NEW JERSEY
AMERICAN WATER

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VIA HAND DELIVERY AND E-MAIL
Board of Public Utilities
Kristi Izzo, Secretary
44 South Clinton Avenue
9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

Re: ***In the Matter of the Board's Review of the Applicability and Calculation of a Consolidated Tax Adjustment*, Docket No. EO12121072**

Dear Secretary Izzo:

New Jersey American Water Company ("NJAW" or "the Company") hereby provides this response to the questions in the "Notice of Opportunity to Comment" dated March 6, 2013 in the above referenced docket. An additional ten copies of this letter are enclosed. An electronic copy of these comments has also been provided to rule.comments@bpu.nj.state.us

NJAW deeply appreciates the willingness of the New Jersey Board of Public Utilities' ("BPU" or "the Board") to examine this issue anew. We take that willingness both as recognition that the Consolidated Tax Adjustment ("CTA") may no longer be a valid ratemaking tool and an invitation to the parties to be candid and fully forthcoming in stating their views on the matter. For NJAW, this is an issue of critical importance because the CTA eliminates hundreds of millions of dollars of rate base – thus wiping out investment at a time when investment in infrastructure is critical to our State, our customers, and our Company. The Company looks forward to working with the Board and the other parties to achieve an appropriate resolution of the CTA.

1. **Please explain your company or organization's position on whether the Board should utilize Consolidated Tax Adjustment (CTA).**

   RESPONSE: NJAW does not believe that the Board should use a CTA in the rate setting process. The Company believes that Board should abandon the rate base deduction currently in use, because, although adopted in the past with the best of intentions, it has become an adjustment that violates sound ratemaking tenets and produces severely adverse consequences for utilities that need to attract capital for necessary infrastructure improvements. As it is now applied in New Jersey, the CTA has become a very large rate base deduction that looks back to 1991, taking into account the losses of all of the companies that were ever included in the consolidated tax filing group of which the regulated utility has ever been a part from 1991 to the present.

The following example is offered as an illustration of how the New Jersey rate base adjustment works. If the annual taxable earnings of a company in the consolidated tax filing group from 1991 to the present adds up to a net taxable gain, it is grouped with all other "net taxable gain companies" and the annual net taxable gains of those companies for the entire period from 1991 to the present is aggregated. (*NJ CTA Illustration* - no. 1) If the annual taxable earnings of a company in the consolidated tax filing group from 1991 to the present adds up to a net taxable loss, it is grouped with all other "net taxable loss companies" and the annual net taxable losses of those companies for the entire period from 1991 to the present is aggregated. (*NJ CTA Illustration* - no. 2) Once that net taxable loss companies' aggregated loss number is obtained, it is multiplied by the applicable federal income tax rate of 35%. (*NJ CTA Illustration* - no. 3) The result is then considered to be the claimed aggregate "benefit" obtained by filing a federal income tax return on a consolidated basis. (*NJ CTA Illustration* - no. 4) That claimed "benefit" is then allocated to the "net taxable gain companies" based on each company's percentage of the total net taxable gain over the period. (NJ CTA Illustration - no. 5) Once that allocation has been made to the New Jersey utility company (or companies) participating in the filing group (*NJ CTA Illustration* - no. 6), a rate base deduction is made of the total amount. (*NJ CTA Illustration* - no. 7) The deduction to the utility's rate base is made on the theory that the losses used by the consolidated group to reduce its federal income tax payment represents a cost free use of cash when rates are set for the New Jersey jurisdictional utility on a stand-alone federal income tax expense basis.

[See table on next page]

New Jersey CTA Illustration

1. Aggregated "net taxable gain companies" (companies with an aggregate annual net taxable gain from years 1991 to present)	$2,000,000,000
2. Aggregated "net taxable loss companies" (companies with an aggregate annual net taxable loss from years 1991 to present)	$1,000,000,000
3. Federal income tax rate (currently 35%)	x 0.35
4. Assumed "benefit" from filing consolidated return using losses	$350,000,000
5. NJ jurisdictional utility aggregated net taxable gain as a percentage of all "net taxable gain companies" (assumed 30%)	x 0.30
6. Imputed consolidated tax "benefit" to NJ jurisdictional utility	$105,000,000
7. Rate base deduction from NJ jurisdictional utility	**$105,000,000**

This backward looking methodology has a number of unfortunate features - not the least of which is that the adjustment grows ever larger, consuming more and more of a utility's rate base as the years go by and the adjustment mounts up. At the same time, the numerous infirmities of the adjustment have become ever more manifest over time.

