that range of potable water delivery organizations, there are 31 investor-owned water utilities serving approximately 40 percent of the state.

Approximately half of the more than 600 community water systems are too small to fall under state regulations.⁶ The DSIC mechanism is available only to those 31 investor-owned water purveyors subject to BPU jurisdiction.

A critical benefit of the DSIC is that BPU-regulated water utilities can accelerate the pace of improvements on critical distribution system improvements because costs are recovered through the DSIC mechanism outside of a base rate case. This programmatic approach to these types of improvements enables companies to engage in critical infrastructure rehabilitation and replacement at a steady pace allowing the work to be done on a planned basis; emergency work is typically at least five to 15 times more costly, excluding secondary impacts such as road or other facility damage.⁷ The customer benefits from this approach because the costs of improvements recovered through the DSIC are passed along to customers in small increments.

To be eligible to apply for the DSIC, a water utility must have had its base rates reviewed and approved by the board within the past three years. The utility must submit a ‘foundational filing,’ which is an engineering report on the distribution system. The report addresses the condition of the utility’s infrastructure, the proposed steps to improve the system, and the specific projects proposed for recovery by the utility (including projected costs and completion dates). The board has 90 days to review and approve a proposed foundational filing.

The improvements covered under the DSIC must be non-revenue-producing water main replacements and rehabilitations, main cleaning and lining, valve and hydrant replacements, service line replacements, and unreimbursed utility relocation costs associated with relocations required by government entities.

Companies are required to submit recovery filings to BPU staff within 15 days of the end of the recovery period. The filings include project information, costs, and the proposed DSIC surcharge. The surcharges become effective on an interim basis 60 days after the end of the recovery period; projects disputed by BPU staff or the Division of Rate Counsel may be omitted from the surcharge. Recovery filings may be made on an approximately semi-annual basis.

The DSIC surcharge is subject to an annual revenue recovery cap of five percent of total water revenues, limiting the amount of revenue a company may recover for DSIC capital improvements before a base rate review is required. There is an annual 'base spending' requirement, which is the minimum annual investment requirement set at the level of annual depreciation expense for the specific utility plant accounts in which DSIC plant investment is recorded and reported to the BPU in the company's annual BPU report. Failure to meet the annual base-spending requirement could trigger refunds to customers by the utility.

The surcharge must be listed separately on the customer bill, and will be assessed to customers as a fixed charge based on meter size. Public fire, private fire, and 'sales for resale' connections are excluded from the DSIC surcharge.

The return on DSIC investments is the utility's adjusted weighed average cost of capital using the equity rate approved by the BPU in the company's most recent base rate case and the current actual embedded debt cost (adjusted semi-annually), which may not to exceed the cost approved in the last rate case. The DSIC rates are interim rates, subject to 'true up' in the company's next base rate case and subject to full refund if the util-

ity fails to file a base rate case within three years of the effective date of its foundational filing. Spending under the program is also subject to annual compliance filings and an earnings test to determine whether any 'over-earning' has taken place.

The current program is a good first step in helping to address some of the state's most immediate and pressing water infrastructure investment needs. The mechanism helps the state's water utilities compete for incremental capital that is typically allocated based in large part on the expected overall return on that capital (including timeliness of return, among other considerations).

Given the magnitude of the state's water and waste water infrastructure investment needs, it would be prudent for the program to continue beyond the rule sunset date and be enhanced to meet the state's goals. Areas for potential enhancement of the rule include raising the five percent cap and expanding the list of eligible assets based on identified system needs and/or state goals. Potential enhancements could include resiliency projects (such as flood walls or dams), supply and treatment projects, and wastewater system improvements.

