**STATE OF NEW JERSEY**
**OFFICE OF ADMINISTRATIVE LAW**
**BEFORE THE HONORABLE IRENE JONES**

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| **I/M/O THE PETITION OF SUEZ WATER ARLINGTON HILLS, INC. FOR APPROVAL OF AN INCREASE IN RATES FOR WASTEWATER SERVICE AND OTHER TARIFF CHANGES** | ) ) ) ) ) ) | **BPU DOCKET No. WR16060510**<br>**OAL DOCKET No. PUC-09261-2016** |

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# INITIAL BRIEF ON BEHALF OF THE DIVISION OF RATE COUNSEL

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## Procedural History & Statement of Facts

On June 15, 2016, Suez Water Arlington Hills ("SWAH" or "Company") filed a petition with the New Jersey Board of Public Utilities ("BPU" or "Board") seeking an increase in annual sewer revenues of $1,404,396, or approximately 118%. Petition, para. 3. SWAH provides sewer service to approximately six hundred residential customers and twenty four commercial customers located in the Borough of Mount Arlington, and one commercial customer located in Roxbury Township. Petition, para. 2. SWAH is a subsidiary of Sewer Water Resources ("SWR"), which is ultimately a part of Suez Environment. The Suez organization is an international company and one of the largest providers of regulated water and wastewater services in the United States. SWAH does not issue its own debt or raise capital. SWR provides all of the equity and debt needs to SWAH.

The proposed rate increase is largely driven by the construction of a new wastewater treatment plant. Petition, para. 3. The Company's Petition utilized a test year ending April 30, 2016 and proposes a Return on Equity of 9.75%. Id. Because of the magnitude of the rate increase, the Company proposes to increase rates in four annual installments. Id. The parties to this matter are the Company, the Division of Rate Counsel ("Rate Counsel") and the Staff of the Board of Public Utilities ("Board Staff") (collectively, the "Parties").

The Company's Petition contained pre-filed testimony from four internal Company employees. Gary Prettyman testified on the general reasons behind the proposed rate increase and the Company's efforts to minimize the increase, on management services fees, accumulated depreciation, contributions in aid of construction, rate design and rate of return. Elda Gil testified on revenues, rate base, gross receipts and franchise taxes, Federal Income Taxes, depreciation expense, the gross revenue conversion factor, and the proposed tariff. Peiling Lin

testified regarding all remaining operation and maintenance expenses not testified to by Mr. Prettyman or Ms. Gil. Antonio Vicente testified to the Company's capital program, including the design and construction of the new wastewater treatment plant.

Subsequent to the filing, the matter was transferred to the Office of Administrative Law and originally assigned to Administrative Law Judge ("ALJ") Danielle Pasquale. ALJ Pasquale conducted a public hearing in Mount Arlington on November 14, 2016. No members of the public attended the public hearing. The Parties engaged in extensive discovery during Fall 2016, followed by several settlement meetings or phone calls. The Parties were unable to reach a mutually agreeable settlement. Sometime between October and December, 2016, the matter was reassigned to ALJ Irene Jones. On December 7, 2016, a status conference was held by ALJ Jones. Following that status conference, ALJ Jones set new hearing dates for the week of March 13, 2017. The Parties also reached an agreement on a procedural schedule to allow Rate Counsel and the Company to conduct discovery and submit expert testimony on the issue of rate of return.

On January 27, 2017, Rate Counsel filed the testimony of four expert witnesses. Dante Mugrace filed testimony regarding the appropriate overall revenue requirement, which he calculated to be $1,138,852 (100.13%) or $265,544 less than the Company's proposed rate increase. Howard Woods, Jr., P.E. filed testimony on all engineering issues, including sales volume, the flow through the plant, purchased power expense, waste disposal expense, and post-test year capital additions. Mr. Woods testified that $205,858 in post test year additions were routine and recurring in nature and should therefore be rejected. Marlon Griffing, Ph.D. testified that the appropriate return on equity for SWAH is 8.57%. Finally, Brian Kalcic testified on the Company's proposed four year phase-in and the appropriate class revenue allocation. SWAH

filed the rebuttal testimony of Gary Prettyman and Pauline Ahern on February 16, 2017. In that testimony, the Company asserted that while it could justify a higher return on equity, it sought only a 9.75% return on equity. Mr. Prettyman also rebutted other issues raised by Rate Counsel's witnesses. Dr. Griffing provided written surrebuttal testimony in response to Ms. Ahern's testimony on March 8, 2017, where he updated his return on equity calculation to 8.65%. All other Rate Counsel witnesses offered oral surrebuttal testimony during the evidentiary hearings. Evidentiary hearings were held before Judge Jones during the week of March 13, 2017.

Following the evidentiary hearings, the Company submitted two updates pursuant to transcript requests that were made during the hearings. The first update involves the amount of rate case expenses. The Company updated its actual rate case expenses from $75,000 to $250,048. TR-1. The second update reflects the actual cost of the new wastewater treatment plant. The actual cost to construct the plant was $12,618,849, which is $238,321 less than originally estimated. TR-2. Rate Counsel believes it is appropriate to reflect both of these updates, which brings our updated revenue requirement increase to $1,159,380.

## Summary of the Issues

The issues in this matter are limited. A number of issues were resolved by the parties either before or during the evidentiary hearing. Along with these issues, there are several flow-through adjustments that are dependent on Your Honor's decision regarding the first six items.

The six[1] issues in dispute between the Company and Rate Counsel in this proceeding are:

1. The appropriate return on equity;
2. Rate case expense sharing;
3. Incentive Compensation;
4. The appropriate consolidated tax adjustment;
5. The Company's proposed carrying charges on the rate phase-in; and
6. Whether the Company's proposed Apartment Complex Rate is appropriate.

The following items have been accepted by Mr. Mugrace:

1. The Company's proposed test year ending April 30, 2016;
2. Prepayments;
3. The present rate revenue adjustment needed to reflect master metering in the apartments;
4. Property taxes; and
5. General liability insurance.

The following items are adjustments made by either Mr. Mugrace or Mr. Woods that the Company appears to not dispute:

1. Commercial revenues adjustment;
2. Power expense;

[1] A seventh issue initially identified by Mr. Prettyman, post-test year additions, appears to be moot, as the Company conceded at hearing that the disputed post-test year additions were in fact never placed in service.