First, the cumulative nature and sheer size of the adjustment alone brings it into question. In the initial application of the CTA over 22 years ago, the adjustments were relatively small, both in overall amount and as a percentage of rate base that was lost. Since then, however, the CTA calculations have grown ever larger with no end in sight. For example, in a 1992 Atlantic City Electric Company case, the Board ordered a rate base adjustment of $15.4

million.[1] In contrast, the adjustment proposed by Rate Counsel's witness in the recently concluded Atlantic City Electric Company case was approximately $386 million, more than 43% of the company's rate base. Staff, while expressing serious concerns about the impact of the proposed CTA in the case (see the discussion below), nevertheless proposed a CTA of approximately $137 million, or just under 15 percent of that company's rate base.[2] In NJAW's last rate case, the adjustment proposed by Rate Counsel's witness was equally draconian. The rate base deduction proposed by Rate Counsel in the Company's last rate case was $197,578,040, claiming that this was the accumulated consolidated income tax savings through December 31, 2010.[3] This adjustment was more than ten percent of the Company's stipulated rate base of $1.92 billion in that case. We simply do not believe that the Board could have expected or intended the punitive result of an adjustment that would obliterate such a significant portion of a utility's rate base when it first instituted the CTA as a modest rate base deduction.

Second, not only is the adjustment unreasonably large and growing, but for certain "net taxable loss companies" it never goes away. In NJAW's last rate case, for example, the adjustment Rate Counsel reflected many companies that either have discontinued operations or have been divested by American Water and therefore, are no longer affiliates of NJAW.[4] These "net taxable loss companies" had, in the aggregate, significant losses over the period in question – losses that will never be eliminated from the CTA "net taxable loss companies" calculations because those losses are locked into the calculation forever.[5]

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[1] *In re the Petition of Atlantic City Electric Company for Approval of Amendments to its Tariff to Provide for an Increase in Rates and Charges for Electric Service, Phase II*, Docket No. ER90091090J, (Order dated October 20, 1992).

[2] *In the Matter of the Petition of Atlantic City Electric Company for Approval of Amendments to Its Tariff to Provide for an Increase in Rates and Charges for Electric Service Pursuant to N.J.S.A.48:2-21 and N.J.S.A. 48:21.1 and for Other Appropriate Relief,* BPU Docket No. ER11080469.

[3] *In the Matter of the Petition of New Jersey American Water Company for Approval of Amendments to Its Tariff to Provide for an Increase in Rates and Charges for Water Service,* BPU Docket No. WR11070460.

[4] The divested loss companies, dissolved loss companies, and discontinued operations include, among others, Arizona American Water, New Mexico American Water, Ohio American Water and Texas American Water, American Water Industrial Operations, Inc., American Water Residuals Management, Inc., Applied Wastewater Services, Inc , Applied Water Management of Delaware, Inc, Azurix Group, Dittman-Merka Enterprises, Inc, The F.B.Leopold, Company, Inc , Hydro-Aerobics, Inc., Mag-Con, Inc., Thames Water Holdings, Inc., Thames Water Aqua US Holdings, Inc., UESG Holdings, Inc., U-Liner Mid-American, Inc., Utility Management and Engineering, Inc., and Thames Water North America, Inc.

[5] As the Board's Staff has noted, this fact belies the belief expressed by the BPU in the 1992 Atlantic City Electric order that the adjustment would "turn around" when, and if, the unregulated subsidiaries became profitable:

> The present Board method calls for the rate base deduction to reflect tax periods dating back to 1991. An early Board decision on this issue indicated that it seemed reasonable to presume that the "loss affiliates" would "turn around" in a few years and become profitable (1992 Atlantic City Electric Order at 6). This presumption seemed reasonable at the time, in the early 1990's, since it was assumed that the non-jurisdictional affiliates were start-up companies that would either turn profitable in a few years or cease to exist. This has not been the case.

Third, the CTA produces very large deductions from rate base that have little or no relationship to the actual current and future tax situation of NJAW Water. By doing so, it establishes intergenerational inequities, subsidizing current customers' consumption based on transactions that arose before some of those customers were even born. If, as the 1993 JCP&L Order cited in the Rockland Electric case claims, "[t]he rate base approach properly compensates ratepayers for the time value of money that is essentially lent cost-free to the holding companies *in the form of tax advantages used currently*," (emphasis supplied) then an adjustment going back to 1991 captures companies and economic conditions that have no bearing on the period for which rates are being set. As noted above, many of the net taxable loss companies – with losses that significantly increase the CTA – either have been sold off or shut down and have nothing to do with today's American Water. Nevertheless, these divested companies and discontinued operations will forever influence the CTA as it currently is calculated. An adjustment going back to 1991 that never eliminates divested or discontinued "net taxable loss companies" does not accurately reflect "tax advantages used currently."

