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January 11, 2024

**VIA E-MAIL**

Honorable Sherri Golden, Secretary  
State of New Jersey, Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, New Jersey 08625-0350

**Re: I/M/O THE PETITION OF NEW JERSEY-AMERICAN WATER  
COMPANY, INC. FOR DEFERRAL ACCOUNTING AUTHORITY  
FOR THE COSTS OF IMPLEMENTING THE CLEAN ENERGY  
ACT OF 2018 BENCHMARKING REQUIREMENT  
BPU Docket No.: WF23060346**

Dear Secretary Golden:

Please accept for filing the Division of Rate Counsel's ("Rate Counsel") comments in connection with the above-referenced petition. Thank you for your consideration and attention to this matter.

**Background**

New Jersey-American Water Company, Inc. ("NJAWC" or "Company") is a regulated public utility corporation engaged in the production, treatment and distribution of water and the collection and treatment of wastewater within its defined service territory within the State of New Jersey. Petition at p. 1. The Company's service territory includes portions of the following counties: Atlantic, Bergen, Burlington, Camden, Cape May, Essex, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Union and Warren. NJAWC is regulated by the Board of Public Utilities ("Board") for water and wastewater rate-setting purposes and to ensure safe, adequate water and wastewater service. Id.

On May 23, 2018, Governor Phil Murphy signed the Clean Energy Act of 2018 into law. The Act includes a Benchmark Requirement specifying that:

No later than five years after the date of enactment of P.L.2018, c.17 (C.48:3-87.8 et al.), the board shall require the owner or operator of each commercial building over 25,000 square feet in the State to benchmark energy and water use for the prior calendar year using the United States Environmental Protection Agency's Portfolio Manager tool.

N.J.S.A. 48:3-87.10(b).

On September 7, 2022, The Board issued an Order Approving Energy and Water Benchmarking Program. The Matter Of The Implementation Of P.L. 2018, C.1, Energy And Water Benchmarking Of Commercial Buildings, Docket No. QO21071023 (“Benchmarking Order”). Pursuant to that Order, all regulated water utilities are required to provide usage data to the owners of commercial buildings over 25,000 square feet. Id at pp. 35-6. Beginning on August 2, 2023, for the first Reporting Year 2022, water utilities must provide data access services using a Portfolio Manager Spreadsheet Template. Id at p. 36.

The Board Order directs regulated utilities such as NJAWC to file for cost recovery of the “reasonable and prudent” costs of implementing the Benchmarking Requirement. Benchmarking Order, at p. 38. The Order specifies that these costs may include “establishing, operating, and maintaining data aggregation and data access services” and states that the Board should evaluate these costs in future base rate case proceedings. Id at p. 38.

In the present petition, NJAWC requests Board authority to (1) allow NJAWC to defer accounting authority for the costs of implementing the Benchmarking Requirement and (2) authorize NJAWC to use deferred accounting to track costs for the Board to evaluate in future base rate proceedings. Petition at p. 4. The petition states that these costs include establishing, operating, and maintaining data aggregation and data access services and that these will be reviewed in future base rate proceedings. Id at p. 3.

## **Analysis and Recommendations**

NJAWC requests the Board's authorization to defer certain expenses that have been incurred and are expected to be incurred in the future in connection with implementing the Benchmarking Requirement. Through discovery, NJAWC explained that it is not providing a schedule related to the deferral of costs and will do so in future base rate proceedings. See NJAWC Response to RCR-A-1 and RCR-A-3. Rate Counsel therefore cannot specify which categories of expenses NJAWC proposes to defer. However, the petition and discovery note that these costs will likely include costs for establishing, operating, and maintaining data aggregation and data access services. See Petition at p. 4; see also NJAWC Response to RCR-A-1.

It is Rate Counsel's opinion that NJAWC should be permitted to defer costs for implementing the Benchmarking Requirement to future base rate cases. Rate Counsel does not object to NJAWC's requests subject to the following conditions:

1. All future and prospective costs incurred shall be reviewed in the context of future base rate case proceedings.
2. NJAWC should be required to include schedules and documentation related to the deferred costs to the Benchmarking Requirements.
3. Of the costs requested for recovery, only those the Board deems prudent, reasonable, and known and measurable should be included for ratemaking purposes and recoverable from ratepayers.
4. There should be no guarantee that 100% of those costs the Company defers and includes for recovery will be fully recovered in rates from ratepayers.
5. Any updated information subsequent to this instant filing should be provided to the parties to this proceeding. This information should be coordinated with Board Staff.

With these conditions, Rate Counsel does not object to NJAWC's request for deferred accounting treatment.

Respectfully submitted,

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EL/fjr

cc: Service List *via e-mail*