3. Chemicals expense;
4. Waste disposal expense;
5. Outside services expense; and
6. Other operation and maintenance expenses.

Finally, the following items are flow-through adjustments:

1. Cash working capital;
2. Accumulated deferred income taxes;
3. Fringe benefit expense;
4. Regulatory commission expense;
5. Depreciation expense;
6. Gross receipts & franchise taxes; and
7. Federal income tax expense.

## POINT I

## A RETURN ON EQUITY OF 8.65% REFLECTS A REASONABLE RETURN FOR A REGULATED UTILITY IN CURRENT MARKET CONDITIONS.

### A. The Return on Equity for SWAH Should be Reasonable In Light of Current Capital Market Conditions.

Rate Counsel's expert witness Dr. Marlon Griffing accepted the Company's proposed capital structure of 53 percent equity and 47 percent debt. RC-5 at 32. Dr. Griffing also accepted the Company's proposed cost of debt of 5.19 percent. The only disputed issue between the Company and Rate Counsel is the appropriate return on equity.

The ratemaking process is designed to give a utility the opportunity to recover prudently-incurred costs of providing utility service to its customers, including a return on its used and useful utility property. The Board's regulation of a utility's rate on equity ("ROE") is intended to identify the fair and reasonable cost of capital invested in the utility's rate base and to approve rates that give a soundly managed utility an opportunity to recover those costs. As Dr. Griffing testified, the Board should set a return on equity that meets the *Bluefield* and *Hope* criteria. Id. at 33. A utility's rate of return should be "reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties." Bluefield Waterworks and Imp't . Co. v. Public Svc. Comm., 262 U.S. 679, 693 (1923); accord Public Svc. Coord'd Transport Co. v. State, 5 N.J. 196, 225 (1950). A utility's ROE "should be commensurate with the returns on investments in other enterprises having corresponding risks." Federal Power Commission v. Hope Natural Gas

Co., 320 U.S. 591, 603 (1944). In this process, the Board must balance the competing interests of the rate paying public and the Company's investors to arrive at a figure "within the range of reasonableness, the zone between the lowest rate not confiscatory and the highest rate fair to the public." In re N.J. Power & Light Co., 9 N.J. 498, 534 (1952).

The zone of reasonableness, which sets the bounds of a fair ROE, must be determined with regard to the general condition of the capital markets. That is, Your Honor and the Board must set a return on equity which provides investors with a yield similar to the return available from like investments of a comparable risk.

In turn, a fair return on equity for utility investors is the return investors require to hold or acquire that utility's common stock. A higher return than this would not meet investor's requirements; rather it would provide the investor with an unexpected windfall achieved by overcharging ratepayers for utility service. The investor's return requirement would also normally be sufficient to permit the utility to maintain its financial integrity and to attract additional capital. The cost of common equity is difficult to identify as investors do not directly reveal the return they require on their common stock investments. Therefore, a utility's cost of common equity must be inferred through analyses of capital market behavior.

### B. Because A Return on Equity Should Be Set Based on Current Market Conditions, the Board's Prior Authorized Returns Cannot Be the Basis For Setting an Appropriate ROE for SWAH at This Time.

As Dr. Griffing correctly stated, "[t]he Board should look to current market conditions as it balances investor and consumer interests. The rate of return should reflect the condition of the capital markets in which the Company must compete with other firms for funding." RC-5 at 8. Historically allowed rates of return and historical performance are only relevant "as they affect investors' views of a company's prospects." Id. In other words, simply because the Board has

authorized a return on equity of 9.75% in prior utility rate cases, does not mean that it is currently an appropriate rate of return for SWAH. Reflecting these current market conditions, utility commissions across the country have recently been setting returns on equity lower than 9.75%. Indeed, the Board itself authorized a rate of return of 9.6% in the three most recent rate cases to come before it. See I/M/O Petition of Jersey Central Power & Light Co. for Review & Approval of Increases in and Other Adjustments to, Its Rates & Charges for Electric Service, BPU Docket No. ER16040383, Board Order dated 12/12/16; I/M/O Rockland Electric Co. for Approval in Changes to Electric Rates, BPU Docket No. ER16050428, Board Order dated 2/22/17; I/M/O Atlantic City Sewerage Co. for Authorization to Increase Tariff Rates & Charges For Sewerage Service, BPU Docket No. WR16100957, Board Order dated 3/24/17. Based on current market conditions, 9.75% is too high a return and would require ratepayers to pay more than necessary to attract capital. Indeed, even Company Witness Ahern's DCF and CAPM models produced results well below 9.75%.

### C. Dr. Griffing's DCF Analysis Concludes that 8.65% is a Reasonable Return on Equity For SWAH .

The Discounted Cash Flow ("DCF") method is one of the most widely used approaches to determining return on equity in utility rate cases. The DCF method equates the return expected by investors with the expected dividend yield, plus expected dividend growth. RC-5 at 10. The DCF formula is expressed as:

$$\text{Return on Equity} = (D_1/P_0) + g$$

where D is the annual dividend yield one year from the present, P is the current stock price, and g is the expected dividend growth rate. Id.

As noted previously, SWAH receives all of its financing from SWR. While SWR is not publicly traded, SWR should serve as the basis for selecting water/wastewater utilities that are

publicly traded and can serve as proxies for determining an appropriate equity return for SWAH. Id. at 11. Accordingly, Dr. Griffing used a proxy group of eight different water/wastewater utilities (collectively, the "Comparison Group") that, like SWR, are among the largest purveyors of regulated water and wastewater services in the United States. As Dr. Griffing noted, while SWAH provides only wastewater service,[2] SWR provides both regulated water and wastewater services. Since SWAH receives all of its financing from SWR, it is entirely appropriate to use a proxy group of companies that, like SWR, provide regulated water and wastewater services. Id. at 12.

Dr. Griffing used the following seven requirements for inclusion in the proxy group:

1. Shares are publicly traded on a stock exchange;
2. The company is a U.S. based firm;
3. The company has a record of paying dividends for five years without skipping or reducing the dividend amount;
4. The company is not expected to be sold or acquired by another company, or to be engaged in an unusual regulatory proceeding;
5. The company has a Standard & Poors investment grade credit rating of BBB- or better;
6. The Company has positive growth-rate projections from expert analysts; and
7. More than seventy percent of the three-year average of operating revenues, operating income or net income is derived from regulatory water or wastewater utility operations.

   Id. at 15.

