



Agenda date: 2/28/18  
Agenda Item: 5A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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WATER

IN THE MATTER OF THE NEW JERSEY BOARD	)	ORDER ON EMERGENT MOTION
OF PUBLIC UTILITIES' CONSIDERATION OF	)	
THE TAX CUTS AND JOBS ACT OF 2017	)	DOCKET NO. AX18010001
	)	
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	)	DOCKET NO. WR17090985
PROVISIONS	)	OAL DOCKET NO. PUC 14251-2017S

**Parties of Record:**

- Ira Megdal, Esq.**, on behalf of New Jersey American Water
- Bradford M. Stern, Esq.**, Rothfelder Stern, L.L.C. on behalf of Rutgers, the State University of New Jersey, Princeton University, Johanna Foods, Inc., Phillips 66 Company, and Cogen Technologies Linden Venture, L.P.
- Philip J. Passanante, Esq.**, on behalf of Atlantic City Electric Company
- Mary Patricia Keefe, Esq.**, on behalf of Elizabethtown Gas Company
- Gregory Eisenstark, Esq.**, Windels Marx Lane & Mittendorf, LLP, on behalf of Jersey Central Power and Light Company
- Andrew Dembia, Esq.**, on behalf of New Jersey Natural Gas Company
- Hesser G. McBride, Jr., Esq.**, on behalf of Public Service Electric and Gas Company
- Margaret Comes, Esq.**, on behalf of Rockland Electric Company
- Stacy Mitchell, Esq.**, on behalf of South Jersey Gas Company
- Robert MacLean**, on behalf of New Jersey American Water Company
- Mark McKoy**, on behalf of Suez Water NJ, Inc.
- Mark McKoy**, on behalf of Suez Water Toms River
- Dennis W. Doll**, on behalf of Middlesex Water Company
- John Hildabrant**, AQUA New Jersey, Inc.
- David G. Ern**, Gordon's Corner Water Company
- Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On February 13, 2018, New Jersey American Water Company, Inc. ("Petitioner," "Company," or "NJAWC") filed an emergent motion to consolidate NJAWC's pending rate case<sup>1</sup> with the New Jersey Board of Public Utilities' ("Board") generic Tax Cut proceeding ("Tax Order") concerning the Tax Cuts and Jobs Act of 2017 ("Tax Act")<sup>2</sup> and granting relief from the requirement that NJAWC file tariffs on March 2, 2018, to be effective April 1, 2018.

The Board, at its January 31, 2018 agenda meeting, issued an order commencing a proceeding to examine the impact of the Tax Act to ensure that utility ratepayers in New Jersey receive the appropriate reduction in their utility rates commensurate to the reduction in the maximum federal corporate tax resulting from the Tax Act. The Tax Order requires, as cited in detail below, that utilities immediately account for and defer the effects of the Tax Act effective January 1, 2018; submit to the Board, no later than March 2, 2018, a detailed calculation of the impact of the Tax Act with data supporting a plan to adjust rates on an interim and permanent basis and to refund deferred collected funds with interest to rate payers; and to institute interim tariff rates effective April 1, 2018 to reflect the new 21% maximum corporate tax rate.

Upon release of the Tax Order, NJAWC submitted the present motion requesting that the Board: (i) exempt NJAWC from the requirements set forth in provision number two (2) of the Tax Order requiring that the Company provide the tariff rates reflecting the new tax rate at 21% effective on April 1, 2018; and (ii) consolidate the requirements in the Tax Order into the NJAWC pending base rate case.

**BACKGROUND**

The Tax Act was signed into law on December 22, 2017, with an effective date of January 1, 2018. The Tax Act sets forth changes to the federal Internal Revenue Code ("Tax Code") including a reduction in the maximum corporate tax rate from thirty-five percent (35%) to twenty-one percent (21%).

Based upon the Board's review of the 2017 Act, these changes to the Tax Code will result in an over-collection of tax revenue by the New Jersey public utilities. When the Board sets rates in base rate cases, utilities are permitted to gross up their revenue requirement based on the corporate tax rate. As such, the utilities' current rates do not reflect the new tax rate of 21%, but rather the previous 35%. To ensure that ratepayers receive the appropriate benefit from the reduction in federal tax rates, it is necessary for rates to be adjusted to reflect the effective federal corporate tax rate.

