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May 29, 2018

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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

VIA HAND DELIVERY

Aida Camacho-Welch
Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 10th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

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 14251-2017S

Dear Secretary Camacho-Welch:

This firm represents Petitioner New Jersey-American Water Company, Inc. ("NJAWC" or the "Company") in the above-captioned matter. On May 18, 2018, the Division of Rate Counsel ("Rate Counsel") filed a Motion to Issue an Order Rejecting the Company's Proposed Provisional Rates (the "Motion") and a letter brief in support thereof.

Please accept for filing an original and ten copies of this letter brief in Opposition to Rate Counsel's Motion. Kindly stamp a copy as "filed" and return it to the courier. Thank you for your assistance.

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I. Preliminary Statement

Rate Counsel attempts to accomplish through its Motion what it could not achieve through the rulemaking process. Indeed, in the stakeholder and the rulemaking process, Rate Counsel raised almost identical arguments to those it raises here, which the New Jersey Board of Public Utilities ("BPU" or "Board") considered and rejected. Notwithstanding Rate Counsel's strong opposition, on December 19, 2017, the Board adopted provisional rate rules at *N.J.A.C.* 14:1-5.12 (the "Provisional Rate Rules" or the "Rules"). *See 50 N.J.R. 625(b),* 2018 NJ REG TEXT 465165 (NS). And therein lies the crux of this matter.

On September 15, 2017, NJAWC filed a petition for an increase in rates (the "Petition") (*i.e.* a base rate case). Under *N.J.A.C.* 14:1-5.12, NJAWC proposed that its rate increase be effective on October 15, 2017, 30 days after the filing. Thereafter, the Board entered two Suspension Orders suspending the proposed rate increase until June 15, 2018. Hearings in this case are scheduled to take place throughout the month of June and thus, NJAWC does not expect a final decision in this base rate case until after June 15, 2018, the expiration of the suspension period.

The Provisional Rate Rules address what happens when a rate case reaches the end of the suspension period, but has not been resolved. The Rules set forth an intricate mechanism of implementing provisional rates with clear filing, notice and certification of compliance provisions. The only objection that the Provisional Rate Rules permit is one by the Staff of the Board regarding an alleged failure to comply with the Rule's notice provisions. NJAWC followed those provisions to the letter. Rate Counsel does not argue otherwise. Despite NJAWC's compliance, however, Rate Counsel objects to the proposed increase for the reasons Rate Counsel advanced in the stakeholder and rulemaking process. This is not the way the Rules are intended to work.

Notwithstanding that the Rules do not contemplate an objection by Rate Counsel in the first place, the Motion should be denied. The parties' settlement discussions, Rate Counsel's opinion that the provisional increase is too high, and NJAWC's filing of five months of actual data in connection with the Petition are not a legitimate basis to preclude NJAWC from doing what it has the right to do.

II. Procedural History

On April 26, 2017, the Board announced a stakeholder process to consider revising its provisional rate rules at *N.J.A.C.* 14:1-5.12. Rate Counsel actively participated in the stakeholder and rulemaking process, attending the Board's stakeholder meeting and submitting written comments to the Board on May 12, 2017 and October 6, 2017. Indeed, Rate Counsel opposed the proposal raising three primary arguments that the Board considered and rejected. First, Rate Counsel claimed that provisional rates were unnecessary because the concept of regulatory lag was a made-up problem. Rate Counsel contended that most base rate cases settle within eight months, before the end of the eight month suspension period provided for by *N.J.S.A.* 48:2-21(d). In connection with this argument, Rate Counsel acknowledged that fully litigated cases did not fit into the "cases completed within eight months" category, as they are "not routine".

Second, Rate Counsel argued that provisional rates are unfair to ratepayers because the Board purportedly awards a fraction of a utility's requested rate increase. Thus, a utility that implements provisional rates will end up paying large refunds to ratepayers after the Board renders a final decision in the base rate case.

Third, Rate Counsel asserted that provisional rates promote rate volatility (the so-called "yo-yo" effect) and discourage settlement. The proposed refund provision, according to Rate Counsel, would not remedy the harm to ratepayers resulting from a utility's possible over-

recovery. Further, Rate Counsel claimed that a utility would have no incentive to settle if it knows it can implement provisional rates.

On August 7, 2017, following review of all stakeholder comments, the Board formally published notice of proposed amendments to the provisional rate rules. *See* 49 *N.J.R.* 2487(a). The Board accepted written comments on the rule proposal through October 6, 2017. Rate Counsel submitted written comments to the Board mirroring the comments it submitted as a stakeholder. On December 19, 2017, the Board responded to all comments and adopted the Provisional Rate Rules.

Against this backdrop, NJAWC filed the Petition seeking, *inter alia*, implementation of a proposed rate increase on October 15, 2017. NJAWC based the Petition on five months of actual data, with the proposed Test Year ending March 31, 2018.

The Board transferred the case to the Office of Administrative Law ("OAL"), where it is currently pending. Thereafter, the Board entered two Suspension Orders under *N.J.S.A.* 48:2-21(d) on October 20, 2017 and on January 31, 2018 suspending implementation of NJAWC's proposed rates until June 15, 2018. Parties to the case, which included Rate Counsel and the Staff of the Board, proceeded with discovery and participated in extensive settlement discussions, but were unable to reach a resolution. Evidentiary hearings will begin and take place throughout June 2018.

On May 15, 2018, the Company notified Board Staff that it would implement provisional rates, effective June 15, 2018—the conclusion of the suspension period. *See NJAWC Provisional Rate and Refund Plan and Proposed Tariff* ("*Provisional Rate Plan*"), BPU Docket No. WR17090985; OAL Docket No. PUC 14251-2017 S (May 15, 2018). Rate Counsel's request that the Board reject NJAWC's proposed provisional rate increase should be rejected, as it lacks any basis under the Provisional Rate Rules.

III. Argument

A. Rate Counsel Attempts to Reargue Issues that the Board Decided During the Stakeholder and Rulemaking Process on the Provisional Rate Rules

At its core, Rate Counsel's Motion is an attempt to reargue issues that it raised, and which the Board rejected, during the stakeholder and rulemaking process amending *N.J.A.C.* 14:1-5.12. Rate Counsel undoubtedly opposed the proposed rules, commenting that provisional rates "are bad policy for both the Board and the utility, not to mention ratepayers." *See Rate Counsel Rulemaking Comments* at 5, a copy of which are attached as Exhibit "A". Rate Counsel also asserted that provisional rates are unnecessary, are financially damaging to ratepayers, discourage settlements, and encourage utilities to not act timely in rate case proceedings. *Id.* at 5-6. Rate Counsel also proposed that if the Board were to adopt the regulations, it should impose additional requirements, such as a rule that utility rate applications include no less than six months of actual operating results. *Id.* at 19. The Board addressed and rejected Rate Counsel's positions when it adopted the Provisional Rate Rules. *See* 50 *N.J.R.* 625(b).