Fourth, the adjustment does not satisfy the forward looking approach that ratemaking demands. Ratemaking is a legislative function that, by definition, sets rates for a future period. As the New Jersey Supreme Court has observed: "ratemaking is a legislative and not a judicial function [and b]y its nature legislative action operates prospectively and not retroactively*.*" *In re Petition of Elizabethtown Water Co. etc.*, 107 N.J. 440, 452 (1987) (citations omitted). Citing *Elizabethtown Water*, the Board has recognized that "retroactive ratemaking is not permitted by the Board's enabling legislation and supporting case law." Docket No. GO12030255, *New Jersey Natural Gas Company,* 2012 N.J. PUC LEXIS 296; 301 P.U.R.4th 519 (October 23, 2012). The New Jersey CTA, however, is a retroactive adjustment that has nothing to do with a utility's future tax situation or even that of its affiliates. As mentioned above, the adjustment takes into account the loss situation of various affiliates going back to 1991; reflecting as it does, companies that no longer exist; that were, or are, owned by others; and that bear no relationship, at all, to the tax situation that might exist in the period for which rates are being set. As such, the CTA does not measure tax expense for the future, as it must under the law, but seeks to recover for customers alleged "benefits" going back to 1991. While some level of historical activity is permitted to be used as a proxy for a future expense level, no stretch of logic would permit looking back to 1991 to set rates for 2013 and beyond.

Fifth, the CTA adjustment inequitably commingles the results of jurisdictional and non-jurisdictional operations. The CTA considers historical tax losses of both regulated and non-regulated subsidiaries even though New Jersey customers never paid to support those

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In the Matter of the Petition of Atlantic City Electric Company for Approval of Amendments to Its Tariff to Provide for an Increase in Rates and Charges for Electric Service Pursuant to N.J.S.A.48:2-21 and N.J.S.A. 48:21.1 and for Other Appropriate Relief, BPU Docket No. ER11080469. (Board Staff Brief, page 39).

companies. If New Jersey ratepayers have supported a given expense, they should reap the benefit of the tax deductions associated with that expense. If they do not support those investments or expenses, they are not entitled to claim the tax deductions associated with those investments or expenses. Attributing some of those tax benefits to the jurisdictional utility commingles the results of regulated and non-regulated operations. This contradicts another basic principle of utility rate making. Moreover, the commingling is done in a lopsided manner. The utility is credited with a share of the tax benefits if a non-utility operation or non-jurisdictional regulated utility suffered losses, but it is not be allowed to show as a recoverable expense any of the losses on which the lower taxes were based; nor is the NJ utility charged with a share of the tax expense if the non-utility operation or non-jurisdictional regulated utility has a taxable gain. This is an improper subsidization of jurisdictional utility customers by non-jurisdictional companies and customers.[6] Further, to the extent that the adjustment takes into account the losses of non-jurisdictional regulated utilities, it improperly intrudes upon the regulatory jurisdiction of sister regulatory commissions. The Board would not want to have New Jersey tax benefits captured for the ratepayers of other states, and it should not be setting rates in New Jersey based on tax losses of other regulatory jurisdictions. Moreover, to the extent that the Board confers on New Jersey ratepayers tax benefits that regulators in other jurisdictions have used to set rates for their consumers, an inequitable double count of those same tax benefits has been created.

Sixth, the claim that the cumulative losses over the last 22 years since 1991 represent an interest free loan from ratepayers to the utility that requires a rate base deduction to compensate those ratepayers is a fiction that is mistaken for several reasons:

(a) Federal Income Tax Expense is just that – an expense. Rate base is for capital items, and it is not proper ratemaking to treat an expense as a rate base item unless to compensate for timing differences. No such timing differences exist here.

(b) The CTA's implicit assumption (repeated in the 2004 *Rockland Electric* case) that it reflects an interest free loan from ratepayers to the holding company rests on the notion that there has been a precise measurement of federal income tax expense that the utility collected from customers which it did not pay. The CTA does not show that. Rather it simply shows net taxable gain and loss companies over a 22 year period and applies a tax rate to the loss companies. Thus the requisite precision and matching is missing from the adjustment.