On January 31, 2018, the Board issued the Tax Order which directed all New Jersey public utilities with revenues in excess of \$4.5 million to defer with interest the effects of the Tax Act, specifically the difference between a tax rate of 35% and 21%. Utilities are also required under the order to submit a mechanism by which the deferrals will be returned to ratepayers. In

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<sup>1</sup> In the Matter of the Petition of New Jersey-American Water Company, Inc. for Approval of Increased Tariff Rates and Charges for Water and Sewer Service, Change in Depreciation Rates and Other Tariff Modifications, Docket No. WR17090985, OAL Docket No. PUC 14251-2017S.

<sup>2</sup> In the Matter of The New Jersey Board of Public Utilities' Consideration of the Tax Cuts and Jobs Act of 2017, Docket No. AX18010001.

addition, the Tax Order requires each utility to submit a petition for new tariff rates by March 2, 2018, effective on an interim basis on April 1, 2018. Public utilities must also submit to the Board, no later than March 2, 2018, a Petition with detailed calculations of the effects of the Tax Act. These calculations shall include, among other things, the impacts resulting from the 2017 Act, the proposed treatment of said changes, the underlying calculations on tax reductions, expense and interest deductions, contribution/advances in aid for construction, depreciation, excess accumulated differed taxes, investment tax credits, alternative minimum tax and other elements of the rate affected by the changes in the 2017 Tax Act.

In sum, the Tax Order requires utilities to: 1) immediately defer the tax rate change from 35% to 21% beginning in January 1, 2018; 2) propose interim rates by March 2, 2018 that will go into effect April 1, 2018 to reflect the Tax Act changes; and 3) provide detailed workpapers showing the requested calculations to support the final adoption of the interim rates. After a period of discovery and comments from stakeholders, the Board will determine the appropriate adjustment of rates commensurate to the Tax Act and will approve the appropriate mechanism by which deferred funds will be refunded.

The Board anticipates that the effective date for final rates resulting from this proceeding will be July 1, 2018, for utilities that do not have a pending base rate case and by December 31, 2018, for all utilities.

The swift action by the Board is designed to protect ratepayers by halting the over-collection of tax revenue expeditiously while allowing for a fair process for stakeholders and interveners to examine the veracity of the utilities' petitions.

### **New Jersey American Water's Motion**

NJAWC filed a base rate case on September 14, 2017, which is currently pending at the Office of Administrative Law. NJAWC is seeking an increase in rates, to be implemented as early as July 1, 2018. In response to the Tax Order, NJAWC filed a Notice of Emergent Motion on February 13, 2018, requesting that the Board:

- 1) Grant relief from the requirement that NJAWC must file by March 2, 2018, reduced rates to be effective April 1, 2018; and
- 2) Consolidate NJAWC's base rate case with the BPU's generic tax proceeding, to the extent this generic tax proceeding pertains to NJAWC.

NJAWC argues that complying with the Tax Order will result in an immediate rate decrease while NJAWC anticipates a rate increase at the conclusion of its base rate case. NJAWC argues that their customers will be harmed if they comply with the Tax Order because the rate decrease pursuant to the Tax Order followed by a potential rate increase at the conclusion of the NJAWC pending base rate case may create a "yo-yo effect" [that] would be confusing to customers, would impede the ability of customers to properly budget and could result in substantial confusion." (Motion at 2.)

NJAWC submits that its customers would be better served if NJAWC is exempt from the Tax Order because its customers may be confused if their rates decrease soon and potentially increase later.