Over the long term, the DSIC enables the investor-owned water companies to continue to provide the most efficient, cost-effective and reliable drinking water in the state, providing the customers of those companies the critical service they, their communities, businesses and local economies have come to rely upon. ■

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Endnotes

1. See N.J.A.C. 14:9-10.1 *et seq.*
2. N.J.A.C. 14:9-10.1(b).
3. See 66 Pa.C.S. Section 1307(g) effective 12/18/1996.
4. Examples of these mechanisms include: accelerated infrastructure investment plans; capital investment recovery tracker; and the energy efficiency filings.
5. *U.S. EPA Drinking Water Infrastructure Needs Survey and Assessment: Fourth Report to Congress*, available at http://water.epa.gov/infrastructure/drinkingwater/dwns/upload/2009_03_26_needsurvey_2007_report_needsurvey_2007.pdf. (last visited June 10, 2013).
6. Infrastructure Investments Necessary for Economic Success, *Facing Our Future*, April 21, 2013, available at, http://www.cnjg.org/s_cnjg/sec_wide.asp?CID=17859&DID=45870 (last visited June 10, 2013).
7. Comments of the Somerset County Business Partnership, Dec. 29, 2010, BPU Docket No. WO10090665.

Farmland Solar Out to Pasture: BPU Approves SRECs for Only Three Out of 57 New Grid-Supply Solar Farmland Projects

by Kenneth J. Sheehan and Cynthia L. M. Holland

At its April 29, 2013, public agenda meeting in Trenton, the Board of Public Utilities (BPU) approved only three out of 57 new grid-supply solar farmland projects pending approval for solar renewable energy certificates (SRECs). The BPU issued its order memorializing the fate of the remaining 54 projects on May 13, 2013. The BPU's detailed order represents final agency action denying SREC eligibility to 34 projects and deferring the decision on SREC eligibility for 20 projects.

The BPU denied seven projects for failure to have a PJM Interconnection system impact study (SIS). The BPU also denied 27 applications because they "lack[ed] sufficient progress" and had "not secured all final unappealable approvals." The BPU then found that 20 applications were not "sufficiently advanced to support [staff's] recommendation for approval," but had "timely PJM issued SIS and had secured all final unappealable federal, state, and local approvals by the application deadline." For those 20 deferred projects, the BPU found more information was required and "additional milestones must be achieved to enable a recommendation for approval or denial based upon the project's prospects for completion."

Only solar electric facilities "connected to the distribution system in the State" may generate SRECs. Pursuant to L. 2012, c. 24, the BPU determines whether a solar electric facility is "connected to the distribution system," if that proposed facility is located on land that had been "actively devoted to agricultural or horticultural use" at any time within the 10-year period prior to the law's effective date.¹ The law looks to whether the land was valued, assessed, and taxed pursuant to the Farmland Assessment Act of 1964,² at any time within

Staff has been directed to work with stakeholders to develop the additional information and milestone reporting requirements to "enable further consideration of the deferred applications."

the previous 10 years. Relevant to the BPU's action, the statute set out three requirements for such solar facilities to be deemed "connected to the distribution system."³ The solar facilities must have received a system impact study from PJM on or before June 30, 2011; filed notice with the BPU within 60 days of July 23, 2012, the legislation's effective date; and received approval from the BPU.⁴ The statute provides no additional criteria for the BPU's approval, instead leaving the agency to exercise its discretion.⁵ The BPU's order provides

a lengthy discussion of the exercise of its discretion in response to comments from solar developers as well as legislators opining on the subject.

Upon review of the BPU's order, solar developers with projects denied SREC eligibility have different options available to them. Motions from solar developers seeking reconsideration of the BPU's decision are due within 15 days of the order. As final agency action, any appeal of the BPU's order must be filed with the Appellate Division within 45 days. For those solar developers not seeking appeal or reconsideration, the BPU has urged petition under N.J.S.A. 48:3-87(q)(1), which applies during the energy years of 2014-16 (beginning on June 1, 2013). The cost and benefit associated with each option will be specific to each project denied SREC eligibility.