While Rate Counsel is entitled to its opinions, the Legislature, in enacting *N.J.S.A.* 48:2-21(d) has already decided that NJAWC had the right to implement provisional rates. The New Jersey Supreme Court, in holding that a public utility may implement provisional rates after the expiration of the suspension period without further Board approval, subject to conditions such as a potential refund if necessary, has already decided that NJAWC had the right to implement provisional rates. *See Toms River Water Co. v. New Jersey Bd. of Pub. Util. Comm'rs*, 82 N.J. 201, 211 (1980). And, now, the Board has put in place a mechanism for NJAWC to do exactly what it plans to do on June 15, 2018. This is not the proper forum for Rate Counsel to challenge NJAWC's implementation of provisional rates. Rate Counsel's opportunity to challenge the Rules has passed. The Board should deny Rate Counsel's Motion.

B. The Provisional Rate Rules Permit NJAWC to Implement Provisional Rates on June 15, 2018

Rate Counsel's assertions that the Company is not entitled to implement provisional rates lacks merit. The Company is entitled to implement provisional rates, up to the full amount of the rates proposed in its base rate case, as of right. *N.J.S.A.* 48:2-21(d) provides that after a utility has proposed new rates, the Board:

> may order the suspension of the increase, change or alteration until the board shall have approved the same, not exceeding 4 months. If the hearing and determination shall not have been concluded within such 4 months the board may during such hearing and determination order a further suspension for an additional period not exceeding, 4 months.

Id. But for the Board's issuance of a Suspension Order, a utility's proposed rates would go into effect on the date proposed in its petition for a rate change. However, the Board may not suspend proposed rates indefinitely, pending a final rate decision. The Board may only suspend rates, in accordance with *N.J.S.A.* 48:2-21(d), for up to eight months. After that time, if the Board fails to issue a final decision, the utility may implement provisional rates consistent with, or lower than, the rates proposed in the original rate case petition. The Board's own regulations provide that "[a] proposed increase in base rates may be implemented on a provisional basis, subject to refunds with interest after the expiration of the suspension periods pursuant to *N.J.S.A.* 48:2-21(d)." *N.J.A.C.* 14:1-5.12(e).

The New Jersey Supreme Court squarely addressed the permissibility of implementing provisional rates in *Toms River*. The Court unambiguously held that "at the end of a suspension period, in the absence of a stipulated extension or waiver, the utility's proposed rates may immediately become effective subject to conditions, such as refund, dependent upon the Board's final determination." *Id.* at 211.[1] Therefore, as far as the Court is concerned, NJAWC

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[1] The "final determination" referenced by the Court is the Board's final determination as to a rate case, not final determination as to the implementation of provisional rates. *Id.* at 211-12. A utility does not need to make a showing as to whether the provisional rates are "just and reasonable" because that will be determined in the Board's final rate

may, as of right, implement provisional rates up to the amount proposed in its base rate case petition, following completion of the second suspension period permitted under *N.J.S.A.* 42:2-21(d), *i.e.* June 15, 2018.

Although Rate Counsel argues that NJAWC's proposed provisional rates are unjust and unreasonable, *see*, *e.g.*, *Rate Counsel Br.* at 5, the reasonableness of the provisional rates will be determined in the Board's final consideration of NJAWC's rate case. If the Board determines that the Company's provisional rates were too high, then the Company must refund any excess revenues collected to all affected customers, with interest, in accordance with *Toms River* and the Provisional Rate Rules. In the rulemaking process, the Board considered and addressed Rate Counsel's contention here that ratepayers would suffer if the provisional rate increase was too high. Indeed, Rate Counsel commented:

> Interim rates will cause significant rate volatility. Rate stability has long been an important public policy followed by the Board. Utilities strive for revenue stability as well. Yet both rate stability and revenue stability are thwarted when interim rates are placed into effect.

The Board responded:

> The Board believes that it has set forth an appropriate procedure for refunds that ***balances the interests of customers with the procedural requirements of utilities.***

50 *N.J.R.* 625(b) at 3-4 (emphasis added).

Rate Counsel's argument lacks merit and thus, the Board should deny the Motion.

C. The Company Filed for Implementation of Provisional Rates Consistent with the Board's Regulations

Rate Counsel cannot plausibly argue that NJAWC failed to comply with the Provisional Rate Rules. Rate Counsel's arguments are rooted in Rate Counsel's objection to any utility implementing provisional rates, at any time.

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case determination. If the Board determines that the provisional rates were too high, the utility will be required to refund any excess revenue to affected customers. *Id.*

The Rules, consistent with *N.J.S.A.* 42:2-21(d) and *Toms River*, provide that a utility may implement provisional rates after expiration of the suspension periods specified in *N.J.S.A.* 42:2-21(d) if such provisional rates (i) are equal to or less than the rate increase requested by the utility in its base rate case; (ii) are subject to refund with interest; and (iii) apply an equal percentage increase to all rate classes using the utility's existing BPU-approved rate design. *N.J.A.C.* 14:1-5.12(e).

The provisional rates the Company intends to implement represent ***less than 60%*** of the rate increase proposed by the Company in the Petition. *Provisional Rate Plan* at 1. Further, the Company provided that the provisional rates would be subject to refund, with interest, in the event final BPU-approved base rates are lower. *Id.* The Company also committed to, in accordance with the Rules, apply provisional rates equally to all rate classes using NJAWC's existing BPU-approved rate design. *Id.* Therefore, no dispute exists that the Company's provisional rates meet all requirements set forth in the Provisional Rate Rules.

NJAWC also fulfilled all of the Rules' notice and filing requirements. *N.J.A.C.* 14:1-5.12(f) provides that a utility seeking to implement a provisional rate increase must: (i) serve written notice on specified parties at least 30 days in advance of the provisional rate increase, but not earlier than 75 days in advance of the provisional rate increase; (ii) file with the Board and serve on Rate Counsel, a copy of the utility's proposed tariff, at least 30 days in advance of the provisional rate increase, but not earlier than 75 days in advance of the provisional rate increase; (iii) file with the BPU and serve on Rate Counsel, a plan detailing the utility's method for providing any refunds and interest owned to ratepayers, "to account for the potential that the Board's final order in the subject rate case includes a determination of over recovery by the utility," at least 30 days in advance of the provisional rate increase; and (iv) file with the Board and serve on Rate Counsel, a certification that the utility has complied with the foregoing requirements, at least 20 days in advance of the provisional rate increase.

The Company complied with each requirement within the required timeframes. However, Rate Counsel still asserts here that NJAWC's refund plan "is woefully inadequate" and that the Company failed to provide detail on how it will accomplish the required refund, if necessary. *Rate Counsel Br.* at 7. There is no merit to these assertions. The Company's plan met each of the requirements specified in the Provisional Rate Rules and provided the Board with a step-by-step analysis of how NJAWC will provide refunds to customers, if necessary. *See Provisional Rate Plan* at 1.

