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TRENTON, NJ

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FEB 27 2018

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Director

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February 23, 2018

**VIA HAND DELIVERY**

Aida Camacho, Assistant Secretary  
State of New Jersey, Board of Public Utilities  
44 South Clinton Avenue, 10<sup>th</sup> Floor  
P.O. Box 350  
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Re: **I/M/O the Petition of New Jersey American Water Company, Inc. for Approval of Increased Tariff Rates & Charges for Water & Wastewater Service, Change in Depreciation Rates & Other Tariff Provisions**  
BPU Docket No. WR17090985  
OAL Docket No. PUC 14251-2017 S

**I/M/O the N.J. Bd. of Pub. Utilities' Consideration of the Tax Cuts & Jobs Act of 2017**  
BPU Docket No. AX18010001

Dear Assistant Secretary Camacho:

Please accept this letter as the opposition of the Division of Rate Counsel to the motion filed on February 13, 2018 ("Motion") by Petitioner New Jersey American Water ("Company") in the above-referenced matters. The Motion seeks to (a) consolidate the Board's generic proceeding concerning the Tax Cuts and Jobs Act of 2017 ("Act") with the Company's pending base rate case; and (b) relieve the Company from the requirement to file tariffs reflecting a rate decrease on March 2, 2018, to be effective April 1, 2018. Rate Counsel opposes the Company's motion to be relieved from filing tariffs for several reasons. First, the Company assumes that its base rate case will result in a settlement by June of this year. This is by no means assured. Furthermore, even if the matter settles as assumed by the Company, the Company's motion

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contradicts the Board's stated intent to swiftly provide ratepayers with the Act's tax benefits as set forth in its recent Order, I/M/O the N.J. Bd. of Pub. Utilities' Consideration of the Tax Cuts & Jobs Act of 2017, BPU Docket No. AX18010001, Order dated 1/31/18 ("Tax Act Order").

The Company's additional argument that rates will "yo-yo" is not compelling and is directly contradicted by increases sought by the Company in other matters. Rate Counsel also opposes the Company's Motion to consolidate, though it is unclear that the Company truly seeks consolidation, because the Company has not addressed any of the requirements for consolidation under N.J.A.C. 1:1-17.3.

The Act became effective January 1, 2018. Among other things, the Act reduced the maximum corporate tax rate from thirty-five percent to twenty-one percent effective January 1, 2018. In adopting the Tax Act Order, the Board held that the reduction in corporate tax rates as a result of the Act shall be passed on to ratepayers. Id. at 2 ("the rate revenue resulting from expenses relating to taxes reflected in rates but no longer owed as a result of the 2017 Act shall be passed onto the ratepayers.") Consistent with this, the Board ordered utilities to defer the tax savings, with interest, starting from January 1, 2018. Id. The Board also initiated a proceeding to determine the appropriate amounts and mechanism by which to refund the savings to customers. Id. The Board ordered utilities with annual revenues greater than \$4.5 million annually to file petitions by March 2, 2018 which include, among other things, tariffs reflecting the new tax rate to be effective on April 1, 2018.

In its Motion, the Company seeks relief from the Tax Act Order's required rate reduction to be effective April 1, 2018. The Company argues that implementing rates effective April 1, 2018 will cause rates to "yo-yo," first going down and then increasing several months later when it receives its base rate increase. Motion at 2. The Company also believes that customers may

experience “substantial confusion.” Id. Rate Counsel does not share these concerns, and believes the Company has not offered any convincing reasons why the Board should exempt it from the requirement to file tariffs with new rates effective April 1, 2018.

First, water, electric and natural gas customers experience rate changes through clause-type adjustments all of the time, such as the DSIC, BGSS, BGS, PWAC, etc. Indeed, NJAW’s DSIC rate changes every six months, and the Company recently supported a proposed regulation regarding provisional rates that will involve frequent rate changes. Secondly, Rate Counsel does not accept the Company’s assumption that rates will inevitably “yo-yo.” The final resolution of the base rate case may not result in a substantial rate increase, or any increase at all.