Dr. Griffing calculated a dividend yield and an expected dividend growth rate for each of the eight companies in his Comparison Group. Dr. Griffing then applied the DCF formula to all

[2] SWAH customers are provided water service by an affiliate, SUEZ Water New Jersey, one of the largest investor-owned water utilities in New Jersey.

eight companies. This calculation produced ROEs ranging from a low of 7.03% to a high of 10.12%, with a mean ROE of 8.57%, Dr. Griffing's recommended ROE for SWAH (updated to 8.65% in his surrebuttal testimony).

### D. Checking His DCF Results With a Capital Asset Pricing Model (CAPM) Analysis, Dr. Griffing Determined that SWAH's ROE Should Not Exceed 8.65%.

To check the reasonableness of his DCF result, Dr. Griffing performed a CAPM analysis for the eight companies in the Comparison Group. The CAPM measures the relationship between a stock's investment risk and its market rate of return. Like the DCF, the CAPM is calculated using a proxy group. Dr. Griffing used a proxy group of eight companies ("CAPM Comparison Group") for his CAPM analysis. The CAPM determines a utility's ROE by taking a risk-free return and adding a market-adjusted risk premium. The CAPM formula can be expressed as follows:

ROE = Risk Free Rate + Beta (Market Return – Risk Free Rate)

The risk free rate reflects the level of return an investor in the current market can achieve without accepting risk. The risk free rate is generally defined by the return on U.S. Treasury securities. RC-5 at 28. The length of the maturity of the U.S. Treasury securities to use in the CAPM analysis is subject to some debate. While Dr. Griffing generally prefers intermediate length Treasury Securities, he determined that the unusual measures taken by the Federal Reserve from 2007 through 2009 render intermediate length Treasury Securities currently inappropriate for inclusion in a CAPM analysis. RC-5 at 29. Dr. Griffing instead uses Thirty-Year Treasury Bonds, even though their inflation risk means they are not risk-free. In performing his analysis, Dr. Griffing notes that use of Thirty-Year Treasury Bonds may result in a higher ROE than if a true risk-free instrument was used. Id.

Beta is another component in the CAPM analysis. Beta is a measure of the volatility, and therefore risk, of a particular stock relative to the overall market. RC-5 at 27. Betas of less than one are considered less risky than the market, while Betas greater than one are considered more risky. Id. at 30. The CAPM Comparison Group had an average Beta of 0.72. Id. The final component of the CAPM is the Market Return. Dr. Griffing used information from the Value Line Universe of 1,700 different stocks as representative of the market return of the broad economy. Id.

Even with using the upwardly-biased 30-year Treasury Bond as his risk free return instrument, Dr. Griffing's CAPM analysis yielded a recommended ROE of 7.24% for SWAH (updated to 7.16%). This CAPM result is within the lower bound of the updated DCF results of 7.14%. Accordingly, Dr. Griffing concluded that the appropriate ROE for SWAH should not exceed his recommended ROE from his DCF analysis of 8.57% (updated to 8.65%). Id. at p. 31.

### E. Company Witness Pauline Ahern's Analysis Supports Dr. Griffing's DCF Analysis of 8.65%, Since Her DCF Analysis Produced an Even Lower ROE of 8.47%.

It is worth noting that the Company's own ROE witness, Pauline Ahern, performed a DCF analysis that resulted in an ROE result of 8.47%. PRT-2 at 27. Ms. Ahern's analysis is consistent with and supports Dr. Griffing's recommended ROE of 8.65%. The DCF is the most widely used method for determining a utility's appropriate return on equity. Both Ms. Ahern and Dr. Griffing produced DCF results in the mid-8% range. This supports Rate Counsel's recommendation that 8.65% is the appropriate ROE for SWAH.

Mr. Ahern also performed a CAPM analysis. Ms. Ahern's CAPM model produced a recommended ROE of 9.52%. **In other words, Ms. Ahern's DCF and CAPM analyses both resulted in recommended ROEs below the 9.60% currently being authorized by the Board**

**in settlements of base rate petitions.** Ms. Ahern is only able to inflate her recommended ROE to 10.85% by using a combination of analyses based on non-regulated, higher risk companies such as Target and AutoZone, plus so-called credit risk and business risk adders. However, as Dr. Griffing demonstrated, SWAH receives all of its capital from the much larger SWR, thereby nullifying Ms. Ahern's claims of greater business risk. Furthermore, the inflated analysis using non-regulated companies should be entirely disregarded, because even the Company itself has no faith in them. Company Witness Prettyman testified at length that the Board should award SWAH a 9.75% ROE. Mr. Prettyman would not ask for a 9.75% ROE unless he believed that such a request satisfies the Company's fiduciary duty to attempt to maximize shareholder return. Thus, Ms. Ahern's overall ROE recommendation of 10.85%, and the analyses that allowed her to arrive at this inflated request, should be rejected by Your Honor.

### F. Recent Changes in the Federal Fund Rate Do Not Materially Alter Dr. Griffing's Analysis.

At the hearing, Dr. Griffing addressed the recent increase in the federal funds rate. Specifically, he looked at what impact the recent 25-basis point increase in the federal funds rate by the Federal Reserve System (the Fed) had on the actual 30-year treasury rate. On March 3, 2017, the day Fed Chair Janet Yellen gave a speech indicating an increase in the federal funds rate was imminent, the 30-year treasury rate was 3.08%. On March 15, 2017, the day after the Fed's Federal Open Market Committee ratified the expected twenty-five basis point increase in the federal funds rate at a regularly scheduled meeting, the 30-year treasury rate actually decreased from 3.17% to 3.11%. Thus, since Chair Yellen gave her speech, there has been a three-basis point change in the 30-year treasury rate. 2T:51-23 to 52-19.

Dr. Griffing then recalculated his CAPM analysis based upon these different 30-year treasury rates and compared it with his updated outcome of 7.165%, reflecting a federal funds

rate of 3.04%. Including the updated 3.11% 30-year treasury rate yielded a 7.185% ROE. Using a 3.08% thirty-year treasury rate yielded a 7.176% ROE. 2T:52-20 to 53-4. Dr. Griffing explained that this two-basis point difference shows that the twenty-five basis point change made in the federal funds rate had little effect on the CAPM ROE.. Dr. Griffing opined that this "means that investors take into account other factors than just the federal funds rate." 2T:53-5 to 14. In other words, if there was a one-to-one link between the federal funds rate and the 30-year treasury rate, when the federal funds rate went up twenty-five basis points, the 30-year treasury rate would have increased at the same rate, rather than the *de minimus* change that actually occurred. The lack of a direct correlation demonstrates that the return investors expect on their investments is not driven solely by the federal funds rate. Therefore, the increase in the federal funds rate does not change Dr. Griffing's fully supported recommendation of an 8.65% ROE in the present matter.