### **Opposition to New Jersey American Water's Motion**

A coalition of significant NJAWC customers identified as the OIW Customer Coalition ("OIW") including Rutgers, The State University of New Jersey, Princeton University, Johanna Foods, Inc., Phillips 66 Company, and Cogen Technologies Linden Venture, L.P., submitted their opposition to NJAWC's motion on February 20, 2018. The members of the OIW Customer Coalition are customers of NJAWC and seek to enjoy the near-term benefits of reduced rates on an interim basis, as the Board's Tax Order contemplates, rather than waiting until NJAWC's base rate case is completed. The OIW Customer Coalition argues that the Company's possible "yo-yo" fluctuation of rates is speculative at best and should not be used as a basis to defer rate relief for the company's customers immediately.

The New Jersey Division of Rate Counsel ("Rate Counsel"), on February 23, 2018, filed its response to the NJAWC motion stating that it opposed NJAWC's request to be relieved from filing tariffs reflecting rate decreases required by the Tax Order for several reasons. Rate Counsel stated that it did not share the Company's concern regarding the potential customer confusion resulting from a rate decrease on April 1, 2018 followed by a potential base rate increase several months later. Rate Counsel noted that water, electric and natural gas customers experience periodic rate changes through clause type adjustments such as the Distribution System Improvement Clause ("DSIC"), Basic Gas Supply Service, Basic Generation Service, and the Purchased Water Adjustment Clause, among others. Rate Counsel noted the Company's DSIC changes every six months and alleged that the Company recently supported a proposed regulation regarding provisional rates that will involve frequent rate changes. Rate Counsel went on to state that the Company's belief that the base rate case will reach a settlement by June was highly speculative and further stated that the final resolution of the base rate case may not result in a substantial rate increase or any increase at all. Rate Counsel further asserted that the Board should not deny ratepayers a timely rate reduction to which they are entitled based on the Company's hopeful assumption of a quick settlement of the base rate case. Rate Counsel further argued that the Company's motion to be relieved of the obligation to implement new rates effective April 1, 2018 contradicts the Board's intent in the Tax Order, which, Rate Counsel argued, was to apply the lower tax rate resulting from the Tax Act as quickly as possible. Finally, Rate Counsel argued that the tax refunds associated with the Tax Act should not be subject to the give and take of settlement negotiations in a base rate case.

### **New Jersey American Water's Reply**

On February 26, 2018, NJAWC filed a letter in reply to Rate Counsel's opposition. In its reply, NJAWC stressed that it intends to return the benefits arising from the Tax Act to its customers, but asserted that it seeks to do so in the most efficient way possible. It argued that, if it were forced to comply with the Board's Tax Order, the eventual rate increase would be even greater than it would have been absent an April 1, 2018 rate decrease. In response to Rate Counsel, the Company also argued that while changes in the DSIC do account for periodic rate increases or decreases, those changes are on a predictable cycle and do not cause sharp rate decreases followed by sharp rate increases, what the Company describes as a "yo-yo" effect. The Company again asserted that it is most logical and beneficial for customers to allow the Company to address the requirements of the Tax Order in its pending base rate case.

## **DISCUSSION AND FINDINGS**

The Board, after careful consideration of the NJAWC motion seeking to be exempt from the requirements set forth in provision (2) of the Board's Tax Order regarding tariff filings on April 1, 2018, **HEREBY FINDS** as follows:

The relief sought by the Petitioner in its motion is based upon speculation concerning "rate volatility" and the impact of the tax adjustments resulting from the recently enacted Tax Act and the Board's responsive Tax Order. The anticipated confusion discussed in NJAWC's motion is unsupported by sufficient facts and therefore does not provide an adequate basis upon which the Board can act to grant the Petitioner's plea for relief from the provisions of the Board's Tax Order. The Tax Order was crafted to swiftly address the positive benefits of the Tax Act for New Jersey's utility consumers. It therefore is unreasonable for the Board to grant the relief sought absent adequate support.

Further, it would be inconsistent with the intent of the Board's Tax Order for NJAWC customers to continue to pay for NJAWC's federal taxes at a 35% rate while NJAWC enjoys the benefit of the reduced tax rate of 21%. The Board developed and approved the Tax Order to strike a balance between the interest of the ratepayers to cease overpaying as quickly as possible and the interest of the utilities to have the ability to submit a plan, refund and amend rates in a manner that suits each utility best.

