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June 8, 2018*

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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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CASE MANAGEMENT

JUN 05 2018

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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 New Jersey-American Water Company, Inc. with
Calculation of Rates under the Tax Cuts and Jobs Act of 2017
BPU Docket No. WR18030233**

Dear Ms. Camacho-Welch:

Enclosed for filing, please find an original and ten (10) copies of reply comments of New Jersey-American Water Company, Inc. ("NJAWC" 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.

*Case Mgmt
10/20/18
10/20/18*

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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. WR18030233 (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. NJAWC 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 NJAWC's Revenue Requirement

In the Petition, the Company stated that the TCJA would result in a revenue reduction of \$42,561,477, including gross-up. *Petition* at 4. Rate Counsel concluded that this determination was reasonable and acceptable. *RC Comments* at 3. However, Rate Counsel also stated that it took exception "to the failure of the Company to reduce the rates to ratepayers effective April 1, 2018 by the correct rate decrease percentage that the \$42.6 million revenue requirement reduction represents." *Id.*

The parties are in agreement as to revenue requirement. While the Company continues to believe that it calculated a reasonable rate decrease percentage, following the requirements

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.

set forth in the Order, in the interest of comity, the Company is willing to accept Rate Counsel's proposed decrease percentage of 6.12%. This is explained in further detail in the Company's reply to Rate Counsel's rate design comments.

III. Tariff Design

Rate Counsel supported the Company's proposed Shorelands and DSIC rate designs but opposed its NJAWC rate design. *RC Comments* at 4. The Company had proposed a rate decrease percentage of 5.88%. Rate Counsel stated that this percentage should be raised to 6.12%.

The Order stated:

Utilities shall provide rate and tariff design proposals to reflect the revenue requirement changes and any clause changes including proof of revenues, and a bill impact analysis supported by the appropriate back-up data, calculations and rationale for the proposed revenue allocation. The rate design and allocation of the dollar amount adjustment shall be consistent with the inter- and intra-class rate design approved when current rates were established and approved by the Board.

Order at 3. NJAWC's last base rate case was a "black-box" settlement pursuant to which "proof of revenues" and "inter and intra-class rate design" were not produced. To that end, the Company utilized its litigation schedules from that case to derive its stated income tax revenue requirement reduction of \$38,545,608 as set forth in the Petition. *Petition* at 4. The Company then produced a proof of revenues allocating this dollar adjustment across the applicable customer classes utilizing the most recent bill analysis provided to the Board – the Base Year Ended March 31, 2017 in its pending base rate case Docket WR17090985. The Company believes that this was a reasonable methodology, per the Order, based on the lack of complete data available from its last base rate case.

Rate Counsel disagrees, stating that the Company should have utilized the approved revenues instead awarded in the Company's last base rate case as the basis of adjusted tariff

rates. *RC Comments* at 5. Although the Company continues to believe it utilized the a reasonable methodology as set forth in the Order, and takes issue with Rate Counsel's use of billing determinants unsupported by the Company's last base case Order, set forth in Exhibit C to Rate Counsel's Comments, the Company is willing to accept Rate Counsel's proposed rate reduction percentage of 6.12%. As to the Company's recommendation on managing any over-collection related to the difference in revenues between the 5.88% Company decrease and 6.12% Rate Counsel decrease, please see the discussion in the next section.

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

Rate Counsel took issue with five elements of NJAWC's treatment of over-recovery of income taxes. The Company will address Rate Counsel's concerns, and then summarize its recommendations.

Rate Counsel's first three concerns relate to the Company's calculated over-collection amount during the period from January 1, 2018 to the change in base rates ("deferral period"). First, Rate Counsel noted that NJAWC made a calculation error with respect to its refund calculation. *Id.* at 6. Second, Rate Counsel stated that the deferred over-collection for the deferral period should be calculated by comparing actual revenues to the tax-adjusted "actual" revenues during the deferral period. *Id.* at 6-7. Third, Rate Counsel argued that NJAWC should have utilized Rate Counsel's recommended base rate reduction percentage of 6.12% when calculating the deferred over-collection accruals for the deferral period. *Id.* at 7.

In response to these concerns, the Company is providing Exhibit A to these comments as an update to its calculation of the deferral period over-collection. The Company has recalculated its monthly over-collection amount utilizing Rate Counsel's 6.12% rate decrease, effective January 1, 2018. The Company provides actual applicable revenues, adjusted for the 6.12% reduction through March 31, 2018. The Company then calculates the variance between the implemented 5.88% decrease and the Rate Counsel proposed 6.12% decrease for April and

May 2018 actual revenues. As Rate Counsel notes in Footnote 7 of their comments, the Company's implementation of provisional rates in Docket WR17090985 would set an end date for calculation of the deferral period of June 14, 2018. Therefore, once actual revenues to that date (or any other date of change in base rates in Docket WR17090985) are available, the Company will update Exhibit A for any over-collection to the end of the deferral period.