For the 20 projects pending approval, the BPU will seek public input on the additional information and milestones necessary for approval. Staff has been directed to work with stakeholders to develop the additional information and milestone reporting requirements to "enable further consideration of the deferred applications." Stakeholders received notice on May 13, 2013, that public involvement in the process would

begin at a stakeholder meeting scheduled the following day, May 14, 2013. Solar developers with deferred applications were urged to participate in the public process. The expectation is that further stakeholder meetings, specifically addressing this topic, will be scheduled in the coming weeks/months. ■

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Endnotes

1. N.J.S.A. 48:3-87(s).
2. N.J.S.A. 54:4-23.1.
3. N.J.S.A. 48:3-87(s)(2)(a)-(c).
4. *Ibid.*
5. N.J.S.A. 48:3-87(s)(2).

BPU Focuses Attention on Utility Storm Response and Preparedness

by Alexander C. Stern

In response to the destructive storms New Jersey has experienced in the past few years, there are several new initiatives at the New Jersey Board of Public Utilities (BPU) addressing public utility planning, infrastructure preparedness, and storm response and recovery.

After completing a comprehensive investigation into the performance of the four electric distribution companies (EDCs) during Hurricane Irene (Aug. 28, 2011) and the Oct. 29, 2011, snowstorm, the BPU directed the EDCs to take actions that would help improve performance. On Jan. 23, 2013, two months after Superstorm Sandy hit New Jersey with devastating consequences, the BPU issued an order approving 103 measures that, among other things, require the EDCs to enhance their planning and preparations for storms, and to improve communications with customers, municipalities and state officials. The BPU found the measures recommended by its independent consultant, Emergency Preparedness Partnerships, were necessary to ensure continued provision of safe, adequate and proper service, to help mitigate future outages and to help develop more effective communication among the EDCs, municipal officials, customers and the BPU during extreme weather events. Most of the ordered actions or plans are to be completed by Sept. 2013.¹

Shortly thereafter, on Feb. 20, 2013, the BPU issued an order implementing new EDC reporting requirements related to outages and reliability improvement measures. These requirements include four initiatives: 1) quarterly outage and substation metrics reports; 2) the inclusion of an annual report providing specific circuit data on reliability; 3) modification of the rules and reporting requirements regarding the poorest performing circuits; and 4) a new tracking objective related to “hazard trees.”²

On the same day the BPU moved forward with these new reliability reporting requirements, PSE&G filed a petition seeking approval of a program titled Energy Strong, which would authorize major investments to

make PSE&G’s electric and gas distribution systems more resilient and better able to withstand severe weather events. The Feb. 20, 2013, filing proposes to invest about \$3.9 billion over 10 years in improvements aimed at hardening infrastructure, safeguarding customers and mitigating damage to communities from severe storms. The program includes protecting electric switching and substations from rising water, protecting natural gas metering stations and a liquefied natural gas (LNG) station from storm damage, replacing and modernizing low-pressure cast iron gas mains, adding more redundancy within the electric system, installing smart grid technologies, upgrading to the pole electricity distribution network, and shifting some overhead lines underground.

Many experts predict extreme weather events like Hurricane Irene, the Oct. 2011 snowstorm and Superstorm Sandy will occur more frequently. PSE&G’s filing represents a direct response to prepare for such events and meet customers’ 21st century service expectations. More than 40 municipalities, along with three counties, have approved resolutions in support of PSE&G’s Energy Strong filing. Several business organizations and labor unions have also expressed support. No official opposition to the filing has been submitted to the BPU. Although perhaps not completely opposed to the filing, concerns about elements of the proposal have been raised by six organizations: AARP, New Jersey Citizens Action, the Chemistry Industry Council of New Jersey, the New Jersey Large Energy Users Coalition, New Jersey Division of the Rate Counsel and NJ Public Interest Research Group. A procedural schedule for the PSE&G filing, including public hearings, is anticipated soon.

In recognition of the planning and capital expenditure issues raised by PSE&G’s filing, as well as the larger issues associated with ensuring storm readiness going forward for all public utilities, on March 20, 2013, the BPU issued two orders commencing two new generic proceedings.

