

CHAPTER 315

AN ACT establishing the “Resiliency and Environmental System Investment Charge Program” for cost recovery of certain investments made by certain utilities and supplementing Title 48 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.48:19-29 Definitions.

1. As used in P.L.2023, c.315 (C.48:19-29 et seq.):

“Adjusted weighted average cost of capital” means the weighted average of the debt and equity components of a utility’s capital structure, where the equity component shall equal the equity rate approved by the board in the utility’s most recent base rate case and the debt component shall equal the approved embedded long-term cost of debt (LTD), which component shall be adjusted semi-annually to reflect the actual embedded cost of LTD at the end of the RESIC recovery period, and which component shall not include short-term debt.

“Board” means the Board of Public Utilities or any successor agency.

“Depreciation expense” means the amount equal to the total amount of RESIC eligible investments, multiplied by the weighted composite depreciation rate on those assets utilizing depreciation rates, as most recently approved by the board.

“In-service” means when a RESIC-eligible project has been substantially completed, is functioning in its intended purpose, and is used and useful for the provision of utility service.

“Pre-tax adjusted weighted average cost of capital” means the adjusted weighted average cost of capital calculated on a pre-income tax basis.

“Requirement” means a decision or regulation imposed on a utility by the State, including any political subdivision thereof, or the federal government, in connection with any of the following: the “Federal Water Pollution Control Act Amendments of 1972” (33 U.S.C. s.1251 et seq.); the federal “Safe Drinking Water Act” (42 U.S.C. 300f et seq.);

any other law, order, or regulation administered by the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Department of Transportation, the United States Department of Homeland Security, the New Jersey Office of Homeland Security and Preparedness, the New Jersey Department of Transportation, or the New Jersey Department of Environmental Protection; or

d. a regulation imposed by any local government unit related to the provision of water or wastewater service, or both, or imposing more stringent standards than those adopted by law.

“RESIC” means the Resiliency and Environmental System Investment Charge program, established pursuant to P.L.2023, c.315 (C.48:19-29 et seq.).

“RESIC-cap” or “cap” means the maximum amount of RESIC revenues that a utility may recover, during the period the RESIC rate is in effect, through the assessment or surcharge computed pursuant to P.L.2023, c.315 (C.48:19-29 et seq.).

“RESIC-eligible project” or “eligible project” means a water or wastewater system project, or both, with projected costs that are:

non-revenue producing;

specifically identified by the utility within its petition in support of a RESIC;

not already being recovered through current base rates, as set by the utility’s most recent base rate case proceeding or through another infrastructure surcharge mechanism; and

approved by the board for inclusion in a RESIC in response to the utility’s petition.

“RESIC filing” means the semi-annual filing made by a utility pursuant to section 4 of P.L.2023, c.315 (C.48:19-32) for each RESIC recovery period, which filing contains actual data for the RESIC recovery period.

“RESIC period” means the period of time between the effective date of the foundational filing and the rate effective date of the next base rate case.

“RESIC rate” means the surcharge added to a utility customer’s bill, calculated pursuant to the provisions of P.L.2023, c.315 (C.48:19-29 et seq.), which rate shall be assessed on the basis of meter charges or meter equivalent basis, and which shall remain in effect for the duration of the RESIC period.

“RESIC recovery period” means the six-month period preceding each RESIC filing submitted pursuant to subsection b. of section 4 of P.L.2023, c.315 (C.48:19-32), provided that the RESIC-eligible project for which filing is submitted shall be completed and in-service during this period.

“RESIC revenue requirement recovery amount” means the total eligible amount to be recovered through the RESIC rate, as calculated pursuant to section 7 of P.L.2023, c.315 (C.48:19-35).

“Restoration costs” means costs necessary to restore construction to preconstruction condition or as dictated by federal, State, county, or municipal laws, rules, ordinances, orders, or regulations, including, but not limited to, paving, sidewalks, curbing, landscaping, and traffic control costs for RESIC-eligible projects approved in a foundational filing.

“Revenue factor” means a gross-up for the associated revenue taxes, uncollectibles, board assessment, and Division of Rate Counsel assessment, adjusted to properly reflect the revenue required to generate the agreed upon rate of return.

“Utility” means a water utility and wastewater utility as defined in this section.

“Wastewater treatment service” means the management of wastewater and includes any activity related to the collection, storage, transport, handling, delivery, processing, treatment, or disposal of wastewater, and other similar activities.