Rate Counsel's fourth issue states that NJAWC incorrectly applied a fixed rate of 1.527% to interest accruals on over-collection balances. *Id.* Lastly, Rate Counsel did not object to the Company's proposal to refund customers through a 12-month customer bill credit. *Id.* However, Rate Counsel asserted that the Company should not only calculate and refund to ratepayers interest on the unrefunded over-collection through the start of the 12-month "refund period" (presumed beginning July 1, 2018), but also should continue to calculate and refund interest during the refund period (presumed to be from July 2018 through July 2019).

The Company believes it would be inconsistent to apply interest during the refund period. The Company's ratemaking history for Regulatory Assets and Liabilities that are not in rate base, and which are relatively short-term, is to record no interest on their unrecovered or unrefunded balance. The over-collection is not sufficiently different than other Regulatory Assets or Liabilities that are not in rate base but are recovered/refunded over 12 months or more. However, in this particular instance, the Company is willing to accept Rate Counsel's proposal to record interest on the deferral period balance at the Company's applicable monthly short term debt rate. The Company will also continue to accrue interest on the unrefunded balance over the course of a 12 month refund term. Please see Exhibit A for the details of the Company's proposed calculation and estimated monthly customer refund.

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. NJAWC 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 net regulatory *asset* of over \$2 million. 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)

**NEW JERSEY-AMERICAN WATER COMPANY
CALCULATION OF STUB PERIOD DEFERRAL AND INTEREST**

Interest Rate	January	Annual	Monthly
		1.7339%	0.1445%
	February	1.7841%	0.1487%
	March	2.0647%	0.1721%
	April	2.3466%	0.1956%
	May	2.3224%	0.1935%
	June	2.3500%	0.1958%

SHORELANDS:	<u>Monthly</u>		FIT	Interest bearing	interest	<u>Ending</u> <u>Balance</u>
	<u>Accrual</u>	<u>Balance</u>				
Jan	\$17,163	\$17,163	(\$3,604)	\$13,559	\$20	\$17,183
Feb	\$15,379	32,562	(6,838)	25,724	\$38	32,600
Mar	\$18,931	51,531	(10,821)	40,710	\$70	51,601
Apr	\$0	51,601	(10,836)	40,765	\$80	51,681
May	\$0	51,681	(10,853)	40,828	\$79	51,760
Jun	\$0	51,760	(10,870)	40,890	\$80	51,840
Jul	(\$4,357)	47,483	(9,971)	37,512	\$73	47,556
Aug	(\$4,357)	43,199	(9,072)	34,127	\$67	43,266
Sep	(\$4,357)	38,909	(8,171)	30,738	\$60	38,969
Oct	(\$4,357)	34,613	(7,269)	27,344	\$54	34,667
Nov	(\$4,357)	30,310	(6,365)	23,945	\$47	30,357
Dec	(\$4,357)	26,000	(5,460)	20,540	\$40	26,040
Jan	(\$4,357)	21,683	(4,553)	17,130	\$34	21,717
Feb	(\$4,357)	17,360	(3,646)	13,714	\$27	17,387
Mar	(\$4,357)	13,030	(2,736)	10,294	\$20	13,050
Apr	(\$4,357)	8,694	(1,826)	6,868	\$13	8,707
May	(\$4,357)	4,350	(913)	3,437	\$7	4,357
Jun	(\$4,357)	(0)	0	(0)	\$0	(0)

NJAW Base:	<u>Monthly</u>		FIT	Interest bearing	interest	<u>Ending</u> <u>Balance</u>
	<u>Accrual</u>	<u>Balance</u>				
Jan	\$2,995,418	\$2,995,418	(\$629,038)	\$2,366,380	\$3,419	\$2,998,837
Feb	\$2,848,924	5,847,761	(1,228,030)	4,619,731	\$6,868	5,854,629
Mar	\$2,736,219	8,590,848	(1,804,078)	6,786,770	\$11,677	8,602,525
Apr	\$118,310	8,720,835	(1,831,375)	6,889,460	\$13,472	8,734,307
May	\$121,120	8,855,428	(1,859,640)	6,995,788	\$13,539	8,868,967
Jun	\$60,560	8,929,527	(1,875,201)	7,054,326	\$13,815	8,943,342
Jul	(\$751,631)	8,191,711	(1,720,259)	6,471,452	\$12,673	8,204,384
Aug	(\$751,631)	7,452,752	(1,565,078)	5,887,674	\$11,530	7,464,282
Sep	(\$751,631)	6,712,651	(1,409,657)	5,302,994	\$10,385	6,723,036
Oct	(\$751,631)	5,971,405	(1,253,995)	4,717,410	\$9,238	5,980,643
Nov	(\$751,631)	5,229,011	(1,098,092)	4,130,919	\$8,090	5,237,101
Dec	(\$751,631)	4,485,470	(941,949)	3,543,521	\$6,939	4,492,409
Jan	(\$751,631)	3,740,778	(785,563)	2,955,215	\$5,787	3,746,565
Feb	(\$751,631)	2,994,933	(628,936)	2,365,997	\$4,633	2,999,566
Mar	(\$751,631)	2,247,935	(472,066)	1,775,869	\$3,478	2,251,413
Apr	(\$751,631)	1,499,782	(314,954)	1,184,828	\$2,320	1,502,102
May	(\$751,631)	750,470	(157,599)	592,871	\$1,161	751,631
Jun	(\$751,631)	(0)	0	(0)	\$0	(0)