The first one, *In the Matter of the Board’s Establishing A Generic Proceeding to Review the Prudence of Costs Incurred*

By *NJ Utility Companies in Response to Major Storm Events in 2011 and 2012*,³ is intended to establish appropriate and consistent methods for evaluating the costs arising from the recent storms while the events are still fresh. All New Jersey public utilities have been directed to file a detailed report by July 1, 2013, or sooner, including but not limited to the identification of all extraordinary preparation, recovery and restoration costs incurred as a result of the major storm events.

The second order, *In the Matter of the Board's Establishment of a Generic Proceeding to Review Costs, Benefits and Reliability Impacts of Major Storm Event Mitigation Efforts*,⁴ is intended to address proper infrastructure planning going forward, and requests that all New Jersey public utilities submit detailed proposals by Sept. 3, 2013, for infrastructure upgrades designed to protect the state's utility infrastructure from future major storm events.

Rounding out the first half of the year, on May 29, 2013, the BPU directed the EDCs to implement eight additional new requirements related to improving communications with customers, the public and governmental officials during extreme weather events. The new requirements arose from the BPU's review of Superstorm

Sandy response and additional lessons learned. The BPU found that additional actions were necessary to ensure continued provision of safe, adequate and proper service to help develop more effective communication during extreme weather events and other periods of extended service interruption.⁵

Based on the forgoing, as well as the fact that hurricane season began June 1, 2013, and the National Oceanic and Atmospheric Administration recently projected a 70-percent chance that the season will see 13 to 20 named storms—including three to six major hurricanes,⁶ careful analysis and consideration of utility actions in storms and storm preparedness will likely continue to be a significant focus of the BPU throughout the second half of 2013.

For more information on PSE&G's Energy Strong filing, please visit http://www.pseg.com/info/media/energy_strong/press_kit/index.jsp. ■

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Endnotes

1. See *In the Matter of the Board's Review of the Utilities' Response to Hurricane Irene*, BPU Docket No. EO11090543 (Jan. 23, 2013).
2. Per the BPU order, a "hazard tree" shall be defined per ANSI A300 as "a structurally unsound tree that could strike a target when it falls. As used in this clause, the target of concern is electric supply lines." See *In the Matter of the Board's Initiative to Revise Reporting Requirements and Improve Reliability Programs by the Electric Distribution Companies Operating in New Jersey*, BPU Docket No. EO12070650 (Feb. 20, 2013).
3. BPU Docket No. AX13030196.
4. BPU Docket No. AX13030197.
5. See *In the Matter of the Board's Review of the Utilities' Response to Hurricane Sandy*, BPU Docket No. EO12111050 (May 29, 2013).
6. See Press Release, National Oceanic and Atmospheric Administration, NOAA Atlantic Hurricane Season Outlook (May 23, 2013), available at <http://www.cpc.ncep.noaa.gov/products/outlooks/hurricane.shtml>.

Legislative Update

by James Laskey

Unlike our last update, where we were able to report on two new laws amending Title 48 of New Jersey's statutes, none of the bills we are tracking have become law. However, several have advanced beyond the introductory stage in the last few months, and several new bills have been dropped into the hopper.

Energy Efficiency, Renewable Energy and Energy Planning

Illustrating the ability and tendency of legislation to move in fits and starts, A-1383, which was released by the Assembly Telecommunications and Utilities (ATU) Committee in March 2012, was amended on the Assembly floor in May 2013. This bill, sponsored by Assemblyman Upendra Chivukula (the chair of the ATU Committee), proposes various changes to the definitions of Class I and Class II renewable energy. Some new technologies would become eligible for the more favorable Class I classification, while other technologies currently classified as Class I would lose that designation unless they are "connected to the distribution system."

Although the bill was amended on the Assembly floor, it was not presented for a vote, and still remains pending in the Assembly. At the same time, a companion bill in the Senate, S-2700, was introduced by Senator Bob Smith in April 2013. S-2700 was approved by the Senate Environment and Energy Committee (chaired by Senator Smith) on June 3, 2013, but was then referred to the Senate Budget and Appropriations Committee, where its future is uncertain.