“Wastewater utility” means an investor-owned public utility, as defined in R.S.48:2-13, that provides wastewater treatment service.

“Water utility” means an investor-owned public utility, as defined in R.S.48:2-13, that provides water service, or a municipal public utility that provides water service to more than 1,000 billed customers in another municipality and charges a different rate to customers inside the municipality than it charges customers outside of the municipality.

C.48:19-30 Utility, recovery, RESIC rate implementation.

2. a. A utility may seek recovery through the implementation of a RESIC rate for any cost made, or to be made, by a utility, which cost is related to the:

(1) direct or indirect compliance with one or more requirements, including, but not limited to, addressing both existing and emerging chemical elements or compounds;

(2) installation of new distribution, production, treatment, or other plant or equipment to further resiliency, health, safety, or environmental protection for the utility’s customers or employees, or the public;

(3) replacement of existing distribution, production, treatment, or other plant or equipment to maintain, enhance, or improve the existing resiliency, health, safety, or environmental protection of the utility’s customers or employees, or the public; or

(4) treatment media replacement, including granular activated carbon and anionic exchange resins, as well as new treatment media, and related tanks, pumps, instrumentation, controls, and electrical equipment for both existing and emerging chemical elements and compounds.

b. Restoration costs associated with an eligible project pursuant to paragraph (1) of subsection a. of this section and approved through a utility’s RESIC foundational filing, made pursuant to subsection b. of section 3 of P.L.2023, c.315 (C.48:19-31), may be recovered if the

costs were incurred not more than 18 months after the eligible project's in-service date and were included in a normally scheduled semi-annual RESIC filing.

c. Notwithstanding any provision of this section to the contrary, a utility may only seek recovery through the implementation of a RESIC rate for costs that may be recorded in the applicable accounts set forth in the uniform system of accounts adopted by the National Association of Regulatory Utility Commissioners for the following categories of expenses: lake, river, and other intakes; wells and springs; power generation equipment; pumping equipment; water treatment plant equipment; distribution reservoirs and standpipes; communication equipment; wastewater pumping equipment; wastewater treatment and disposal equipment; and wastewater communication equipment.

C.48:19-31 RESIC implementation, board authorization.

3. a. (1) The board shall authorize the implementation of a RESIC by a utility to recover costs associated with RESIC-eligible projects through an approved RESIC rate.

(2) A utility that offers more than one regulated service may file a joint petition to establish a RESIC that includes RESIC-eligible projects for multiple regulated services or separate petitions to establish a separate RESIC for water and wastewater services, respectively. If a utility files separate petitions, each RESIC approved by the board shall be subject to its own respective RESIC-cap.

b. To obtain authorization to implement a RESIC, the utility shall submit a foundational filing to the board. Whether filed separately or concurrently with a base rate case, the utility shall submit the following information with the foundational filing:

(1) projected annual capital expenditures on RESIC-eligible projects for a three-year period, identified by major categories of expenditures;

(2) actual annual capital expenditures on RESIC-eligible projects for the previous three years, identified by major categories of expenditures;

(3) an engineering evaluation and report identifying the specific projects to be included in the proposed RESIC, with descriptions of project objectives, detailed cost estimates, and the estimated in-service dates for each project;

(4) vintage, condition, or other similarly relevant and reasonably available information about the eligible infrastructure that is being rehabilitated or replaced, if applicable;

(5) a forecast of RESIC-eligible capital expenditures for a three-year period setting forth annual planned capital expenditures;

(6) the maximum dollar amount, in aggregate, the utility seeks to recover through the RESIC under the foundational filing; and

(7) the estimated rate impact of the proposed RESIC on customers of the utility.

c. In considering a utility's foundational filing in support of a RESIC, the board may require the utility to provide any supplemental information that the board deems necessary to evaluate the utility's foundational filing.

d. Before the board approves a RESIC, the board shall conduct a public hearing in the utility's service territory, notice of which shall contain the maximum dollar amount the utility seeks to recover through its RESIC and the utility's estimated rate impact.

e. A RESIC foundational filing shall not be approved unless a utility has had its base rates set by the board within the past three years and any prior RESIC rate was reset to zero through the current or prior base rate case. After a utility's RESIC rate has been reset to zero, a new foundational filing shall be approved before a new RESIC rate recovery may occur. A RESIC foundational filing may be approved concurrently with the setting of new base rates.

f. The board shall act on each foundational filing no later than 120 calendar days after receiving the completed filing, except that if the foundational filing is submitted concurrent with a base rate case or during the pendency of a base rate case, the board may delay action until the effective date of the board's approval of the base rate case.