NJAWC filed the required certification of compliance with the Rules' notice requirements on May 23, 2018. The Board's regulations further provide that after filing of such certification, "a utility may implement the provisional rate increase . . . unless Board staff transmits written objections to the utility. Any such objections *shall address* ***only the utility's compliance*** *with* [*N.J.A.C.* 14:1-5.12] *(f).*" *N.J.A.C.* 14:1-5.12(g) (emphasis added). According to the Board's regulations, Board Staff is the only party that may raise objections to a utility's plan to implement provisional rates.[2] Staff has not done so.

Consequently, the Board should deny Rate Counsel's Motion. While Rate Counsel makes other specious arguments as to why the Board should prevent the Company from implementing provisional rates, each of these arguments is irrelevant and should be disregarded.

Rate Counsel claims that NJAWC's provisional rate increase is excessive, unjust, and unreasonable. The proper forum to address the reasonableness of base rates is in the rate case where Rate Counsel will have a full opportunity to present its case to the OAL in only a few short weeks. The OAL's decision will then be presented to the Board for review and a final determination. If, at that time, final Board-approved base rates are lower than provisional rates, the Company will calculate the refund due to each customer, as applicable, for the period

[2] NJAWC does not believe Rate Counsel even has standing to present its Motion to the Board.

provisional rates were effective, calculate proper interest due on the same in accordance with *N.J.A.C.* 14:3-13.3, and issue refunds to customers accordingly. *Provisional Rate Plan* at 1. This process is precisely what the Rules contemplate.

Pointing to the circumstances leading up to the Company's decision to seek provisional rates, Rate Counsel contends that NJAWC is only trying to gain leverage in settlement discussions over base rates, or to collect "excessive, unjustified provisional rates." *Rate Counsel Br.* at 3-4, 6. Not only are Rate Counsel's speculative beliefs regarding NJAWC's intent irrelevant, they do not stand-up to scrutiny and lack factual support. In reality, NJAWC filed its notice to implement provisional rates when its right to do so under the Provisional Rate Rules was ripe.

Rate Counsel further argues that allowing the Company to avail itself of provisional rates, explicitly authorized by New Jersey law, "will encourage it, as well as other utilities, to forego settlement in the future." *Id.* Not only is this belief speculative, as discussed above, this is an argument that Rate Counsel raised in the rulemaking process that the Board addressed and dismissed. *See 50 N.J.R. 625(b),* 2018 NJ REG TEXT 465165 (NS), (Response to Comments 2 through 20)

Finally, Rate Counsel argues that provisional rates are not intended to be available to companies that file a base rate case with only five months of actual data. *Id.* at 5-6. Rate Counsel also states that a utility can only implement provisional rates where there has been regulatory lag, and there is allegedly no regulatory lag in this case. These arguments, however, lack any factual or legal basis. As the Board held in *In re Elizabethtown Water Company Rate Case*, it is completely appropriate for a utility to file a rate case petition with "five months actual data and seven months estimated data." BPU Docket No. WR8504330 (May 23, 1985). Further, although the Provisional Rate Rules were clearly intended to address regulatory lag, neither *N.J.S.A.* 42:2-21 nor *N.J.A.C.* 14:1-5.12 contain any requirement that the utility prove

that the parties to a rate case agree that regulatory lag exists. It is axiomatic that the Board believed "regulatory lag" begins when the suspension period ends. More than nine months will have lapsed since the Company filed its base rate case. The parties still have not begun evidentiary hearings at the OAL. It is quite possible that a final determination on rates will not be made until late 2018 or the first quarter of 2019. This is a significantly longer period of time than the total eight months in suspension periods permitted by *N.J.S.A.* 42:2-21(d).

IV. Conclusion

Petitioner, New Jersey American-Water Company, Inc., respectfully requests that Rate Counsel's Motion should be denied for the reasons stated herein.

Sincerely,

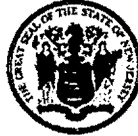
COZEN O'CONNOR, PC

By: Ira G. Megdal

IGM

cc: Attached Service List (*via email*)
Honorable Jacob S. Gertsman (via fax and First Class Mail)

Exhibit A



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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Director

October 6, 2017

VIA ELECTRONIC DELIVERY
Irene Kim Asbury, Secretary
State of New Jersey, Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
CN Box 350
Trenton, New Jersey 08625-0350

Re: Provisional Rate Increase Implementation
Proposed Amendment: N.J.A.C. 14:1-5.12
BPU Docket No.: AX17050468

Dear Secretary Asbury:

Please accept the Division of Rate Counsel's ("Rate Counsel") comments regarding the above referenced matter. Thank you for your consideration and attention to this matter.

Introduction

This process began at an agenda meeting on April 21, 2017, at which Board of Public Utilities ("Board" or "BPU") President Richard S. Mroz reported to the Board that Staff is "looking at the possibility of putting forward a straw proposal for comment" on guidance to utilities seeking to implement provisional rates. See Closing Remarks, 3:11 to 18 (April 21, 2017). In response, on April 26, 2017, Board Staff issued an "Announcement of Stakeholder Process" that contained a straw proposal ("Straw Proposal"). The purpose of the process was to "receive comments and proposals regarding potential regulations and filing requirements for

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implementation of provisional base rates during the pendency of a rate case matter." (Straw Proposal, para. 2) On May 4, 2017, an unrecorded meeting was held where parties presented initial reactions to the straw proposal to various members of Board Staff. There was no discussion among the stakeholders, parties were not allowed to respond to other parties' comments and Board Staff provided no statement or explanation regarding the proposal.

At the May 4 meeting, Rate Counsel Director Stefanie Brand stated that due process dictates that a thorough and deliberative process with all interested stakeholders must be convened to fully vet the issues raised by this proposal. This position was echoed by the New Jersey Large Energy Users Coalition and AARP. Indeed, many other parties supporting the proposal echoed the same concern, assuming that this was just the beginning of a process where stakeholders could work together and attempt to create a workable proposal. The outcome of this process has the potential to significantly impact ratepayers in New Jersey, subjecting them to higher rates that have not been found to be just and reasonable, and possibly subsequent refunds. Rate Counsel continues to maintain that a comprehensive stakeholder process is needed.[1]

On May 12, 2017 Rate Counsel filed comments on the Straw Proposal. An initial concern raised by Rate Counsel was that the departure from a normal stakeholder process is significant, especially where there has been no evidentiary record developed to establish the need for regulations. As explained more thoroughly below, this deficiency remains. The absence of a proper stakeholder process has left the Board devoid of any evidentiary record to support these rules and has deprived the Board of the benefit that results from the thorough discussions and vetting that comes from that process. Therefore, before the adoption of these proposed rules,

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[1] See Executive Order No. 2. (Christie, January 20, 2010); "Red Tape Review Commission, Findings and Recommendations," February, 2012, pp. 4 and 8 (http://www.nj.gov/state/pdf/red-tape-reports/2012-0208-red-tape-review-report.pdf). (Agencies should solicit opinions from stakeholders prior to proposing new rules.)