In support of its Motion, the Company also notes that settlement discussions in its base rate case will be starting in late February, and that it anticipates a settlement in the rate case in time for the Board’s June Agenda meeting. The Company’s optimism is premature. When the Company filed this Motion on February 12, 2018, not a single settlement meeting had occurred. Indeed, the Company was not yet even aware of Rate Counsel’s litigation position when it filed the Motion. The Company’s belief that it will reach a settlement by June, especially without knowing any other parties’ positions, is highly speculative. The Board should not deny ratepayers a timely rate reduction to which they are entitled based on the Company’s hopeful assumption of a quick settlement.

The Company’s Motion to be relieved of the obligation to implement new rates effective on April 1 also contradicts the Board’s intent in the Tax Act Order. In the Tax Act Order, the Board intended to apply the lower tax rate from the Act for ratepayers’ benefit as quickly as possible: “[t]he immediate change to rates will stop the continued over-collection of tax revenue while interested stakeholders have the opportunity to examine the calculations of the

deferrals....This approach will ensure that ratepayers receive a timely and equitable treatment of the benefits associated with the 2017 Act.” Tax Act Order at 4. Because it contradicts the intent of the Tax Act Order, the Board should deny the Company’s request to be relieved of the requirement to file tariffs on March 2, 2018 with new rates to be effective April 1, 2018.

Moreover, the generic proceeding allows the Board to ensure that all New Jersey ratepayers are treated equally. If each utility's tax obligation refund is set in a separate base rate proceeding, there is the risk that refunds will not be provided uniformly. More importantly, refunds should not be subject to the give and take of settlement negotiations in a base rate case. Unlike other issues, where various parties can support different outcomes, the tax issue is relatively clear. The Company's tax obligation has been reduced by a set amount. Rates will be reduced to reflect this new revenue requirement, and to the extent the utility has over collected taxes, that over collection must be returned to the ratepayers.<sup>1</sup> These transactions are best handled in a generic proceeding so the Board can make sure these basic principles are applied uniformly to all New Jersey utilities.

Finally, the Company's request to consolidate its pending base rate case with the Board’s generic proceeding to the extent that the generic proceeding pertains to New Jersey American Water appears to be mislabeled. First, the Company does not appear to actually seek consolidation. Indeed, the Company never cites to N.J.A.C. 1:1-17.3 nor does it ever discuss the standards for consolidation at any time. Instead, the Company appears to be seeking relief of its obligations under the generic proceeding and to instead fulfill those obligations during the course of its base rate case. As stated above, this will delay relief to the Company's ratepayers and runs

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<sup>1</sup> This is not to imply that the underlying calculations are not complicated. Rate Counsel recognizes the efforts that will be necessary to calculate these numbers. Rather, the tax issue will result in a specific number, and that amount will be owed 100% to the ratepayers.

the risk that the relief granted to the Company's ratepayers will differ from the relief provided to other New Jersey ratepayers through the generic proceeding. Finally, to the extent the Company intends to use any tax decrease owed to the ratepayers as a bargaining chip during negotiation of the base rate case, this would run directly counter to the Board's intent to provide ratepayers with 100 percent of the tax savings. Simply, the relief sought here is not really consolidation, but delay, and if the motion is granted, it would undermine the Board's goal of providing timely relief to ratepayers as set forth in the generic Tax Act Order.

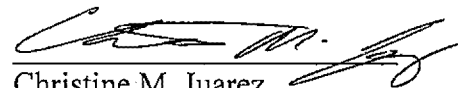
**Conclusion**

For all the foregoing reasons, the Board should deny the Company's Motion and require it to comply with the Board's January 31, 2018 Tax Act Order.

Respectfully submitted,

STEFANIE A. BRAND, DIRECTOR  
Division of Rate Counsel

By:



Christine M. Juarez  
Asst. Deputy Rate Counsel

**In the Matter of the Petition of  
New Jersey American Water Co.  
Inc. for Approval of Increased  
Tariff Rates and Charges for  
Water and Wastewater Service,  
Change in Deprecation Rates and  
Other Tariff Modifications**

**BPU Docket No. WR17090985**

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