C.48:19-32 Subsequent RESIC filings, requirements.

4. a. Following board approval of the utility's foundational filing, each subsequent RESIC filing made by a utility shall include the following:

(1) a detailed description of all RESIC-eligible projects placed in-service, which description shall clearly identify any projects that are carried over from a prior RESIC period or from a prior RESIC recovery period, any restoration costs sought for projects placed in-service, and the in-service date for the projects associated with the restoration costs;

(2) aggregate information capturing blanket-type RESIC-eligible infrastructure, if any, to be rehabilitated or replaced and the actual annual costs of the blanket-type replacement programs;

(3) a schedule comparing the:

(a) total spending on RESIC-eligible projects to date for the RESIC recovery period and eligible project spending by foundational filing project identification number or blanket-project category;

(b) actual cost of completed RESIC-eligible projects for the RESIC recovery period with the estimated costs for the projects contained in the most recent foundational filing or any amendment thereto;

(c) in-service date of completed RESIC-eligible projects compared to the estimated in-service date of RESIC-eligible projects set forth in the foundational filing; and

(d) actual revenues collected through the RESIC assessment, compared with the actual revenue requirement of the RESIC-eligible projects during the RESIC recovery period, and the resultant RESIC under- or over-recovery amounts; and

(4) a proposed RESIC schedule outlining the RESIC rate, determined pursuant to P.L.2023, c.315 (C.48:19-29 et seq.), and detailed information demonstrating that the proposed RESIC rate meets those requirements. The schedule shall include either a proposed schedule for returning to customers any over-recovery in the prior RESIC recovery period, including interest at the adjusted weighted average cost of capital, or a proposed schedule for recovering from customers any under-recovery in the prior RESIC recovery period. The over-recovery, including interest, or under-recovery shall be credited or charged to customers during the next RESIC recovery period. This information shall support the RESIC rate calculation, with documentation, detailed financial analyses, and other relevant information, showing all assumptions and calculations. All supporting financial information shall be presented in a manner to allow the board to evaluate whether the calculations meet the requirements of P.L.2023, c.315 (C.48:19-29 et seq.).

b. RESIC filings shall be filed with the board on a semi-annual basis, commencing six months after the effective date of the foundational filing. A utility shall submit a semi-annual RESIC filing to the board within 15 calendar days of the scheduled conclusion of the RESIC recovery period. A RESIC filing shall be reviewed by the board and the Division of Rate Counsel. The utility may recover the interim surcharge associated with the RESIC-eligible projects placed in-service, including restoration costs during the RESIC recovery period, beginning 45 calendar days after the receipt of the complete semi-annual RESIC filing.

c. To the extent permitted under section 2 of P.L.2023, c.315 (C.48:19-30), a utility's expenditures made prior to the board's approval of a RESIC shall be eligible for cost recovery so long as the expenditures were included in the RESIC foundational filing.

d. The semi-annual RESIC filings may include changes or updates to any information provided in the foundational filing, provided that the utility has a reasonable expectation that the change shall occur during the RESIC recovery period, which project changes may include, but shall not be limited to, additions, replacements, or deferral projects that are otherwise RESIC-eligible.

e. Rates approved by the board for recovery of expenditures under a RESIC shall be:

- (1) accelerated and recovered through a separate clause of the utility's board-approved tariff;
- (2) subject to annual reconciliation based on a reconciliation period consisting of the 12 months completed prior to the utility's next RESIC filing. The revenue received through the RESIC rate for the reconciliation period shall be compared to the utility's costs associated with RESIC-eligible projects for that period. The difference between revenue and costs shall be recouped or credited, as appropriate, through the RESIC rate included in the RESIC filing; and
- (3) provisional and subject to refund and interest. The prudence of RESIC expenditures shall be determined by the board in the utility's next base rate case.

f. A utility shall file its next rate base case not later than three years after the board's approval of the RESIC start date, except that the board, in its discretion, may require a utility to file its next base rate case within a shorter period.

g. A utility may continue to file for cost recovery of RESIC-eligible projects during the approved RESIC period notwithstanding the filing of the utility's next base rate case.