Rate Counsel again asks that the Board initiate a proper stakeholder process. The Board can utilize the comments filed in response to this proposal to facilitate that process.

The Proposed Regulations are Unnecessary

All utilities already have the right to implement interim rates after nine months under statute. N.J.S.A. 48:2-21.1; see also, Toms River Water Co. v. N.J. Bd. of Public Util. Comm'rs, 82 N.J. 201 (1980). For a variety of reasons, however, the utilities have not done so. For those same reasons, the proposed regulations should not be promulgated.

First, there is no problem here that needs solving. Rate Counsel conducted a review of the rate cases filed in the past five years, by electric, gas and major water utilities. (See Exhibit A). There were 20 rate cases in that category. Of those 20, only the JCP&L 2012 rate case took more than ten months for the Board to resolve.[2] That case obviously was not routine because it was ordered by the Board, was fully litigated, included many extensions requested by the OAL, and there was significant motion practice up and down to the Board throughout the case. In addition, that case, unlike the others, resulted in a rate reduction and thus the delay may have injured ratepayers, but benefitted the Company.

Of the remaining 19, only three took more than nine months to resolve. Those three cases took ten months to resolve only because the companies, New Jersey Natural Gas and South Jersey Gas, filed their petitions with only three months of actual data and nine months of forecasted data. It was thus not possible to resolve those cases within nine months because the full test-year of actual data was not available in that timeframe. The Utilities control the test year and the amount of forecasted data to be provided when they file their rate case. Where they have filed with three months actual and nine months forecasted data without prior agreement or

[2] While the Board states in its summary to the proposed rules that "there have been rate cases that were not completed before the suspension periods have elapsed," Exhibit A demonstrates that his is extremely rare.

approval, Rate Counsel has asked the BPU to require that they file with more months of actual data but the Board has not granted such relief. In most of those cases Rate Counsel often "agreed in principle" to a settlement and then had to wait for the full test year's data (the "12+0s") to be filed before the settlement could be finalized. This adds to the time needed to complete a case. However, if the data is presented in a timely fashion, history shows that the case is likewise completed in a timely fashion.[3]

Second, interim rates are almost certainly going to lead to a need for large refunds since the utilities routinely file for more than the Board ultimately concludes is reasonable and because they poorly forecast their actual revenue requirements in the remaining portion of the test year. In each of the 20 completed base rate proceedings in the past five years, the BPU approved rate increase was significantly less than the increase requested in the initial petition. (Exhibit A).

The use of interim rates while rate cases are pending has led to problems in other states that have allowed them. In Oklahoma, two legislators filed bills that would put an end to interim rates in response to recent Oklahoma Gas and Electric Company and Public Service Co. of Oklahoma ("PSO") cases. *Oklahoma Legislators File Bills to End Utility Interim Rates, Ok Energy Today, (January 26, 2017)* (http://okenergytoday.com/2017/01/oklahoma-legislators-file-bills-end-utility-interim-rates). In PSO's latest rate case, the Company filed for an increase of $130 million. The Commission ultimately approved a $14 million increase. PSO collected about $65 million in higher interim rates since January of 2016, which it now needs to refund to its customers.

[3] The water utilities are required to file with at least five months actual data and all eight water rate cases analyzed were completed within eight months or less. (See Exhibit A). See In Re Elizabethtown Water Company Rate Case, BPU Dkt. No. WR8504330, Order dated May 23, 1985.

The Straw Proposal stated that "Utilities rarely avail themselves of" the remedy of interim rates. This is not because of the absence of regulations. It is because interim rates are not needed and are bad policy for both the Board and the utility, not to mention ratepayers. Simply, this is a bad solution in search of a non-existent problem.

Interim Rates Promote Rate Volatility and Discourage Settlement.

Interim rates will cause significant rate volatility. Rate stability has long been an important public policy followed by the Board. Utilities strive for revenue stability as well, i.e., the ability to predict sales and revenues. Yet, both rate stability and revenue stability are thwarted when interim rates are placed into effect. As demonstrated in Exhibit A, it is clearly the rule, rather than the exception, that the Board approves rate increases that are significantly below the utility's original request. Thus, when interim rates reflecting the utility's original rate request are implemented, ratepayers are subjected to an unnecessary, albeit temporary, rate increase only to be followed by a rate reduction when final rates are approved. This type of yo-yoing of rates wreaks havoc on the budgets of businesses and families, particularly during the peak summer and winter months.

That refunds with interest are provided for in the proposal is simply not enough to remedy the harm to vulnerable ratepayers caused by excessive and unnecessary rate changes. There are some damages that will be permanent and cannot be fixed by refunds with interest such as for example, families losing their housing or utility service due to temporary excessive rates. Moreover, interim rates, to the extent they are later found to be excessive, provide no real benefit to the utility either. Proper accounting requires utilities to establish a contingent liability for their anticipated refund obligation. The contingent liability undermines the utility's ability to rely on the increased revenues to replace or expand its infrastructure or to improve its service quality. With no accurate mechanism to calculate the refund, the utilities may be reluctant to use

monies collected as interim rates subject to refund to fund additional investment. Thus, excessive revenues collected under interim rates will do nothing to encourage capital spending but will simply provide a low interest loan from ratepayers to the utility. Given the clear track record that initial rate requests by New Jersey utilities are excessive, the damages caused to ratepayers due to rate volatility presents a much greater risk than any "benefit" the utilities receive by collecting excessive interim rates subject to refund.

Additionally, interim rates will discourage settlements. Board Staff and Rate Counsel have limited resources and are not able to litigate and commit the extensive resources often needed to settle cases at the same time. If Rate Counsel has to ensure that cases are fully litigated in nine months in order to ensure that ratepayers are not subject to interim rates higher than what the utilities deserve, Rate Counsel will have to focus on preparing to litigate, rather than pursuing settlement. Promoting settlements has up until now been a policy of the Board, and this potential regulation is directly contrary to that policy. An interim rate policy could also make cases last longer and be more difficult to litigate. If a utility can put its interim rates in effect, even if it faces future refunds, it has no incentive to meet litigation deadlines, respond to discovery on a timely basis or engage in settlement efforts.

N.J.S.A. 52:14B-4 Rulemaking Required Summaries

N.J.S.A. 52:14b-4(a)(2) requires the agency proposing a new rule to provide certain summaries, including an economic impact, jobs impact and housing affordability impact analysis of the rule. Those statements must be sufficiently clear so as to provide the public with an understanding of what the agency is proposing. N.J.A.C. 1:30-2.1. As explained more fully below, the economic impact statement, the jobs impact statement and the housing affordability impact analysis here miss this mark. These statements are unclear and ambiguous and deprive

the public of its fundamental right to understand and comment on the Board's proposals. The Board should address the issues raised below and republish the rule proposal with statements that clearly and accurately reflect the impacts of these proposals.