## POINT II

## RATE COUNSEL ACCEPTS THE COMPANY'S PROPOSED TEST YEAR ENDING APRIL 30, 2016 AND THEREFORE THIS ISSUE IS NOT DISPUTED.

The appropriate test year in this matter is not in dispute. Rate Counsel accepts the a Test Year ending April 30, 2016, with a post-test year period for capital additions ending October 31, 2016 provided in the Company's Petition. While Mr. Prettyman complains in his rebuttal testimony about the decision in In re Elizabethtown Water Company Rate Case, Docket No. WR8504330, Decision on Motion for Determination of Test Year and Appropriate Time Period for Adjustments, dated May 23, 1985 that mandates base rates be predicated upon an historical test year, he did not make any changes to the Company's proposed test year. Mr. Prettyman's rebuttal testimony continues to request the rate increase of approximately $1.4 million that was contained in the Company's Petition, and which is based on a test year ending April 30, 2016. Thus the appropriate test year is not in dispute in this matter.

## POINT III

## THE APPROPRIATE RATE BASE FOR SWAH IS $13,022,966 which is $561,311 LESS THAN SWAH'S RECOMMENDED RATE BASE.

As Mr. Woods testified, the two projects that satisfy the Board's strict standard for post-test year inclusion in rates are the new sewer treatment plant, and the main extension to service the new Atkins Development. RC-4 at 14. Both of these projects meet the "major in nature and consequence" standard under In Re Elizabethtown Water, and both were in-service at the end of the post-test year period. The total estimated construction cost for these two projects was $13,362,466. Id. Rate Counsel and the Company are in agreement that these two projects should be included in rates. On April 4, 2017, however, the Company provided a response to Transcript Request RC-TR-2. In that response, Rate Counsel learned that the actual cost of the wastewater treatment plant was $12,618,849, an amount $238,321 less than the amount claimed in the Company's filing and supported by Company testimony as recently as the hearings in this matter. This appears to be the best and most accurate data of actual costs, and Rate Counsel maintains that the actual cost of this project as shown in the response to RC-TR-2 is the cost that should be reflected in rates in this matter.

### A. Because There Are No Routine Post-Test Year Additions Currently In-service, the Issue of Routine Post-Test Year Additions Under In re Elizabethtown Water is Moot.

The Parties learned for the first time during the evidentiary hearings that the Company did not spend any money on routine post-test year capital additions except for $924 spent on a pump at the old wastewater treatment plant. 45T:L12-L19 (3/3/17). The $924 pump is no longer in service, and no longer part of utility plant in service, because the old wastewater treatment plant has been demolished. 56T:L22 – 57T:L4 (3/13/17). The issue of whether routine post-test

year additions should be included in rates – and any corresponding analysis of the In re Elizabethtown Water decision – is therefore moot. There is no need for Your Honor to make any interpretation of law on this issue.

### B. Mr. Prettyman's Rebuttal Testimony on Post-Test Year Additions Should be Rejected.

The Test Year in this case ended on April 30, 2016, and the six month post-test year period ended on October 31, 2016. In rebuttal testimony filed February 16, 2017, Gary Prettyman challenges Rate Counsel witness Woods' disallowance of "$205,858 of projects that were placed in-service between May 1, 2016 and October 31, 2016 . . . " PRT-1 at 17, lines 17-18. Mr. Prettyman continues, "However, they [the $205,858 of projects] are in service now (approximately 10 months later), and will have already been in service for about a year at the time of the decision in this case, having been serving customers more than a year once rates are initially set in this case." Id. at 18, lines 7-10. Mr. Prettyman states, "They are wholly used and useful and providing service to the customers." Id. at lines 13-14. As it turns out, and as conceded by the Company at the hearing, Mr. Prettyman's sworn rebuttal testimony was not correct. For the first time at the hearing, the Company admitted that it did not spend this money and that the plant was never in fact put in service. 13T:L7 (3/13/17).

It is undisputed that the test year ended October 31, 2016. It is undisputed that Mr. Prettyman filed testimony three and a half months later on February 16, 2017, claiming that the Company should recover $205,858 in plant that he wrongly asserted was in service, and used and useful by ratepayers. It is unclear how this was allowed to occur or why Mr. Prettyman was not aware that the Company had not expended this money or placed the equipment in service. This

error in Mr. Prettyman's testimony is of great concern and undermines his credibility. Your Honor should disregard his testimony and disallow these charges.

### C. In Order to Reflect an Adequate Sharing of the Tax Benefits Stemming From SWAH's Participation in a Consolidated Tax Filing, Your Honor Should Reflect a Consolidated Tax Adjustment That Uses a Twenty Year Look-back Period and a Rate Base Deduction.

SWAH participates in an annual consolidated tax filing with the SUEZ umbrella of regulated and non-regulated subsidiaries. RC-2 at 13. The purpose of a consolidated tax filing is to minimize the Federal income tax liability for the members of the group. By participating in a consolidated return, SWAH can take advantage of tax losses experienced by other member companies, thus reducing the tax liability of the entire group. It has long been the law in New Jersey that ratepayers are entitled to a sharing of these tax benefits. The New Jersey Supreme Court has held:

> [T]he Utility is allowed a deduction from gross income for actual operating expenses only (or actual normalized operating expenses) and not for hypothetical expenses which did not and foreseeably will not occur. Thus it is entitled to an allowance for actual taxes and not for higher taxes that it would pay if it filed on a different basis.

I/M/O the Revision in Rates Filed by New Jersey Power & Light Company, Increasing its Rates for Electric Service, 9 N.J. 498, 528 (1952) (Internal citations omitted).

When Lambertville Water Company appealed a decision by the BPU that disallowed a portion of the water utility's claimed federal income tax expense, the Appellate Division said:

> If Lambertville is part of a conglomerate of regulated and unregulated companies which profits by consequential tax benefits from Lambertville's contributions, the utility consumers are entitled to have the computation of those benefits reflected in their utility rates.
> It is only the real tax figure which should control rather than that which is purely hypothetical. And, the P.U.C. Commissioners therefore have the power and function to take into consideration the tax savings flowing from the filing of the

> consolidated return and determining what proportion of the consolidate tax is reasonably attributable to Lambertville.