C.48:19-33 RESIC-eligible project plant additions, base rate case.

5. a. If RESIC-eligible project plant additions are placed in-service during the test year of a utility's base rate case, and the plant additions are not recovered as part of a routine RESIC filing, then the plant additions shall be considered as part of the base rate case proceeding and included in the plant additions, consistent with existing board rules.

b. Notwithstanding any other provisions of P.L.2023, c.315 (C.48:19-29 et seq.) to the contrary, a utility may continue to make RESIC-eligible investments and collect the RESIC rate during a pending rate case filed in accordance with existing board rules.

c. RESIC rates shall be included in base rates during a utility's subsequent base rate case, and the RESIC rate shall be reset to zero.

C.48:19-34 Carryover costs, RESIC-cap calculation.

6. a. All carryover costs permitted by this section and included in a RESIC rate shall be included in the calculation of the RESIC-cap.

b. Notwithstanding any other provision of this section to the contrary, when a utility has commenced work on a RESIC-eligible project, but the eligible project has not been placed in-service during the period captured under an initial foundational filing, the eligible project may be considered a valid RESIC-eligible project in a subsequent foundational filing that is filed with the board prior to the resetting of rates under the initial foundational filing when the RESIC-eligible project began.

c. When a RESIC-eligible project is placed in-service by a utility between the close of the test year and the effective date of rates in the base rate case, the utility may recover the costs of the project, as authorized by a board order approving a foundational filing, in the first RESIC filing under the board's new foundational filing order and included in the RESIC-cap.

d. Unrecovered restoration costs of a project that was placed in-service during one foundational filing may be carried over and recovered in a subsequent foundational filing and included in a timely semi-annual RESIC filing, provided that the restoration costs shall otherwise be within the timeframe set forth in P.L.2023, c.315 (C.48:19-29 et seq.).

C.48:19-35 Recovered revenues, RESEIC rate, calculation.

7. a. The revenues to be recovered through the RESIC rate shall be calculated as follows:

(1) the eligible net investment shall equal the eligible investment, less the per-book accumulated depreciation amount recorded for the eligible projects, and adjusted for the recorded accumulated deferred income tax amount for the eligible projects;

(2) the eligible net investment shall be multiplied by the pre-tax adjusted weighted average cost of capital, plus depreciation expense, the sum of which shall be multiplied by the revenue factor, plus or minus the RESIC under-recovery or over-recovery amount, the product of which shall equal the RESIC revenue requirement recovery amount; and

(3) the RESIC revenue requirement recovery amount shall be divided by the number of meters and meter equivalents, weighted by meter capacity ratio, the product of which shall equal the RESIC rate per customer.

b. (1) The revenues to be recovered through the RESIC rate shall not exceed the RESIC-cap, which amount shall not exceed a maximum percent, as set forth in paragraph (2) of this subsection, of the utility's total annual revenue, as established in the utility's most recent base rate decision, and such revenues shall be adjusted in accordance with a purchased water or wastewater adjustment clause approved by the board pursuant to chapter 9 of Title 14 of the New Jersey Administrative Code.

(2) The RESIC-cap shall not exceed the following amounts, subject to the methodology set forth in paragraph (1) of this subsection:

(a) at the time of the utility's initial foundational filing, two and one-half percent of the utility's total annual revenue;

(b) at the time of the utility's second foundational filing, three and one-half percent of the utility's total annual revenue;

(c) at the time of the utility's third foundational filing, four and one-half percent of the utility's total annual revenue; and

(d) for each foundational filing thereafter, five percent of the utility's total annual revenue.

C.48:19-36 Utility, board-approved RESIC, identify, list amount owed by customer, separate, utility bill.

8. a. If a utility has a board-approved RESIC, the utility shall identify and list the amount owed by the customer, based on the RESIC rate calculated in accordance with section 7 of P.L.2023, c.315 (C.48:19-35), separately on a customer's utility bill. The RESIC rate shall be reflected in bills issued on and after the effective date of the first RESIC filing and may be adjusted on the basis of subsequent RESIC filings, no more frequently than every six months, up to an amount not to exceed the RESIC-cap over the RESIC period.

b. A customer's bill shall reflect the RESIC rate calculated pursuant to paragraph (3) of subsection a. of section 7 of P.L.2023, c.315 (C.48:19-35).

9. This act shall take effect immediately.

Approved January 16, 2024.