Economic Impact

To support the conclusion that this rule will have "negligible" economic impact, the Board states the "provisional rates cannot ultimately exceed a Board-approved rate increase entered at the conclusion of the base rate case." This statement is clearly incorrect as provisional rates can, and most likely will exceed the Board-approved rate increase entered at the conclusion of the base rate case. [4] This is the very reason there is a need for the provision requiring refunds. Thus, there is an economic impact on utility ratepayers in that for some period of time, utility ratepayers will pay a rate that is higher than what the Board ultimately determines is just and reasonable. The fact that the higher rate is subject to refund may limit the impact, however, it does not eliminate it. Depending on the magnitude of the excessive rate and the length of time that excessive rate is in place, irreparable harm may have already occurred before any refund can be implemented. For example, a ratepayer may not have sufficient funds to cover both the excessive rate and other expenses, leading the ratepayer to take on additional debt or worse be left with the choice of paying an excessive utility bill or paying for other necessities such as food. While the utility is made whole in the short term and ultimately will repay the money, the utility ratepayer is essentially forced to provide the utility with a loan for the amount of the rate that is above a just and reasonable rate. To state that this will have negligible economic impact on utility ratepayers is simply untrue, and a real analysis of the economic impact should be conducted and disclosed in order to comply with N.J.S.A. 52:14b-4(a)(2)..

[4] As discussed more fully below, the proposed rule as drafted permits a utility to implement the full amount of its requested rate increase, and the rules have no provisions to limit the scope of those provisional rates below any amount noticed by the utility in its petition.

Job Impact

The Board states that the proposed amendments will not result in "the loss of existing jobs." The rules will permit higher rates to be implemented for an undetermined period of time at a rate that can (and likely will) exceed the rate that the Board ultimately determines is just and reasonable. There is no limitation on how long these interim provisional rates will be in effect, and no cap on how high these rates can be other than the initial request in the base rate petition filed by the utility. The Board's assertion that there will be no job losses without any explanation deprives the parties of their ability to assess the Board's job impact analysis and to respond to it prior to adoption of the rules. The Board simply ignores the fact that these higher, unnecessary rates could raise the rates of employers in New Jersey so that they may lay off employees, move work to other states or simply hold off on hiring or performing additional work until the rates are settled. At this time, the Board's conclusory statement that there will be no jobs impact, without any factual basis makes the statement unsupportable and impossible for any party to refute. The Appellate Division recently explained that it does "not consider these APA requirements to be insubstantial." In the Matter of the Board's Review of the Applicability and Calculation of a Consolidated Tax Adjustment, Docket No. A-1153-14T1 (September 18, 2017) Slip Op. at 25. "When the requirements are ignored, the Board gathers information and comment, but Rate Counsel and the stakeholders are deprived of the right granted by the APA to consider and contest the Board's assessment of economic impact and responses to the submission prior to the adoption of the rule." Id. at 26. The same is true for the job impact statement in these proposed rules.

Housing Affordability Impact Analysis

The Board's statement that the "proposed amendments will have no impact on the affordability of housing in New Jersey . . . because the amendments are voluntary and specific to provisional utility rates" makes no sense. It is unclear what link there is between the impact on the affordability of housing in New Jersey and the fact that the utilities can choose whether to implement provisional rates. Assuming the utilities do so, those rates will likely be higher than the rates the Board ultimately determines to be just and reasonable. While these provisional rates are in effect, they will not be voluntary to those who must pay them. If utility costs are included in rents, landlords will seek to recoup these higher rates by increasing rents. Once the rent is increased, it is highly unlikely that landlords will lower the rates once just and reasonable rates are set. Moreover, any refund would go to the landlord, not the renter. Again, it is unlikely the landlord will pass that refund back to the renter—assuming that the same renter is in the unit by the time any refund is actually implemented. The statement in this section of the proposed rule provides no actual basis for the Board's conclusion. The Board's statement does not provide the public with sufficient notice of the Board's assessment of the housing impact, and leaves the public unable to respond prior to the adoption of the rule.

This is especially troubling given the requirement that there be a housing affordability impact analysis. N.J.S.A. 52:14b-4.1b.There is no analysis of any kind in this statement. Certainly there is no analysis of whether rents in New Jersey will go up because of higher utility bills or if the up and down rates of higher provisional and then lower final rates will impact rents or even the sales of homes. Nor can the Board rely upon the exception to N.J.S.A. 52:14b-4.1b(a), which provides that the subsection will apply if the impact is minimal, as the agency must still provide an indication of the basis for its finding. The lack of analysis or any basis

whatsoever for the Board's statements makes it insufficient to satisfy the statutory requirement for proposed rules. See I/M/O the Board's Review of the Applicability and Calculation of a Consolidated Tax Adjustment, supra, at 25-26.

Comments on the Text of the Proposed Rules

SUBCHAPTER 5. PETITIONS

14:1-5.12 Tariff filings or petitions [which] that propose increases in charges to customers

> *(e) A proposed increase in base rates may be implemented on a provisional basis, subject to refund with interest, after the expiration of the suspension periods pursuant to N.J.S.A. 48:2-21(d). In implementing a provisional rate increase pursuant to this subchapter, provided all the conditions of this subchapter are met, a utility:*
>
> > *1. May implement a provisional rate increase equal to the full amount of the rate increase requested by the utility within the subject base rate case, or a lesser amount, following the expiration of the suspension periods, subject to refund with interest; and*

Comments: The amount of the provisional rate increase should not necessarily equal the full amount of the rate increase requested by the utility. The utilities have routinely filed for more than the Board ultimately concludes they are entitled and the utilities poorly forecast their actual revenue requirements in the remaining portion of the test year. In each of the 20 base rate proceedings in the past five years, the Board-approved rate increase was significantly less than the increase requested in the initial petition. For example, in the 2012 JCP&L matter, the Company sought an increase of $31.47 million and the Board ultimately ordered a $115 million decrease, a difference of $146.47 million. (See Exhibit A). Similarly, in the 2015 New Jersey Natural Gas base rate case that took ten months to resolve, the Company filed for an increase of $147.6 million based upon three months of actual data. Upon filing twelve months of actual

data, the request decreased to $112.8 million. The final Board order approved an increase of only $45 million, over $100 million less than initially requested. (See Exhibit A).

In the 2015 South Jersey Gas case that took ten months to resolve, the Company also filed with only three months of actual data, precluding resolution within a nine month period. When the full year's actual data came through, the $62.6 million requested fell to $54.4 million. That case was ultimately settled and approved by the Board for $20 million – less than a third of what the Company originally sought. (See Exhibit A).

