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June 5, 2018

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June 8, 2018

VIA HAND DELIVERY
VIA EMAIL

Aida Camacho-Welch
Secretary
New Jersey Board of Public Utilities
44 South Clinton Ave.
9th Floor, Suite 314
P.O. Box 350
Trenton, NJ 08625-0350

Re: In the Matter of the New Jersey Board of Public Utilities' Consideration of the Tax Cuts and Jobs Act of 2017
BPU Docket No. AX18010001

In the Matter of the Petition of Environmental Disposal Corporation With Calculation of Rates under the Tax Cuts and Jobs Act of 2017
BPU Docket No. WR18030235

Dear Ms. Camacho-Welch:

Enclosed for filing, please find an original and ten (10) copies of reply comments of Environmental Disposal Corporation ("EDC" or the "Company") in the above-captioned matter. These reply comments are being submitted in response to comments filed by the New Jersey Division of Rate Counsel ("Rate Counsel") with the New Jersey Board of Public Utilities ("BPU" or "Board") on May 25, 2018, and pursuant to the Board Orders in this matter dated January 31, 2018 and March 26, 2018 and the schedule agreed upon by the parties.

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I. Introduction

On January 31, 2018, the Board issued an Order in BPU Docket No. AX18010001 (the "Order") that, *inter alia*, directed all public utilities with revenues equal to or greater than $4.5 million to file a petition by March 2, 2018 setting forth the impact of the 2017 Tax Cuts and Jobs Act ("TCJA") on the utility's revenue requirement, along with proposed interim rates effective April 1, 2018 and rate design proposals.

The Company filed a petition, docketed at BPU Docket No. WR18030235 (the "Petition") on March 2, 2018 providing the Board with the requested information. The Petition also set forth the Company's proposal to flow through the revenue requirement savings and revenue over-collection refunds resulting from the TCJA to ratepayers. Rate Counsel subsequently served discovery on the Company, to which the Company responded.

On May 25, 2018, Rate Counsel filed comments in this matter. EDC respectfully takes this opportunity to respond to those comments. Unless noted herein, the Company continues to maintain the positions set forth in the Petition.[1]

II. Impact of the Act on EDC's Revenue Requirement

In the Petition, the Company stated that the TCJA would result in a revenue reduction of $191,801, including gross-up. *Petition* at 4. The Company updated its position to $180,535 in response to data request RCR-EDC-A-18. Rate Counsel concluded that this determination was reasonable and acceptable. *RC Comments* at 3.

III. Tariff Design

EDC's proposed rate design would result in an across the board 3.44% reduction in the average residential customer's bill. Rate Counsel supported this proposed rate design, but

[1] The Company continues to believe that the Order is unlawful as it constitutes single-issue and retroactive ratemaking. *See Petition* at 2-4. Rate Counsel did not respond to these arguments.

stated that the Company had made a $50 error, citing a discrepancy between the revenues set forth on Exhibits A and C of the Petition. *RC Comments* at 3. Exhibit A stated total revenues as $5,582,691 while Exhibit B stated total revenues as $5,582,641.

The Company's total revenues in Exhibit A are consistent with Attachment C to the Board's Order in EDC's last base case, Docket WR 07090715. EDC's Exhibit A also properly derives a $122,166 rate increase over present rate revenues of $5,460,526. In addition, the Company's Exhibit C rate design matches Attachment E to the BPU's Order in EDC's last rate case, which authorized revenues of $5,582,641 in base rates. The Company believes the $50 difference between Attachments A and C is likely the result of miscellaneous operating revenues and should be reasonably disregarded for rate adjustments in this proceeding.

IV. Over-Recovery of Income Taxes to be Deferred and Returned with Interest

Rate Counsel and EDC are in agreement that the Company's stub period deferral of $45,208, with interest of $72, be refunded to customers over 12 months (presumably beginning July 1, 2018).

V. Impact of the Tax Act on the Company's Accumulated Deferred Income Taxes

The Company's excess accumulated deferred income taxes ("ADIT") fall into two categories: plant ("Protected Balances" in the context of the Average Rate Assumption Method) and non-plant ("Unprotected Balances" in the context of the Average Rate Assumption Method). If the Company reduces cost of service (*i.e.*, returns excess ADIT to ratepayers) for plant more rapidly than over the life of the property that gave rise to the excess, the Company could lose its ability to utilize accelerated tax depreciation to the detriment of both the Company and Ratepayers. Ratepayers benefit from the Company's use of accelerated depreciation, as it results in ADIT that is a rate base deduction and provides a source of funds for infrastructure investment. Customers benefit from both the rate base deductions and the improvements in

infrastructure afforded by ADIT. No party wishes to see the Company lose its ability to utilize accelerated tax depreciation.

The Company must use the Average Rate Assumption Method ("ARAM") to determine the proper rate to flow back excess Protected Balances to ratepayers to comply with the normalization rules specified in the Tax Act of 1986, the TCJA, and in the IRS' rules. ARAM must be used for all Protected Balances. If the Company utilizes RSGM for Protected Balances, and is found to have had the records necessary to do ARAM it will be in violation of IRS normalization rules.

Computing ARAM is a complicated and laborious process. As the Company explained to the Board and to Rate Counsel, it is working expeditiously to implement the necessary computer software changes to compute ARAM. These changes include formatting vintage deferred tax records, in the Company's possession, into a format into which Powertax can utilize them to compute ARAM.

Rate Counsel is of the mistaken belief that the Company can flow certain excess ADIT balances to customers using the Reverse South Georgia Method ("RSGM") for some assets while continuing to work to implement ARAM for other assets. *See RC Comments* at 9. Rate Counsel is mistaken for several reasons.