I/M/O the Revision of Rates Filed by Lambertville Water Company Increasing the Rates for Water Service, 153 N.J. Super 25, 28 (App. Div. 1977) (internal citations omitted).

In 1993 the issue of a consolidated tax savings adjustment was again addressed by the Board. I/M/O the Petition of Jersey Central Power and Light Company for Approval of Increased Base Tariff Rates and Charges for Electric Service and Other Tariff Revisions, BPU Docket No. ER91121820J, Order, (June 15, 1993). In that proceeding, JCP&L voluntarily included in its federal income tax calculation the tax savings resulting from its parent company and affiliate tax losses in its unadjusted test year operating income. The Board rejected the income statement adjustment proposed by JCP&L and adopted the rate base adjustment proposed by Staff as "a more appropriate methodology for the reflection of consolidated tax savings." Id. at 8.

In 2014, the Board issued an additional Order on the subject of consolidated tax adjustments. I/M/O The Board's Review of the Applicability & Calculation of a Consolidated Tax Adjustment, BPU Docket No. EO12121072, Board Order dated 12/17/14 ("2014 CTA Order"). The 2014 CTA Order reaffirmed the Board's position that utilities "are required to reduce rates as a result of a CTA applied during base rate cases to reflect certain tax savings realized by the holding company." 2014 CTA Order at p. 11. The 2014 CTA Order required, for the first time, that utilities include a CTA calculation with their base rate filings. Id.

This minimum filing requirement in the 2014 CTA Order first requires utilities to calculate a CTA using a five year lookback period. 2014 CTA Order at p. 11. After calculating the CTA based on a five year lookback period, the 2014 CTA Order then requires that the CTA "shall be allocated so that the revenue requirement of the company is reduced by 25% of the

adjustment." 2014 CTA Order at p. 11. While the Board has historically implemented CTAs using a rate base deduction, the 2014 CTA Order appears to suggest a revenue requirement deduction.

The 2014 CTA Order stated that these calculations will all be subject to review during the pendency of base rate cases. Id. As Mr. Prettyman agreed, the Board ruled that "the CTA adjustment would be decided in individual rate cases." PRT-1 at 43. The 2014 CTA Order is currently under appeal. In his Direct Testimony, Mr. Mugrace noted that SWAH did not include the filing requirement stemming from the 2014 CTA Order in its petition. RC-2 at 13. Mr. Prettyman concedes this oversight in his rebuttal testimony. PRT-1 at 42. Mr. Prettyman eventually provided an updated calculation that used a five year lookback period and a rate base deduction. Mr. Prettyman's calculation results in a rate base deduction of $79,381. The Company's position reflects a CTA based on the minimum filing requirement contained in the 2014 CTA Order, but modified to reflect a rate base deduction rather than a revenue requirement deduction.

Rate Counsel believes that the appropriate CTA methodology is to use a twenty year lookback period for purposes of the CTA calculation. Rate Counsel also believes that the CTA should continue to be a rate base deduction, not the revenue requirement deduction suggested by the 2014 CTA Order. As Mr. Mugrace testified, "a twenty-year period reflects an accurate picture of the Company's negative and positive net income and the amount of taxes actually paid." RC-2 at 14. A twenty year lookback period also has the effect of minimizing outlier years. Id. Rate Counsel's recommendation results in a rate base deduction of $107,440.

It is clear that neither Mr. Mugrace nor Mr. Prettyman followed the exact methodology set forth in the 2014 CTA Order. Accordingly, both sides obviously believe that it is within

Your Honor's discretion to choose a CTA methodology that most appropriately shares the benefits a consolidated tax filing with the Company's ratepayers. Your Honor should reject Mr. Prettyman's use of the 75%/25% split in favor of shareholders, because it denies ratepayers an adequate share of the consolidated tax benefits. As Your Honor is aware, the rate base deduction that Mr. Prettyman and Mr. Mugrace use already includes a sharing of benefits, because a rate base deduction is akin to a carrying charge. With a rate base deduction, there is no need for additional sharing. Rate Counsel's use of the twenty year lookback period is also preferable because it minimizes outlier years. For all these reasons, we recommend that Your Honor adopt Rate Counsel's CTA methodology.

## POINT IV

## THE APPROPRIATE PRO FORMA OPERATING INCOME IS $909,222, WHICH IS $124,578 LESS THAN SWAH'S RECOMMENDED OPERATING INCOME.

### A. Rate Case Expenses Should Be Amortized Over Four Years, and Consistent With Long-Standing Board Policy, Split 50/50 Between Shareholders and Ratepayers.

Mr. Mugrace recommended that rate case expenses be amortized and recovered over a four year period. RC-2 at 23. In rebuttal testimony, the Company accepted this recommendation. PRT-1 at 29. Rate Counsel and the Company still disagree, however, on how to properly share rate case expenses between ratepayers and shareholders.

Consistent with long-standing Board policy, rate case expenses should be shared equally between the Company's shareholders and its ratepayers. The Board has ruled in numerous litigated rate cases that it is appropriate to have shareholders and ratepayers share the responsibility of rate case expenses. See, e.g., I/M/O Parkway Water Co. for an Increase in Rates, BPU Docket No. WR05070634, Order, (9/14/06); I/M/O Pinelands Water Company and Pinelands Wastewater Company, BPU Docket No. WR00070454 and WR00070455, Order, (8/1/01); I/M/O Gordon's Corner Water Co., BPU Docket No. WR00050304, Order, (7/13/01); I/M/O Middlesex Water Co. for Approval of an Increase in Its Rates For Water Service, BPU Docket No. WR00060362, Order, (6/6/01); I/M/O the Petition of Pennsgrove Water Company, BPU Docket No. WR98030147, Order, (6/24/99) I/M/O Hackensack Water Company, BPU Docket No. 815-447, Final Decision and Order, (January 12, 1983). The Board's policy of splitting rate case expenses has been applied to some of the State's smallest utilities, including a water utility with only seventy five customers. I/M/O Seaview Water Co. For an Increase in Rates for Water Service, BPU Docket No. WR98040193, Order, (10/1/99). The Board continued

its long-standing policy in the most recent litigated rate case to appear before the Board. I/M/O Jersey Central Power & Light Co. For Review & Approval of Increases in & Other Adjustments to Its Rates & Charges For Electric Service, BPU Docket No. ER12111052, Order, (3/18/15). Indeed, in this most recently litigated case, the Board ordered a 50/50 sharing of rate case costs for a base rate case proceeding that it compelled JCP&L to file and that eventually resulted in a rate decrease. Id. at attachment C, p. 6.