NJAW DSIC:	<u>Monthly</u> <u>Accrual</u>	<u>Balance</u>	<u>FIT</u>	<u>Interest bearing</u>	<u>Interest</u>	<u>Ending</u> <u>Balance</u>
Jan	\$317,302	\$317,302	(\$66,633)	\$250,669	\$362	\$317,664
Feb	\$307,657	625,322	(131,318)	494,004	\$734	626,056
Mar	\$317,678	943,734	(198,184)	745,550	\$1,283	945,017
Apr	\$0	945,017	(198,454)	746,563	\$1,460	946,477
May	\$0	946,477	(198,760)	747,717	\$1,447	947,924
Jun	\$0	947,924	(199,064)	748,860	\$1,467	949,391
Jul	(\$79,790)	869,601	(182,616)	686,985	\$1,345	870,946
Aug	(\$79,790)	791,156	(166,143)	625,013	\$1,224	792,380
Sep	(\$79,790)	712,589	(149,644)	562,945	\$1,102	713,691
Oct	(\$79,790)	633,901	(133,119)	500,782	\$981	634,882
Nov	(\$79,790)	555,092	(116,569)	438,523	\$859	555,951
Dec	(\$79,790)	476,161	(99,994)	376,167	\$737	476,898
Jan	(\$79,790)	397,107	(83,393)	313,714	\$614	397,721
Feb	(\$79,790)	317,931	(66,766)	251,165	\$492	318,423
Mar	(\$79,790)	238,633	(50,113)	188,520	\$369	239,002
Apr	(\$79,790)	159,212	(33,434)	125,778	\$246	159,458
May	(\$79,790)	79,667	(16,730)	62,937	\$123	79,790
Jun	(\$79,790)	0	0	0	\$0	0

*Interest should be net of tax, as Reg Liability is not part of rate base, and is treated as taxable income for tax purposes.

SHORELANDS:

Customer Group, at 3/31/17	Amount	Source
Metered Water Customers	10,954	Docket WR17090985, SIR-15
Resale/Contract Customers	2	Docket WR17090985, SIR-14, Wkpr. 5, Pages 13a-14
Private Fire Services	134	Docket WR17090985, Exhibit P-2, Schedule 7, Pages 1-7
Private Fire Hydrants	186	Docket WR17090985, Exhibit P-2, Schedule 7, Pages 1-7
Public Fire Hydrants	842	Docket WR17090985, Exhibit P-2, Schedule 8, Pages 1-2
Total customers/connections	12,118	
Total Refund	\$ 52,282	per RCR-NJAWC-A-2a
Refund per customer/connection	\$ 4.31	
Refund per month	\$ 0.36	

NJAW Base:

Customer Group	Amount	Source
Metered Water Customers	612,702	DSIC Semi-Annual Filing #4, Attachment B
Resale/Contract Customers	51	DSIC Semi-Annual Filing #4, Attachment B, plus SOS/Trump Nat'l
Sewer Customers	37,599	Docket WR17090985, SIR-15
Private Fire Services	9,299	Docket WR17090985, Exhibit P-2, Schedule 7, Pages 1-7
Private Fire Hydrants	2,146	Docket WR17090985, Exhibit P-2, Schedule 7, Pages 1-7
Public Fire Hydrants	44,071	Docket WR17090985, Exhibit P-2, Schedule 8, Pages 1-2
Total customers/connections	705,868	
Total Refund	\$ 9,019,576	per RCR-NJAWC-A-2a
Refund per customer/connection	\$ 12.78	
Refund per month	\$ 1.06	

NJAW DSIC:

Customer Group	Amount	Source
Metered Water Customers	612,702	See NJ Base above
Resale/Contract Customers	51	See NJ Base above
Total customers	612,753	
Total Refund	\$ 957,483	per RCR-NJAWC-A-2a
Refund per customer/connection	\$ 1.56	
Refund per month	\$ 0.13	

*For applicable metered water/resale customers, DSIC and NJAW base rate refunds will be combined into a single customer credit.

** Customer/connection counts are as of Base Year End, March 31, 2017, except counts per DSIC Semi-Annual Filing #4, which are as of September 30, 2017.

NEW JERSEY AMERICAN WATER
COMPANY TAX CUTS AND JOBS ACT
OF 2017 ("TCJA") FILING
FOR THE ADJUSTMENTS OF BASE
RATES AND REFUNDS

BPU DOCKET NO. WR18030233

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

BPU Docket No. AX18010001

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except discovery

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