In a 2015 water/wastewater case filed by New Jersey American Water with only four months of actual data, the parties reached a tentative settlement well before nine months, and then had to wait until the full test year's actual data was available. The difference between the forecasted numbers and the actual numbers was so great that the parties had to go back to the negotiating table. In the end, the case was settled for about one third of what the Company had initially asked for. (See Exhibit A).

It is clear that allowing the utility to implement provisional rates up to the amount of the rate increase requested by the utility will result in provisional rates that could be grossly excessive. Allowing the utility to unilaterally decide whether to implement the full rate or a lesser amount is not sufficient to satisfy the Board's obligation to ensure that rates are just and reasonable. The regulations should require that, along with a Board approved plan to implement refunds and sufficient proof to the Board that the utility will have the ability to pay those refunds, the Board should approve the amount of the provisional rate prior to its implementation. In doing so, the Board will hopefully keep provisional rates from becoming abusive.

Such a provision has been included in other jurisdictions. Given the historically high and ultimately unjustified rate increases sought by utilities, a provision to limit the scope of the

increase is appropriate. In order to protect ratepayers in Delaware, the Delaware Legislature limits the amount of the provisional rate to "not constitute an increase in excess of 15 percent of the public utility's annual gross intrastate operating revenues or $2,500,000 annually, whichever is less." 26 Del. C. §306(c). The Board should implement a similar cap on the amount of the increase the utility can seek as a provisional rate.

> *2. Shall apply an equal percentage increase to all rate classes using the existing rate design for the utility approved by the Board.*

Comments: This provision should also state that the increase will not be applied to the monthly customer service charge. Increases to the fixed service charge disproportionately burden low income and smaller households. Because of this, none of a provisional rate increase should be applied to that portion of a utility's charges. The proposed regulation also does not explain how the refund will be implemented if the rate design changes in the base rate case. If the rate design changes, the provisional rate will have been implemented pursuant to what will be a defunct rate design. The refund, to be fair, should also be implemented pursuant to the prior rate design so that the refunds return the over payments to those customers who paid them. This issue should be addressed in the regulations.

> *(f) Unless otherwise ordered by the Board, a utility that seeks to implement a provisional rate increase shall:*
>
> *1. Serve written notice of the intended provisional rate increase at least 30 days in advance of the provisional rate increase, but not earlier than 75 days in advance of the provisional rate increase, upon:*
>
> *i. The Board;*
>
> *ii. The Director, Division of Rate Counsel, 140 East Front Street, 4th Floor, PO Box 003, Trenton, New Jersey 08625;*
>
> *iii. The Department of Law and Public Safety, Public Utilities Section, 124 Halsey Street, PO Box 45029, Newark, New Jersey 07101;*

iv. The municipal clerk of each municipality where the utility renders service;

v. The clerk of the board of chosen freeholders of each county where the utility renders service;

vi. If applicable, the executive officer of each county where the utility renders service;

vii. All intervenors or participants in the pending rate case;

viii. The Administrative Law Judge presiding over the rate case, if applicable; and

ix. All customers who are billed on a recurring basis and who will be affected by the rate increase, where such notice may be made by bill insert.

As to subsection ix

Comments: The Proposed Rule should include a requirement of actual notice to all affected customers. The Proposed Rule currently includes a notice requirement to all affected customers "who are billed on a recurring basis…where such notice may be made by bill insert." Under this notice requirement, only customers who receive paper bills will receive notice. The utilities should be required to provide notice of a provisional rate implementation via bill insert, a line item on all affected customers' bills and on their websites.

As to section f as a whole

Comments: This Proposed Rule requires utilities to serve written notice of an intended provisional rate increase on various parties at least 30 days prior to implementation. This notice provision however, is not sufficient. There is no provision allowing affected parties to object or requiring Board approval of the proposed interim rate prior to implementation. The proposed rule does not provide the Board with the ability to reduce the rate if it is not just and reasonable or deny the ability to impose the interim increase if the delay in the case is caused by the utility itself, e.g. if it has not met all litigation deadlines, or for other good cause. While the Proposed

Rule allows an interim rate of less than the full increase requested in the base rate case, that decision appears to lie solely with the utility. The Board must retain some residual authority to deny the proposed increase if it is unjust or unreasonable. The Proposed Rule allows Staff a limited review of compliance with notice requirements only. See Proposed new N.J.A.C. 14:1-5.12(g). It is a fundamental and non-waivable duty of the Board to ensure that rates are just and reasonable. N.J.S.A. 48:3-1. Because utility rate requests are routinely found to be significantly excessive and actual operating results vary significantly from the initial forecasts filed by the utility, a utility should be required to obtain Board approval of its proposed interim rate, prior to implementation. This process should allow for participation by Rate Counsel and other interested Parties who will be impacted by the provisional rates.

> *2. File with the Board and serve on the Director of the Division of Rate Counsel, a copy of the utility's proposed tariff, at least 30 days in advance of the provisional rate increase, but not earlier than 75 days in advance of the provisional rate increase;*
>
> *3. File with the Board and serve on the Director of the Division of Rate Counsel, a plan detailing the utility's method for providing any refunds and interest owed to ratepayers, to account for the potential that the Board's final order in the subject rate case includes a determination of over recovery by the utility, at least 30 days in advance of the provisional rate increase; and*

Comments: The Proposed Rule does include a requirement that utilities seeking to implement interim rates must file a plan detailing the utility's method for providing any refunds and interest owed to ratepayers with both the Board and Rate Counsel. However, there is no specification in the Proposed Rule regarding the content of such plans or providing a process for the Board to approve such plans. There should be a requirement that all plans demonstrate the utilities' ability to effectuate refunds on an accurate and timely basis, either through bill credits or refund checks. The plan also should state the strategy for locating customers who discontinued service during the period in which the refund obligation accrued. Also, the utility must prove its ability to pay

the refund with interest. In Delaware, a utility is required to file a surety bond with the Commission prior to implementation of interim rates. See 26 Del. C. §306. See also Toms River Water Co., supra., 82 N.J. at 212 ("a requirement that a utility post a bond for the excess income collected under provisional, unapproved rates" is one procedure "that would strike an equitable balance between the interests of the utility and its consumers" when provisional rates are implemented). A similar requirement should be imposed here. The Board should require New Jersey utilities to file a surety bond and the Board should make a determination that the Plan and the utilities' surety bond are sufficient to demonstrate the utility's ability to pay the refunds with interest when due. Finally, the plan should map all audit parameters so that the Board Staff or an independent auditor can verify the accuracy and completeness of the utilities' refund. It is not unreasonable to anticipate that a refund and the subsequent audit of the refund may take longer to resolve than did the original rate filing, and all plans should be required to ensure that both are done in a timely an orderly fashion.

To the extent necessary, Rate Counsel should be permitted to conduct discovery on the utility's plan and its ability to implement that plan. Rate Counsel should further be permitted to submit comments to the Board prior to consideration of the utility's plan.