The Board's 50/50 rate case sharing policy is rooted in fundamental fairness, as both shareholders and ratepayers benefit from a rate case proceeding. I/M/O Middlesex Water Co., supra, Order at p. 27. Indeed, a utility's primary motivation in filing a rate case is to maximize shareholder value. This is always a utility's goal when filing a base rate case. Moreover, 50/50 rate case sharing is also good public policy, as all parties have a motivation to seek settlement in order to keep rate case expenses down. The Board properly recognizes that the Company's shareholders should have a stake when deciding whether to file a request for a rate increase, and once filed, when making decisions on whether to settle the case. The Company offers no compelling reason to deviate from the Board's long-standing policy. As always, both ratepayers and shareholders should bear the costs of processing a rate case.

Finally, as to the appropriate level of rate case expenses, Rate Counsel does not object to updating the total legal expenses to $250,048 as provided by the Company in transcript request RC-TR-1. Using the four year amortization accepted by the Company, Rate Counsel recommends a proposed annual rate case expense of $31,256.

**B. The Company's Request For Carrying Charges on the Rate Phase-in Proposed By the Company Should Be Denied.**

The Company's proposed rate increase exceeds 100%. In an effort to mitigate rate shock, the Company's Petition proposed a four stage phase-in of new rates. The Company never

requested carrying charges on its proposed phase-in in its Petition, and to date has never amended its Petition to make such a request. Instead, more than six months after filing its Petition and after the close of discovery, the Company appears to now request carrying charges of $287,654 via Mr. Prettyman's rebuttal testimony. PRT-1 at 46.

Initially, this request is procedurally flawed. In its petition, the Company proposed the rate phase-in without carrying charges. Its total requested rate increase did not include any carrying charges. At that time, the Company was well aware that this case could potentially be litigated and take time to conclude. The Company notice a revenue increase of approximately $1.404 million, which did not include these additional carrying charges. P-7A. Indeed, carrying charges will likely require an increase in rates beyond that which the Company noticed. The Company had ample opportunity to amend its Petition to request carrying charges before the public notice was published in the newspaper. It did not do so. Given the lack of public notice, the Company's ratepayers have no idea that they may be subject to carrying charges on top of this already very large rate increase.

During the course of this matter, the never amended its Petition to request carrying charges. Instead, the Company improperly requested carrying charges via Mr. Prettyman's rebuttal testimony. Rebuttal Evidence is defined as "evidence offered to disprove or contradict the evidence presented by an opposing party." Black's Law Dictionary, Pocket Edition (1996). It is not an opportunity to introduce new issues or make new requests. Mr. Prettyman's rebuttal testimony was clearly not the proper forum to make a new request for carrying charges.

Ordinarily, utilities' base rate petitions are subject to multiple rounds of discovery by Board Staff and Rate Counsel. Because of SWAH's late request for carrying charges, both Board Staff and Rate Counsel were deprived of adequate time to analyze and rebut the issue.

This is the reason a petition must include all the Company seeks from the BPU. Adding to the request at the last minute prejudices the other parties. For this reason, Your Honor should deny these requested carrying charges.

Moreover, the Board generally does not allow carrying charges on rate phase-ins. In a Seaview Water rate case, the Board adopted a phase-in of rates, against the Company's wishes and without carrying charges, in an effort to mitigate rate shock. I/M/O the Petition of Seaview Water Co. For an Increase in Rates For Water Service, BPU Docket No. WR98040193, Board Order dated (10/1/99). In approving a two stage phase-in without carrying charges, the Board noted its "sweeping" jurisdiction over public utilities. Id. at p. 18 (quoting In re Pub. Serv. Electric & Gas Co., 35 N.J. 358, 371 (1961)). The Board rejected the ALJ's suggestion of a "deferral mechanism" to recover any lost revenues. Id. at p. 19. Noting the magnitude of the increase, Seaview's small customer base, and the lack of specificity in the ALJ's suggestion, the Board determined a deferral mechanism to be neither "supported nor feasible." Id. The eventual rate increase for SWAH will exceed Seaview's 80% rate increase. Indeed, the rate increase will approach or exceed 100%. The same reasons given by the Board for approving a phase-in without carrying charges in Seaview are equally applicable here. We urge Your Honor to follow the Board's reasoning in Seaview and deny the Company's request for carrying charges.

### C. Because It is Directly Linked to Shareholder Profit and is Not a Known & Measurable Expense, Incentive Compensation Should Not Be Recovered in Rates.

SWAH labor expenses come from two sources - Suez Water New Jersey ("SWNJ") and Suez Management & Services Co. ("M&S"). Of SWNJ's overall labor expense of approximately $35 million, 0.4248% is allocated to SWAH. This calculates to a requested labor expense of $155,992. Regarding the M&S portion, the Company has requested recovery of $42,244 in total M&S fees. Consistent with Board policy, Mr. Mugrace makes two adjustments

to remove incentive compensation expenses from the overall labor expense. The Company provided evidence that $6,506 of the labor allocation from SWNJ and $12,461 of the labor allocation from M&S are for incentive compensation expenses. RC-2 at 20, 25. Accordingly, Mr. Mugrace removed both of these amounts in accordance with long-standing Board policy that incentive compensation is not to be recovered in rates.

The Board has long held that ratepayers should not pay incentive compensation expenses. This is particularly true when a Company's incentive compensation plans are linked to financial targets, therefore benefiting shareholders first and foremost. The primary beneficiaries of earnings targets are shareholders by the resulting increases in their stock values or dividends, and shareholders should accordingly bear the costs of SWAH's incentive compensation programs. In a leading case on this issue, the Board found:

> We are persuaded by the arguments of Staff and Rate Counsel that, at this time, the incentive compensation or bonus expenses should not be recovered from ratepayers. The current economic condition has impacted ratepayers' financial situation in numerous ways, and it is evident that many ratepayers, homeowners and businesses alike are having difficulty paying their utility bills or otherwise remaining profitable. These circumstances as well as the fact that the bonuses are significantly impacted by the Company achieving financial performance goals, render it inappropriate for the Company to request recovery of such bonuses in rates at this time. Especially in the current economic climate, ratepayers should not be paying additional costs to reward a select group of Company employees for performing the job they were arguably hired to perform in the first place.