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[6] By imposing a CTA and forcing a diversified utility to subsidize New Jersey utility customers' consumption, the Board also is placing the diversified utility at a competitive disadvantage. This diminishes the attractiveness of investment in diversified public utilities to a much greater extent than it affects the investment in undiversified utilities. This inconsistent treatment poisons one of the main benefits companies derive from filing consolidated corporate tax returns, impairing the current ability of consolidated returns to mitigate tax biases against investment.

(c) The 1993 *JCP&L* Order, cited in the *Rockland Electric* case claims that "[t]he rate base approach properly compensates ratepayers for the time value of money that is essentially lent cost-free to the holding companies in the form of tax advantages used currently." That, however, is demonstrably not the case. A calculation of earnings and losses back to 1991 has nothing to do with "tax advantages used currently" and, in fact, as shown above distorts and misstates any current tax advantages, as the adjustment is a backward looking calculation that employs stale data and defunct companies. Consequently, it is improper to employ that fiction to reduce a company's rate base. There is no "loan" – cost free or otherwise - being advanced to the Company or its parent.

(d) In the case of tax timing for accelerated depreciation, once the crossover point is reached, rate base begins to be restored and ultimately the rate base deduction is eliminated. No such timing differences exist here. Any attempt to defend the New Jersey CTA by drawing an analogy to a rate base adjustment that is permitted under the normalization requirements for the timing difference between straight-line and accelerated depreciation would be inappropriate; it should be realized that the two cases are fundamentally different. A utility's depreciation allowances arise as a result of its own operations; they involve only the utility and no other businesses. The source of consolidated tax savings is exactly opposite to this. They originate in losses occurring in non-utility businesses and non-jurisdictional utility businesses; the losses have nothing whatsoever to do with New Jersey utility operations. Thus, a supposedly analogous case (deferred taxes) is not analogous at all.

For all the above reasons, the use of a rate base deduction to reflect the utility's tax expense is not appropriate ratemaking.

Finally, no more telling indictment can be found of the current CTA than the fact that the adjustment produces such large and unreasonable results that even the Board Staff has recommended it no longer be fully applied in its complete form. One such example can be seen in the recent *Atlantic City Electric Company* case,[7] where Board Staff implicitly conceded that the CTA cannot be rational ratemaking and made the following observations that demonstrate some of the deleterious effects of the current CTA:

- "Staff believes that the application of consolidated Tax Savings Adjustment proposed by Rate Counsel would produce financial results inconsistent with sound financial management policy and could ultimately produce higher costs to ratepayers, as a result of investor's reluctance to supply capital to New Jersey-based utilities on reasonable terms." (pages 35-36).

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[7] *In the Matter of the Petition of Atlantic City Electric Company for Approval of Amendments to Its Tariff to Provide for an Increase in Rates and Charges for Electric Service Pursuant to N.J.S.A.48:2-21 and N.J.S.A. 48:21.1 and for Other Appropriate Relief, BPU Docket No. ER11080469.*

- "The end result of Rate Counsel's Consolidated Tax Savings Adjustment in this case could be lower stock prices, lower credit ratings, higher capital costs and damage to investors' view of the Board. This could result in ratepayers ultimately paying higher rates for utility service." (page 36).
- "Rate Counsel's proposed Consolidated Tax Adjustment would result in ACE shareholders earning a rate of return on equity of below 2 percent - a rate below the embedded cost of debt and below that which is available on much less risky investments. A rate of return on equity of less than 2 percent could not be considered as within a "zone of reasonableness." (page 36)
- "The end result of Rate Counsel's Consolidated Tax Savings Adjustment in this case could be lower stock prices, lower credit ratings, higher capital costs and damage to investors' view of the Board. This could result in ratepayers' ultimately paying higher rates for utility service." (page 36)
- "The investment community would be shocked given the magnitude of the proposed ACE Consolidated Tax Adjustment…Although Rate Counsel has applied the Board approved methodology, its application to the tax situation which exists with ACE and its parent company, PHI, produces results which may not be considered fair. Other things remaining equal, the price of the parent company's stock would be expected to decline as result of the Consolidated Tax Adjustment in this case." (page 37).
- "In addition to the deleterious impact on shareholder value, bond investors and ratepayers would be impacted as a result of the likely credit rating downgrade." (page 37).
- "In addition, because of the magnitude of the adjustment for Consolidated Income Taxes, the investment community could downgrade New Jersey's investment climate as it pertains to utilities as well as their perception of the quality of regulation in New Jersey. Such an outcome would not be in the public interest." (pages 37-38).