> *4. File with the Board and serve on the Director of the Division of Rate Counsel, a certification that the utility has complied with the requirements set forth in (f)1, 2, and 3 above at least 20 days in advance of the provisional rate increase.*

Comments: Rate Counsel agrees that utilities should certify compliance with proposed N.J.A.C. 14:1-5.12(f)1, 2 and 3, as modified pursuant to Rate Counsel's recommendations above.

> *(g) After filing the certification required under (f)4 above, a utility may implement the provisional rate increase permitted by this section on the date noticed by the utility, unless Board staff transmits written objections to the utility. Any such*

objections shall address only the utility's compliance with (f) above, and shall be transmitted to the utility no later than five days in advance of the provisional rate increase.

Comments: The review of the utility's proposed provisional rate is too limited. The regulations must require not only that the utility comply with the procedural requirements to obtain a provisional rate, but the Board must also make a determination based on the facts of the specific rate case before it that the provisional rates the utility seeks to implement are just and reasonable and that the Plan for refunds is adequate. As written, a utility can, after providing proper notice, implement interim rates up to the full amount noticed in its base rate petition. Such an interim rate will almost certainly be higher than the final rate approved by the Board. To the extent the proposed provisional rate is already known to be excessive, the Board has a duty and should have the ability to prohibit that rate. Moreover, an excessive rate, implemented for a long period of time is harmful to the ratepayers. Once an interim rate is in place, the utility has no incentive to conclude the pending base rate case—especially if it is collecting excessive provisional rates. Indeed, this regulation threatens to discourage timely settlements of rate cases for this very reason. Before implementation of provisional rates, the Board should be assured that the utility is complying with the procedural schedule in the base rate case and will continue to do so. Otherwise, rate cases, which traditionally take less than nine months to resolve, could take significantly more time to conclude, while ratepayers are paying excessive, unjust and unreasonable rates.

(h) Upon conclusion of a rate case, a utility shall determine whether it owes interest to customers due to excess funds recovered through provisional rates pursuant to this subchapter. The utility shall return any over-recovery, plus interest, to customers in the next billing cycle. In determining interest owed under this subchapter:

1. Interest shall not be due to the utility as a result of a final order in the rate case;

> *2. A utility, except an electric utility, shall calculate the amount of interest owed in accordance with N.J.A.C. 14:3-13.3(c) through (g), as applicable, except that in lieu of the "over-recovered gas cost balance" or "the over-recovery amount determined under N.J.A.C. 14:9-7.4," the utility shall utilize the amount recovered through provisional rates in excess of the amount approved by the Board in its final order in the utility's base rate case;*
>
> *3. An electric utility shall calculate the amount of interest owed in the manner prescribed for a gas utility; and*
>
> *4. The calculation of the amount of interest owed to customers shall cover the applicable period, which shall be the period between when the utility implemented provisional rates and the rate effective date of the Board's final order in the proceeding.*

Comments: The interest to be paid on refunds to ratepayers for over-recovery is insufficient under the Proposed Rule. Ratepayers must be compensated for use of their funds. The monies to be refunded from interim rates were collected involuntarily from customers and cannot be compared to over-recoveries from purchased water, sewer, electric or gas clauses. The rates charged through the various utility purchasing clauses are vetted and approved through contested case process and are based on the actual charges of the providers. Any over-recoveries that result in these matters are due to conditions outside of the utilities' control. Thus, refund obligations should appropriately be considered as short-term, customer-contributed capital. In that sense, utilities should be required to compensate customers for the use of customer-contributed funds at the customers' cost of capital, in the same way that customers are required through the ratemaking process to compensate utility investors at the investors' cost of capital. As an example of customer short-term debt costs, presently, consumers pay anywhere from 12 percent to over 21 percent, annually on short-term revolving credit card debt. The refund interest rate must be set high enough to discourage or eliminate arbitrage opportunities for the utilities. That is, there should be no incentive to "borrow" money from ratepayers to invest in higher return, short-term financial instruments. Both, the recognition that refunds are customer-

contributed capital and the elimination of arbitrage incentives require that the refund interest rate be set significantly above the utilities' authorized rate of return. This is also equitable, as a customer unable to pay all of his/her bills may likely bridge the gap by carrying more credit card debt. Rate Counsel recommends that the interest rate on refunds be set at no less than 12 percent per annum. Even an interest rate of 12 percent cannot remedy all of the damages that may result from implementing interim rates. Some damages are beyond the Board's ability to remedy.

Moreover, the refund period should continue until the refunds are fully implemented. This includes the continuing accrual of interest during the time between when the excessive rates are no longer being collected and when they are actually refunded. To do otherwise provides the utility with an incentive not to refund excessive rate recovery on a timely basis and to utilize those funds as interest free loans.

There is no process in the regulations to deal with any disputes regarding refunds. The regulations should establish a procedure for ratepayers who believe they have not received the correct refund. There could be any number of reasons why a ratepayer believes he or she did not receive the proper refund. Given that these are funds ratepayers involuntarily loaned to the utilities—in excess of a just and reasonable rate, the ratepayers must be afforded procedures to challenge the rebate paid to them. The proposed regulations are silent on this issue.

> *(i) Nothing contained in this section shall require a utility to implement provisional rates upon the expiration of the applicable suspension periods.*

Comments: Rate Counsel agrees with this section of the proposed regulations. Utilities should not be forced into implementing provisional rates and required to guess at an appropriate rate that will nonetheless likely lead to refunds and the yo-yoing of utility rates.

> *(j) Nothing contained in this section shall be construed as establishing or endorsing a provisional rate as final, nor shall this section be construed in*

any way to limit or restrict the Board's authority to approve final rates at the conclusion of a utility's base rate case.

Comments: Rate Counsel agrees with this section of the proposed regulations. The provisional rules have no bearing on a Board approved just and reasonable rate. The provisional rate will be an arbitrary number applied by the utility without the benefit of a full base rate case record. Therefore these rates cannot have any precedential value whatsoever.

Additional Provisions needed in the Proposed Rules

In order to protect ratepayers, there are additional elements that a proposed provisional rate rule should include.

The Proposed Rule should include a requirement that any utility seeking the ability to implement provisional rates must include at least five months actual data with the rate case filing. See, In Re Elizabethtown Water Company Rate Case, BPU Dkt. No. WR8504330, Order dated May 23, 1985. As is demonstrated on Exhibit A, recent rate cases generally have been completed within the present eight-month suspension period when the utilities' initial filing reflected six months or more of actual operating results. Conversely, only in recent cases where the utility filed with less than six months of actual results did rate cases extend beyond the eight-month period. It is simply impossible for` Board Staff and Rate Counsel to thoroughly review a rate filing and to wait for twelve months of actual operating results all within an eight-month suspension period when the initial rate filing relies predominately on forecasts and contains less than six months of actual operating results. Therefore, so that rate investigations can be completed within the eight-month suspension period, the filing regulations should require utility rate applications to include no less than six months of actual operating results if interim rate implementation is being sought. Further, the Proposed Rule must prohibit rate case filings that include a provisional rate request from also including requests for approval of new or renewing

programs in their rate cases. There will be no time to address other programs in the rate case so separate petitions should be required.