RSGM can only be utilized when the information necessary to compute ARAM is definitively unavailable. A utility would be in violation of IRS normalization rules, and thus potentially in danger of losing its ability to utilize accelerated tax depreciation, if it used RSGM and later determined it had, in its possession, the records necessary to use ARAM. The Company is working, as quickly as possible, to confirm that it has all necessary information to utilize ARAM.

The Company believes that it has the information necessary to compute ARAM; it will just take time to setup the records and system to do so. Rate Counsel has not cited to any

decision or IRS guidance document that indicates to the Company that there is any timing component applicable to whether a utility should utilize ARAM or RSGM to flow back excess ADIT to ratepayers. Rather, every decision known to the Company, including IRS PLR 8910012 relied upon by Rate Counsel, states that RSGM may only be used when adequate records were not maintained and available to compute ARAM. Rate Counsel is incorrect to state at this time that the Company does not have adequate records to compute ARAM. The Company believes it has the necessary records. The records, instead, simply need to be converted into a format in which a system such as Powertax can correctly compute ARAM. EDC is not "recreating records," as described by Rate Counsel. Rather, the Company is converting them into a format in which it can compute ARAM. This is the only methodology known to the Company that it believes complies with IRS normalization rules.

The Company also believes that comparisons to the utilization of RSGM in 1986 are overstated by Rate Counsel. In 1986, utilities did not have powerful computer software like Powertax, and records and data were not as well maintained and accessible as they are today. There would not have been the same ability to effectively convert existing records into a format necessary to compute ARAM, and therefore, the IRS and utilities were content with the use of RSGM. That, however, is not the case today.

Rate Counsel also argues that the Company's software upgrades are too costly and may be unnecessary. First and foremost, the Company believes that if it simply implemented RSGM without updating its software to compute ARAM for all Protected Balances, it would be in violation of ARAM and potentially lose its ability to utilize accelerated tax depreciation. This would be far more harmful to ratepayers than the *incremental* cost of the Company's software upgrades. The cost the Company is incurring to re-implement PowerPlant and PowerTax are not being done for the sole purpose of enabling the use of ARAM. Some of the other reasons are: the version of the PowerPlant and PowerTax being used is no longer supported by the

software provider Power Plan Consultants; to continue using tax repairs on a long-term basis, the Company will be obligated to have functionality to directly identify and track over life its tax repair deduction; and to better support regulatory requirements, the Company is implementing the PowerTax deferred tax module aligning the level of detail at which deferred taxes are computed with book depreciation.

Moreover, as stated earlier, given the data that the Company believes is available, using RSGM for certain vintages now, and ARAM for other vintages in the future, would be a violation of IRS normalization rules. The Company cannot do this. However, even if using a mix of RSGM and ARAM at this point was permitted (which it is not), from a practical cost standpoint, attempting to use RSGM for certain vintages now and ARAM for other vintages in the future would end up costing even more than it will cost to implement the software changes necessary to compute ARAM for all vintages. Using a mix of RSGM and ARAM to normalize the excess ADIT that resulted from the TCJA would require more software capabilities than would be required for ARAM only. Rate Counsel already expressed that it wishes software costs to be kept to a minimum to maximize returned savings to ratepayers. If this is true, Rate Counsel should support an ARAM-only approach, which it should do anyway to ensure the Company remains in compliance with all normalization rules. The mixed approach can't be done, and even if it could be done, it would be more costly to do.

With respect to other ADIT-related comments expressed by Rate Counsel, the Company continues to maintain that it correctly characterized ADIT excess balances related to contribution in aid of construction ("CIAC") and tax repairs, as protected and subject to the tax normalization rules. Rate Counsel's assertions are without support and are inconsistent with industry norms and regulatory requirements. With respect to excess ADIT that resulted from tax repairs, this excess ADIT is subject to a normalized method of accounting pursuant to the requirements of an IRS consent decree establishing this method. Rate Counsel contends,

without support, that this consent decree is retrospective only. It is not. It is a change in accounting. With respect to excess ADIT that resulted from CIAC, this is subject to a normalized method of accounting pursuant to the requirements of law and regulation as illustrated in PLR-149395-08, Dated: May 07, 2009.

The Company must also address Rate Counsel's demand that the Company begin to flow back non-plant excess ADIT, essentially immediately, with interest at the Company's weighted average cost of capital ("WACC"). As Rate Counsel should be aware, the Company's current non-plant balance results in a $46,457 net regulatory *asset*. If action were to be taken immediately on this item, it should technically result in the *return* of this amount to the Company, from ratepayers, with interest.

Lastly, the Company continues to request that the Board defer the excess ADIT liability until the Company's next base rate case. As explained herein, a significant amount of effort is being expended to implement the necessary modifications to Powertax to be able to calculate ARAM. The Company cannot refund any excess ADIT to customers until that is completed without risk of violating IRS normalization rules. Thus, the Company respectfully requests that the Board defer this issue until the Company's next base rate case; or in the alternative, defer excess ADIT until the fourth quarter of 2019, at which time the Company intends to have Powertax fully functional to compute ARAM. In the interim, the Company can provide the Board with periodic updates on Powertax's implementation, as requested.

VI. Conclusions

Rate Counsel and the Company are in agreement on several issues, but differences in opinion remain. The Company is looking forward to discussing these issues with Board Staff and Rate Counsel at upcoming settlement discussions.

Respectfully,

COZEN O'CONNOR, PC

By: Ira G. Megdal

IGM/k
Enclosure

cc: Attached Service List (via email)

I/M/O the New Jersey Board of Public Utilities' Consideration of the Tax Cuts and Jobs Act of 2017

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SERVICE LIST

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