Plainly, as Board Staff recognizes, the current CTA has become untenable. It is axiomatic that, if an adjustment cannot logically be applied as its proponents intend because the consequences would be too dire, then it should not be applied, at all. Therefore, whatever course the Board resolves to take in this investigation, it should be clear that the existing CTA's rate base-reducing effect is no longer an appropriate ratemaking tool and must be abandoned. No other course can be supported given the facts discussed above.

Although NJAW recognizes that the use of a CTA has a long history in New Jersey and that the courts have sanctioned the Board's recognition of consolidated tax savings in the past, the Company does not support the continuation of a CTA in rate setting proceedings. The Company is cognizant of the fact that New Jersey is now one of the few states that continue to apply a CTA in the rate setting process. As NJAW reads the cases discussing the CTA, the Company is of the firm opinion that the Board requires only a rational basis to depart from its current CTA method or to reject a CTA entirely. We believe that the facts discussed above provide an ample rationale for the Board to discontinue the current methodology. Furthermore, as will be shown in the following section, New Jersey utility customers are entitled to pay rates that contain tax consequences of actions that bear an economic nexus to the service they are being provided. This means that customers should get the benefits associated with the risks and utility property they are asked to support - no more and no less. Therefore, given that the optimal ratemaking approach to consolidated taxes is to recognize the tax liability of the utility on a stand-alone basis and given that most states no longer impose a CTA, there is a rational basis for the Board to reject the use of a CTA in its entirety.

2. **If the Board continues the use of CTA, please describe and detail what changes to CTA methodology, if any, should be adopted by the Board.**

RESPONSE: As stated in response to Question 1, NJAW's position is that the current CTA is manifestly inappropriate, and its use should be discontinued. The Company further believes that the fact that most other state utility regulatory commissions eschew the CTA should not be ignored or simply be dismissed out of hand. As the Board is well aware, the other states are just as vigilant in protecting their utility consumers as is the Board. Utility rates in those jurisdictions are not adversely affected because those commissions refuse to use a CTA. The Board has an ample and rational basis to reject the use of the existing CTA as being fatally flawed. And, finally, the Board has a rational basis to reject any CTA and place New Jersey among the majority of jurisdictions that base the federal income tax component of rates upon the costs and investments of the in-state utility.

If the Board does choose to reject the modern trend of basing rates on the tax consequences of the utility alone, NJAW hopes the Board will consider the following:

- Federal Income Tax Expense is an expense item. Consequently, any consideration of consolidated taxes should not be based on reducing rate base.
- The time frame over which any adjustment should be considered and calculated should be finite, and no hypothetical tax loss should be included in the calculation.
- Any adjustment must exclude divested loss companies, dissolved loss companies, and discontinued operations (e.g., those transferred outside the consolidated group, merged or liquidated entities) from any calculation.
- Any such adjustment must exclude utility operations regulated by other regulatory commissions outside of New Jersey.
- Any such adjustment must exclude non-regulated subsidiaries if New Jersey utility customers never paid to support those companies operations.
- If the Board continues to believe that some recognition of consolidated tax is warranted, it must allow companies to propose rational alternative methods for the adjustment.

- Furthermore, the Board should consider any proposed adjustment in conjunction with other tax or economic policies (such as bonus or accelerated depreciation elections) to avoid punitive or unreasonable rate case decisions. For example, an adjustment should not be used to offset tax incentives designed to spur investment and stimulate the economy, such as accelerated or bonus depreciation or the repair election.

- Finally, the Board should be cognizant of the impact an adjustment may have on the allocation of discretionary capital among jurisdictional and non-jurisdictional regulated utility affiliates.