The regulations must also include a provision that any administrative costs incurred to implement interim rates and provide refunds for over-collection should be borne by the utility's shareholders and not ratepayers. To the extent the interim rate is higher than the rate approved by the Board, that amount is not just and reasonable and must be refunded. See Toms River Water Co., at 213. Ratepayers should not be required to pay administrative costs to refund an unjust and unreasonable rate collected by the utility. Utilities often express concerns about the time, effort, and cost they incur to implement a rate change. These efforts and costs often involve changes in computer software. The time, effort and costs will be more than double for the utility when interim rates are implemented, due to the additional time, effort and costs incurred to implement a refund of the excessive charges. If the utilities' additional costs are considered a "normal operating expense," ratepayers will end up paying additional costs for these unnecessary rate changes. Indeed, the refund could potentially be swallowed whole by the administrative costs of implementing the refund.

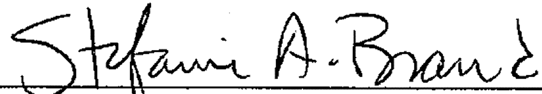
The Proposed Rule should add a provision restricting utilities from filing more than one rate case at a time. Enacting interim rate regulation could result in pancaking of rate filings. Presently, New Jersey statutes do not prescribe the frequency of utility rate filings. Thus, the timing and frequency of rate increase filings are left entirely up to the utilities. In the absence of a prescription on the frequency of filings, however, implementing interim rates provides a perverse incentive for utilities to "pancake" their rate requests on top of each other, in effect rendering interim rates effectively permanent. For example, a utility could time its rate filings so that it has two or more rate applications before the Board at one time. Then, as one case is being

finalized, interim rates would be placed into effect on the subsequent case. In effect, the utility never will have permanent rates in effect. The Board, through its rulemaking, must insure that "interim" rates do not become *de facto* permanent rates.

Conclusion

For all the foregoing reasons, the Board should amend the Proposed Rule to include the ratepayer protections specified above.

Respectfully submitted,



Stefanie A. Brand
Director, Division of Rate Counsel

EXHIBIT A

Utility Base Rate Cases Filed the Last 5 Years

Utility	BPU Docket No.	Petition Filed	Increase Requested	Filed Test Year Actuals/Projected	BPU Approved	Approx. No. of months
Atlantic	ER17030308	March 30, 2017	$70 m	5/7	September 22, 2017 $40 m	6 months
	ER16030252	March 22, 2016	$79 m	9/3	August 24, 2016 $45 m	5 months
	ER14030245	March 14, 2014	$61.7 m	12/0	August 20, 2014 $19 m	5 months
	ER12121071	December 11, 2012	$71.5 m	9/3	June 21, 2013 $25.5 m	6 months
JCP&L	ER16040383	April 28, 2016	$142.1 m	6/6	December 12, 2016 $80 m	8 months
	ER12111052	November 30, 2012	$31.47 m	12/0	March 26, 2015 ($115 m) Rate decrease	28 months[1]
Rockland	ER16050428	May 13, 2016	$9.6 m	3/9	February 22, 2017 $1.7 m	9 months
	ER13111135	November 27, 2013	$19.3 m	6/6	July 23, 2014 $13 m	8 months
PSE&G	No Base Rate Case filed in the last 5 years					
New Jersey Natural	GR15111304	November 13, 2015	$147.6 m[2]	3/9	September 23, 2016, $45m	10 months
South Jersey Gas	GR17010071	January 27, 2017	$74.875m	3/9	October 20, 2017[3]; $39.5m	10 months

[1] Although the reply briefs were filed by the parties by February 24, 2014, the ALJ closed the record on June 30, 2014 and filed 4 requests for an extension for his initial decision which was filed with the Board on January 8, 2015, almost one year later to the benefit of the JCP&L.
[2] The 12 + 0 provided a revenue requirement of $112.8 m.
[3] A stipulation of settlement was submitted to ALJ Pelios on September 29, 2017. A final order from the BPU approving the settlement is expected at the October 20, 2017 Board Agenda meeting.

	GR13111137	November 13, 2013	$62.6m[4]	3/9	September 20, 2014 $20m	10 months
Elizabethtown Gas	GR16090826	August 31, 2016	$19m	3/9	June 30, 2017 $13.3 m	9 months
NJAWC	WR15010035	January 9, 2015 *	$66.2 m	4/8	Sept 11, 2015, $22m	8 months
	WR10040260	April 9, 2010 *	$84.7 m	5/7	Dec 6, 2010, $39.9 m	8 months
Aqua NJ	WR11120859	December 9, 2011	$4.2 m	5/7	April 11, 2012 $1.75m	4 months
	WR09121005	December 18, 2009	$7.2 m	5/7	June 7, 2010. $4m	6 months
Middlesex Water Company	WR13111059	November 8, 2013	$10.6 m		June 18, 2014, $4.248m	7 months
	WR12010027	January 10, 2012	$11.3 m		July 18, 2012, $8,1m	7 months
UWNJ	WR15101177	October 7, 2015	$29.4 m		April 27, 2016, $11m	6 months
	WR13030210	March 11, 2013	$29.9 m	5/7	Nov 22, 2013, $11m	8 months

*Petition sought combined water and wastewater base rate increases.

[4] The 12 + 0 provided a revenue requirement of $54.4 m.

IN THE MATTER OF THE PETITION OF NEW JERSEY AMERICAN WATER COMPANY, INC.
FOR APPROVAL OF INCREASED TARIFF RATES AND CHARGES FOR WATER AND
WASTEWATER SERVICE, CHANGE IN DEPRECIATION RATES
AND OTHER TARIFF MODIFICATIONS
BPU DOCKET NO. WR17090985
OAL DOCKET NO. PUC 14251-2017 S

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IN THE MATTER OF THE PETITION OF NEW JERSEY AMERICAN WATER COMPANY, INC. FOR APPROVAL OF INCREASED TARIFF RATES AND CHARGES FOR WATER AND WASTEWATER SERVICE, CHANGE IN DEPRECIATION RATES AND OTHER TARIFF MODIFICATIONS
BPU DOCKET NO. WR17090985
OAL DOCKET NO. PUC 14251-2017 S

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IN THE MATTER OF THE PETITION OF NEW JERSEY AMERICAN WATER COMPANY, INC. FOR APPROVAL OF INCREASED TARIFF RATES AND CHARGES FOR WATER AND WASTEWATER SERVICE, CHANGE IN DEPRECIATION RATES AND OTHER TARIFF MODIFICATIONS
BPU DOCKET NO. WR17090985
OAL DOCKET NO. PUC 14251-2017 S

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