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March 30, 2021

**VIA ELECTRONIC DELIVERY**

Aida Camacho-Welch, Secretary  
State of New Jersey, Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
P.O. Box 350  
Trenton, New Jersey 08625-0350

**Re: I/M/O the Petition of N.J. American Water Co. for Approval of Increased Tariff Rates & Charges For Water & Sewer Service, Changes in Depreciation Rates & Other Tariff Modifications**  
**BPU Docket No. WR17090985**  
**OAL Docket No. PUC 16279-18**

Dear Secretary Camacho:

Please accept this letter as the Division of Rate Counsel's ("Rate Counsel") objection to the Motion of Petitioner New Jersey American Water Company ("NJAWC") to submit a "sur-reply" to Rate Counsel's reply exceptions filed in the above-referenced matter. Because NJAWC's motion presents an insurmountable procedural deficiency, as it is outside the scope of the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 et seq. ("Rules"), NJAWC's motion should be denied.

The Rules govern the procedural aspects of cases before the Office of Administrative Law and the Board of Public Utilities ("Board"). N.J.A.C. 1:14-1.1 ("Any aspect of the hearing

not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1.”). The Rules specifically provide that “this chapter shall govern the procedural aspects pertaining to transmission, the conduct of the hearing and the rendering of the initial and final decisions in all contested cases in the Executive Branch of the State Government.” N.J.A.C. 1:1-1.1(a). The Rules apply both when a case is before the Office of Administrative Law and an Agency Head, such as the Board. Id. Specifically, the rules provide that “[t]his chapter governs the procedure whether the contested case is before the Office of Administrative Law, an agency head or any other administrative agency.” Id.

The Rules provide for the filing of exceptions within thirteen days from the filing of a judge’s Initial Decision, and reply exceptions within five days from the receipt of exceptions. N.J.A.C. 1:1-18.4. The Rules contain no provision for what NJAWC is trying to do here – get another bite of the apple through the filing of a so-called “sur reply.” Indeed, NJAWC’s effort has been tried and rejected before. See El-Hewie v. Bd. of Educ. of Bergen County Vocational School Dist., OAL Dkt. No. EDU 7673-06, Commissioner's Decision (April 10, 2008) (“N.J.A.C. 1:1-18.4 makes no provision for replies to reply exceptions, and thus they were not considered.”) A scan of administrative decisions shows that the Rules are strictly obeyed by the various State agencies. See, e.g., Fitting v. N.J. Dep't of Env'tl. Prot., OAL Dkt. No. ESA 2714-07, 2009 N.J. AGEN LEXIS 753, Final Decision (September 25, 2009) (“Petitioners' exceptions could not be considered where the deadline for filing exceptions with the Department was September 1, 2009, petitioners' exceptions were postmarked two days after the deadline, on September 3, 2009, and were received a week after the deadline, on September 8, 2009.”); see also Alva Muhammad v. Public Service Electric & Gas Co., BPU Dkt. No. EC12040303U; OAL

Dkt. No. PUC 07198-12, 2013 N.J. PUC LEXIS 311, Final Decision (October 16, 2013) (“The N.J. Board of Public Utilities rejected a utility customer's exceptions to the initial decision on the customer's billing dispute with a utility company as issued by an Administrative Law Judge (ALJ) because the exceptions were not filed within the 13-day period following the mailing of the decision as required by N.J.A.C. 1:1-18.4.”)

The case law and the Rules are clear – what NJAWC has done is impermissible. The case law demonstrates that the Rules are to be followed carefully. Yet NJAWC has made a filing that is entirely outside the scope of what is allowed by the Rules. For this reason, NJAWC’s Motion should be denied and its accompanying “sur-reply” rejected.<sup>1</sup>

Respectfully submitted,

STEFANIE A. BRAND  
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By: Christine M. Juarez  
Christine M. Juarez  
Assistant Deputy Rate Counsel

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<sup>1</sup> Because NJAWC’s filing contains an overt procedural deficiency, and should be dismissed on that basis alone, Rate Counsel has chosen not to respond to the substance of NJAWC’s “sur-reply.” This does not mean that Rate Counsel is in agreement with the position advanced by NJAWC.

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