Ultimately, NJAW believes that the Board should adopt the test adopted by FERC. Docket No. RP75-106-006 (Consolidated Taxes) *Columbia Gulf Transmission Company*, 23 F.E.R.C. P61, 396, *; 1983 FERC LEXIS 2737, **; 54 P.U.R.4th 31 (June 22, 1983).[8] In that case, the FERC observed that "[t]axes are no different from other expenses included in the cost of service. So there should be no difference between the principles used to determine the tax allowance and the allowances for other expenses." [*61,851] The FERC then distilled its inquiry to a simple test:

> Our stand-alone method is different. It does not ignore the consolidated return or the tax reducing benefits the group realizes by filing such a return. Unlike a separate [*61,853] return policy, our stand-alone policy in effect looks beneath the single consolidated tax liability and analyzes each of the deductions used to reduce the group's tax liability to determine the deductions for which each service is responsible. It then allocates to the jurisdictional service those deductions which were generated by expenses incurred in providing that service. In making this allocation it is irrelevant on which member's return the deductions would be reported if the group filed separate returns. Instead, the test is whether the expenses that generate the deduction are used to determine the jurisdictional service's rates. Put more simply, the test is whether the expenses are included in the relevant cost of service. If they are, the associated deductions and their tax reducing benefits will be taken into account in calculating the tax allowance for that cost of service. If the expenses are not, the deductions will not be taken into account. In this way the tax allowance will reflect the profit the ratepayers contribute to the group's consolidated taxable income.

[8] It is more than ironic that the 2004 *Rockland Electric* order cited *Lambertville Water Company v. New Jersey Bd. of Public Utility Com'rs*, 153 N.J. Super. 24, 28 (App. Div. 1977), reversed on other grounds, 79 N.J. 449 (1979) for authority to impose the CTA. The *Rockland Electric* order recognizes explicitly that *Lambertville* cited *FPC v. United Gas Pipe Line Co.*, 386 U.S. 237, 87 S.Ct. 1003, 18 L.Ed.2d 18 (1967)). *United* upheld the discretion of FERC's predecessor, the FPC, to impose a CTA. FERC, however, has since rejected the use of a CTA as being inconsistent with proper cost allocation.

23 F.E.R.C. P61, 396, 60-61 (F.E.R.C. 1983).

NJAW believes that the Board would be best served were it to follow the simple test announced by the FERC. In short, if New Jersey ratepayers are expected to support a given expense, they should reap the benefit of the tax deductions associated with that expense. If they do not, they are not entitled to claim the tax benefits. Ultimately, the utility must stand on its own costs and any discussion of consolidated tax benefits, actual taxes paid or "phantom" taxes simply evades that critical point.

3. **Please calculate a CTA for your company utilizing the current Board methodology set forth in the Board's April 20, 2004 order, *I/M/O the Verified Petition of Rockland Electric Company for the Recovery of its Deferred Balances and the establishment of Non-Delivery Rates Effective August 1, 2003 and I/M/O the Verified Petition of Rockland Electric Company for Approval of Changes in Electric Rate, its Tariff for Electric Service, its Depreciation Rates, and for Other Relief, BPU Docket Nos. ER02080614 and ER02100724.***

   RESPONSE: The above mentioned *Rockland Electric* order does not mandate the use of or provide a clear methodology for a CTA calculation. A reasonable sense of the impact of the CTA can be observed by referring to the testimony filed by Rate Counsel's witness Ms. Andrea Crane in the Company's last rate case. See Docket No. WR11070460; Direct Testimony of Andrea C. Crane, filed January 13, 2012. Given that the case was decided less than a year ago, the size and scope of Rate Counsel's proposed adjustment is based on reasonably current information. As noted previously, according to Ms. Crane's testimony Rate Counsel would reduce NJAW's rate base by $197,578,040, resulting in a lower revenue requirement of $24.37 million, (assuming the cost of capital recommended by Rate Counsel in that case) for its CTA. For the reasons noted in the responses to Questions 1 and 2 above, however, NJAW opposes the proposed adjustment in its entirety and does not endorse that methodology in any manner.

4. **If applicable, please provide the actual amount of the CTA included in your company's last base rate case.**

   RESPONSE: Most New Jersey utilities' recent base rate cases were resolved through settlement without specific attribution to a CTA. In the recent NJAW rate case settlement, discussed previously, the settlement that was approved by the Board did not include a specific calculation of the rate impact of the CTA, although the proposed adjustment's impact on the outcome of the case was surely a significant factor given that Rate Counsel advocated rates that would be over $24 million lower to reflect the CTA.

CONCLUSION

NJAW deeply appreciates the Board's recognition that the CTA has become a serious problem and its willingness to re-examine its policy for setting a reasonable income tax expense. We look forward to the working with the Board and the various parties to arrive at a tax setting method that is fair and equitable and reflects the fundamental ratemaking maxim that benefits must reflect cost responsibility.

Respectfully submitted,

New Jersey American Water Company

By: RJ Brabston

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