Accordingly, the Board **HEREBY DENIES** the motion for relief from provision (2) of the Board's Tax Order and **HEREBY DIRECTS** the Company to file the requisite tariffs on April 1, 2018.

Although NJAWC references no particular legal basis or provision of the New Jersey Administrative Code for its motion to consolidate, on NJAWC's motion to consolidate the base rate proceeding cited above with the generic tax cut proceeding outlined in the Board's Tax Order, the Board is guided by the principles set forth in N.J.A.C. 1:1-17.3 which states, in sum, upon a motion to consolidate, the following factors are to be considered:

1. The identity of parties in each of the matters;
2. The nature of all the questions of fact and law respectively involved;
3. To the extent that common questions of fact and law are involved, the saving in time, expense, duplication and inconsistency which will be realized from hearing the matters together and whether such issues can be thoroughly, competently, and fully tried and adjudicated together with and as a constituent part of all other issues in the two cases;
4. To the extent that dissimilar questions of fact or law are present, the danger of confusion, delay or undue prejudice to any party;
5. The advisability generally of disposing of all aspects of the controversy in a single proceeding; and

6. Other matters appropriate to a prompt and fair resolution of the issues, including whether a case still pending in an agency is contested or is ripe to be declared contested.

[N.J.A.C. 1:1-17.3(a).]

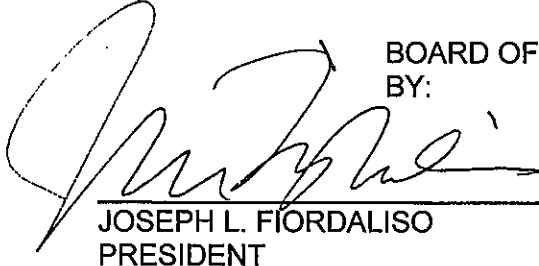
The Base Rate Case is currently pending before an Administrative Law Judge at the Office of Administrative Law. The generic Tax case is currently pending before the Board and applies to various utilities, some of which are essentially dissimilar to NJAWC in their tax structure and other respects. Nonetheless, the Board notes that the Tax Act has the potential of creating additional federal income tax issues beyond the tax rate change. Any potential federal income tax issue created by the Tax Act may need to be explored within the context of the base rate case. Thus based upon the foregoing, in the interest of efficiency and expediency, consistent with the Board's rules and regulations, and the overall issues being addressed in the base rate case to determine the justness and reasonableness of the rates, the Board expects the Tax Act and the Board's Tax Order to be considered therein.

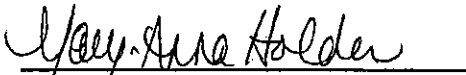
Therefore, the Board **HEREBY DENIES** NJAWC's motion to consolidate NJAWC's rate base proceeding with the Board's generic tax cut proceeding and **HEREBY DIRECTS** NJAWC to comply with the Tax Order requirements.

The Board **HEREBY DIRECTS** that this Order be posted on the Board website and a copy of the Order be circulated to the service list electronically.


This Order shall be effective on February 28, 2018.

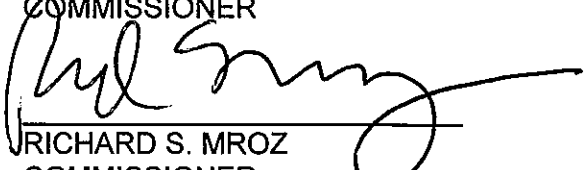
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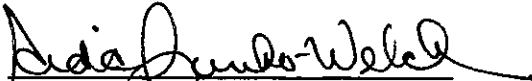
  
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ATTEST:   
AIDA CAMACHO-WELCH  
SECRETARY

**Docket No. AX18010001 – In the Matter of the New Jersey Board of Public Utilities’  
Consideration of the Tax Cuts and Jobs Act of 2017; and**

**Docket Nos. BPU WR17090985 and OAL PUC 14251-2017S – In the Matter of the Petition  
of New Jersey-American Water Company, Inc. for Approval of Increased Tariff Rates and  
Charges for Water and Sewer Service, Change in Depreciation Rates, and Other Tariff  
Modifications**

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