I/M/O of the Petition of Jersey Central Power & Light, BPU Docket No.ER91121820J, Decision and Order, p.4. (June 15, 1993).

The Board reaffirmed its position in the 2001 Middlesex Water Company base rate case. In rejecting the ALJ's recommendation to share incentive compensation costs 50%-50% between ratepayers and shareholders, the Board cited the fact that incentive compensation was significantly affected by achievement of financial performance. I/M/O Middlesex Water Co.,

supra, Order at p. 25. And again, in 2003, the Board denied Rockland Electric Company's request for recovery of incentive compensation from New Jersey ratepayers, stating:

> The Board continues to believe that incentive or "bonus" compensation should not be paid for by New Jersey ratepayers. New Jersey ratepayers are entitled to safe, adequate and proper utility service at just and reasonable rates, and should not, in our view, be required to pay incentives or bonuses for the utility to provide such service. Some New Jersey ratepayers continue to face many of the same economic difficulties which existed at the time the Board formulated the above policy, and which, in the Board's view, justify its continuance. Accordingly, the Board HEREBY ORDERS that all of RECO's proposed incentive compensation should be disallowed from rates.[3]

The same economic factors that influenced these prior Board Orders remain true today. Ratepayers experiencing stagnant wages should not have to shoulder the additional burden of paying for employee bonuses in rates, especially when those bonuses are based upon increasing shareholders profits.

This concern is especially valid for SWAH, where ratepayers will be burdened with a rate increase of approximately 100%, and where all incentive compensation expense is driven to maximize shareholder value. The incentive compensation plan information distributed to SUEZ employees states that the purpose of the plan is to drive "performance towards objectives critical to creating shareholder value." RC-1 at RCR-A-40, attachment, p. 1. The plan is designed to reward "outstanding achievement among employees who can directly impact United Water's results." Id. SWAH's incentive compensation plan is completely motivated by achievement of financial goals, and is not eligible for recovery in rates.

Notably, SWAH does not dispute this rationale behind the Board's policy. SWAH also does not deny that the Board does not allow rate recovery for incentive compensation expenses that are tied to financial targets. PRT-1 at 40. Suez does not seek to recover the portion of

[3] I/M/O the Verified Petition of Rockland Electric Company for Approval of Changes in Electric Rates, BPU Docket No. ER02100724, Final Decision and Order, (April 20, 2004), p. 71.

incentive compensation that it says are directly linked to financial goals. SWAH does seek to recover incentive compensation expenses totaling $16,401 that it claims are based on individual employee's goals. Id. There are, however, two major flaws in SWAH's argument.

First, the portion of incentive compensation that is linked to individual employee goals is not known and measurable. The Company offered no information about how many employees actually achieve their individual goals, or how much of this portion of incentive compensation gets paid. The "personal performance" portion of the incentive compensation plan, however, requires management to evaluate employee performance. RC-1 at RCR-A-40, attachment, p. 3. If employees are rated below a certain threshold, no incentive compensation is paid out. Id. at 2. The second reason for rejecting this incentive compensation is that the written terms of the plan allow employees' individual goals to be based on the Company's financial performance. The Company offered no information on what percentage of personal goals is based on financial targets. This portion of incentive compensation should not be recovered in rates.

The Company also disputes $12,461 in incentive compensation paid to M&S employees that Mr. Mugrace removed. The Company claims that Mr. Mugrace made a "calculation oversight." PRT-1 at 41. The Company's Petition requested M&S Fees totaling $42,244. RC-2, Schedule DM-13. During the pendency of this rate case, the Company received Board approval of a new methodology for allocating M&S fees. This new methodology would have increased the allocation to SWAH from $42,244 to $115,969. PRT-1 at 41. The Company decided not to make an amended request for the higher amount. However, when Mr. Mugrace asked the Company to provide the amount of incentive compensation imbedded in M&S fees, the Company provided the amount that is embedded using the new methodology.

The Company now appears to want to utilize the amount of incentive compensation embedded in the $42,244 allocation under the old methodology. The Company, however, never provided this information. Mr. Mugrace did not make any calculation error. Instead, Mr. Mugrace used the exact amount of incentive compensation, $12,461, that the Company provided to him. The Company has the burden of justifying all components of the revenue requirement, and if a different amount of incentive compensation was appropriate, the Company should have provided that information. Mr. Mugrace simply used the amount of incentive compensation expense that the Company provided. Based on the information provided by the Company, $12,461 in incentive compensation related to M&S should be excluded from rates.

### D. The Company Has Accepted Rate Counsel's Adjustment to SWAH's Commercial Revenues

The Company does not challenge Rate Counsel witness Howard Woods' adjustment to the Company's proposed commercial volumetric sales. PRT-1 at 15. Mr. Woods' adjustment increases the Company's commercial sales volume by 205,000 gallons per year. Mr. Woods rejects the Company's proposed linear trend analysis, because it produces a very low correlation coefficient of 0.144. RC-4 at 7. According to Mr. Woods, "[a] linear trend analysis should not be used to forecast pro forma sales with such a poor correlation." Id. Instead, Mr. Woods arrived at his adjustment by using the five year average for commercial sales.

### E. The Company Has Accepted Rate Counsel's Adjustment to SWAH's Purchased Power Expense Adjustment

The Company does not challenge Mr. Woods' adjustment to the Company's proposed purchased power expense. PRT-1 at 15. Mr. Woods proposes a purchased power expense of $23,187, which is $34,851 less than the Company's proposed expense of $58,038. RC-4 at 10-11. The Company based its purchased power expense on power usage at the old wastewater

treatment plant. Because a new wastewater treatment plant is in service, numbers relating to the old plant are no longer relevant. Id. at p. 10. Instead, Mr. Woods used an engineer's estimate, provided by the Company, of the annual power consumption for the new wastewater treatment plant. Id.