Staying with the topic of Class I renewables, Assemblyman Chivukula recently introduced A-4081, which would place energy derived from hydrothermal decomposition in Class I. This bill was approved on June 6, 2013, by the ATU Committee. It does not have a companion in the Senate as of this writing.

The family of certificates representing energy with favorable attributes, which currently includes certificates for renewable energy (RECs), solar (SRECs) and offshore

wind (ORECs), would gain another sibling in the form of alternative energy credits (AECs) under legislation sponsored by Assemblyman Chivukula (A-1384) and Senator Smith (S-2651). The Assembly bill was released from the ATU Committee in Feb. 2013, but was then referred to the Assembly Appropriations Committee, which has not taken further action. The Senate bill was approved by the Environmental and Energy Committee on June 13, 2013, and is pending before the Senate as of the date of this report.

Another bill sponsored by Assemblyman Chivukula (and 11 other members of the Assembly), A-2887, would require the state's energy master plan to focus specifically on long-term capacity planning and infrastructure planning. This bill was passed by the full Assembly in March 2013, on a vote of 71-0-6. It is now pending before the Senate Economic Growth Committee, which also has the companion bill, S-2758, introduced in May 2013 by Senator Jim Whelan. Hearings have not been scheduled on these bills.

A related bill has similarly advanced, but without the same broad support. A-2888, also sponsored by Assemblyman Chivukula (this one with the support of three other members of the Assembly), would establish an Office of Clean Energy as a separate state agency. The bill passed the Assembly in late April 2013, by a vote of 45-32-0. Like A-2887, it is now before the Senate Economic Growth Committee. A companion bill, S-2733, was introduced in April 2013, by Senators Smith and Linda Greenstein, and referred to the Senate Environment and Energy Committee. This committee released a committee substitute for this bill on June 13, 2013, but the bill was then referred to the Senate Budget and Appropriations Committee.

Reliability Legislation

Bills related to utility reliability and restoration continue to receive attention. A-2760, sponsored by Assemblyman Chivukula, which was reported out of the ATU Committee in Sept. 2012, was amended on the

Assembly floor in May 2013. The amendments add a number of procedural refinements to the prior proposal, particularly in terms of the BPU's ability to impose penalties. As was the case with A-1383, discussed above, A-2760 was amended on the Assembly floor, but it was not presented for an Assembly vote, and remains pending in the Assembly. It still does not have a counterpart in the Senate. A provision in the bill ensuring recovery by utilities of reliability-related expenditures has attracted opposition from AARP.

None of the other bills covered in the last legislative update have advanced beyond the committee stage, but utility reliability continues to be a topic of great interest in Trenton. At the annual meeting of the New Jersey Utilities Association, held during the first week of June, Senate President Stephen Sweeney indicated during a luncheon address that he and Senator Raymond Lesniak were working together on a bill that would likely be introduced after the Board of Public Utilities concludes its current investigation into reliability issues.

Rate Case Procedures

Several bills that would increase the number of public hearings to be held in connection with proposed utility increases have been introduced. A-4019 is sponsored by a number of Republican members of the Assembly, and A-4040 is sponsored by Assemblyman Joseph Cryan, a Democrat. Both are pending in the ATU Committee. The Senate counterpart to A-4019 is S-2703, introduced by Senator Kip Bateman, and referred to the Senate Economic Growth Committee. As of this writing A-4040 still did not have a Senate companion. ■

James Laskey practices with Norris, McLaughlin & Marcus, P.A.

2013 BPU Regular Public Meetings

Pursuant to the Open Public Meetings Act, N.J.S.A. 10:4-6 *et seq.*, the New Jersey Board of Public Utilities updated the 2013 schedule of its regular public meetings. The remaining meetings are as follows:

July 19, 2013

August 21, 2013

September 18, 2013

October 16, 2013

November 22, 2013

December 18, 2013

The meetings will take place at 10 a.m. at the State House Annex, Committee Room 11, 125 West State Street, Trenton, NJ 08608. Check the BPU website at www.bpu.state.nj.us to stay abreast of modifications to the schedule throughout the year.