### F. The Company Has Accepted Rate Counsel's Adjustment to SWAH's Waste Disposal Expense Adjustment

The Company does not challenge Mr. Woods' adjustment to the Company's proposed waste disposal expense. PRT-1 at 15. This is the expense to remove wastewater sludge from the wastewater treatment plant site for final treatment and disposal. RC-4 at 11. Again, this expense cannot be based on historical averages because of the construction of the new wastewater treatment facility. Id. Instead, Mr. Woods used the Company's engineer's estimate for sludge disposal volume at the new wastewater treatment facility. Mr. Woods' recommended a waste disposal expense is $35,886, which is $8,517 lower than the Company's projected expense of $44,403.

### G. The Company Has Accepted Rate Counsel's Adjustment to SWAH's Labor Expense

The Company does not appear to challenge Mr. Mugrace's removal of $185,000 in labor expenses for two new positions that the Company has decided not to fill. RC-2 at 18.

### H. The Company Has Accepted Rate Counsel's Adjustment to SWAH's Outside Services Expense Adjustment & Other Operation and Maintenance Expense Adjustment

The Company does not challenge Mr. Mugrace's adjustment to the Company's proposed outside services expense or to the Company's proposed other operation and maintenance expense. PRT-1 at 15. These adjustments are the result of Mr. Mugrace removing all one-time, non-recurring expenses. Mr. Mugrace's adjustments reduce the Company's proposed outside

services expense by $11,143 and the Company's proposed other operation and maintenance expenses by $7,713. RC-2 at 26, 28, 29.

## POINT V

## ABSENT A COST-OF-SERVICE STUDY, THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT THE COMPANY'S PROPOSED APARTMENT RATE.

In its Petition, the Company did not provide a cost of service study to assess the proper revenue allocation to its different classes of customers. Instead, the Company proposed to implement an across-the-board increase to all rate classes. An across-the-board increase is a typical proposal when a Company does not want to incur the expense of a cost of service study. Accordingly, Rate Counsel witness Brian Kalcic accepted the Company's proposal to implement an across-the-board increase to all rate classes. RC-7 at 3. Mr. Kalcic also accepted the Company's proposal for a four year rate phase-in. Id. at 4. In developing his recommended amount to be phased in each year, Mr. Kalcic set the annual dollar increase at a level such that the resulting percentage increase in rates would not exceed what was noticed to the public in the public notice. Id. at 5. In other words, Mr. Kalcic's proposed phase-in maximizes the Company's cash flow over Years 1 through 3 consistent with the public notice.

At the time the petition was filed, the Company believed that new apartments to be built in the Company's service territory would be individually metered, and designed its rate based upon this assumption. During the pendency of this rate case, the Company learned that the apartments would not be individually metered, but rather would have one master meter for each apartment building. PRT-1 at 47. This resulted in a net loss of fixed revenues compared to the Company's filed case. In his testimony, Mr. Mugrace, reflected those "lost revenues" and made the Company whole on that issue. RC-2 at 16. During the rebuttal phase, the Company learned of a further update to the apartment construction, with one fewer apartment building and a

slightly different mix of differently sized master meters. Once again, Rate Counsel agreed to reflect this change in revenues. 1T:62-19 – 63-9.

Ignoring its original proposal for an across-the-board increase, the Company introduced a new proposal for an "Apartment Rate" in Mr. Prettyman's rebuttal testimony. As with the carrying charge issue, the Company first introduced this new proposal via rebuttal testimony. This alone is a sufficient basis for denying the Company's request.

The rate itself, however, is objectionable. The Apartment Rate is designed to give the Company greater revenues from fixed charges than the Company's original rate design, yet consumption attributed to the apartments will remain the same. PRT-1 at 49. Mr. Prettyman's testimony offers no cost basis for the Apartment Rate, as the Company never performed a cost of service study. In fact, Mr. Prettyman's proposed Apartment Rate is not even revenue neutral compared to the proposal contained in the Company's Petition. Instead, the Apartment Rate would provide the Company with an additional $83,000 in annual revenues compared to the rate design in the Company's Petition.

Mr. Prettyman justifies the Apartment Rate by claiming that absent such a rate, the apartments would be classified as commercial customers with very high rates. Id. at 50. Yet Mr. Prettyman provides no support for his assumption that the apartment buildings would necessarily be billed as commercial customers. Absent existing tariff provisions that define apartment buildings as commercial customers, apartments should be billed as residential customers. The Company could easily bill the apartment buildings as residential customers pursuant to Rate Counsel's proposal, simply by adding two inch and three inch fixed service charges to the residential tariff. 41T:L25 – 42T:L3 (3/16/17).

Mr. Prettyman also attempts to justify the Company's proposed Apartment Rate by claiming that the additional revenues generated by the new rate would mitigate the rate impact of this case on residential customers. PRT-1 at 51. Rate Counsel respectfully disagrees. While collecting more revenue under present rates from any subset of customers would reduce the ultimate (residual) increase needed from remaining customers, the Company's proposal to charge Apartment Buildings more for service would simply result in residential customers paying more to rent their apartments. In other words, the Company seeks permission to charge one subset of residential customers (*i.e.*, apartment dwellers) more for wastewater service in order to mitigate the ultimate rate impact on a different subset of residential customers (*i.e.*, non-apartment dwellers). As such, the Company's proposed Apartment Rate would not provide any net benefits to the overall residential class. 14T:L13 – 15T:L14 (3/16/17).

The Company's proposed Apartment Rate should be rejected because it has no cost-of-service basis, and would not provide any net benefits to ratepayers. Without cost-of-service evidence, the Company's original proposal for an across-the-board increase to all ratepayers, including apartment dwellers, is the most reasonable revenue allocation. Accordingly, Your Honor should adopt Rate Counsel's rate design, which is consistent with the across-the-board increase originally recommended by the Company, and consistent with the Company's published public notice.

## CONCLUSION

For all of the reasons discussed above, we recommend that Your Honor issue an Initial Decision finding that:

1. The appropriate return on equity for the Company is 8.65%;
2. The appropriate consolidated tax adjustment is $107,440, reflecting a rate base deduction that uses a twenty year look back period with no additional sharing;
3. Consistent with Board policy, rate case expenses should be updated for the actuals provided by the Company through the end of February, amortized over four years, and split 50/50 between shareholders and ratepayers;
4. There should be no carrying charges on the Company's proposed phase-in;
5. Consistent with Board policy, incentive compensation should be excluded from rates;
6. Rates should be increased across-the-board to all rate classes and phased in consistent with the public notice and without a new apartment rate.

Respectfully submitted,

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