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**Remarks of Stefanie A. Brand,  
Director, Division of Rate Counsel,  
Regarding A3628 “Water Infrastructure Protection Act”  
Presented at the Assembly State and Local Government Committee  
Meeting on December 11, 2014**

Good afternoon. My name is Stefanie Brand, I am the Director of the Division of Rate Counsel. I would like to thank Chairwoman Linda Stender and members of the committee for the opportunity to testify today regarding A3628, the “Water Infrastructure Protection Act,” which proposes many changes to the process by which investor-owned water and sewer utilities in New Jersey may purchase municipal, county, or regional public water or sewer utility assets. In October, Rate Counsel sent a letter to the Senate Budget and Appropriations Committee expressing our concerns with the companion Senate bill.

As you are aware, the Division of Rate Counsel represents and protects the interest of all utility consumers—residential customers, small business customers, small and large industrial customers, schools, libraries and other institutions in our communities. Rate Counsel is a party

in cases where New Jersey utilities seek changes in their rates and/or services. Rate Counsel also gives consumers a voice in setting energy, water and telecommunications policy that will affect the rendering of utility services well into the future.

This bill would change the process by which investor-owned water and sewer utilities in New Jersey may purchase municipal, county, or regional public water or sewer utility assets. First, the bill allows the public entity to lease or sell the assets to a private entity without a public referendum by declaring the existence of “emergent conditions.” Pending approval of its “emergent conditions” certification, the public entity must advertise a request for qualifications (RFQ) for a minimum of thirty days seeking potential buyers. After receiving approval of its certification, the public entity will identify “qualified respondents” and issue a request for proposals (RFP) to each one, providing a minimum of fourteen days for them to submit a proposal. After reviewing the proposals, the public entity shall choose one respondent to negotiate with regarding a potential sales contract. The executed sales contract would then be submitted to the Board of Public Utilities (Board), where if not acted on in thirty days, it shall be deemed approved. The bill also mandates specific ratemaking treatment of the system assets.

Rate Counsel has significant concerns about this bill and its impact on ratepayers, which I will briefly summarize for the Committee today. We believe these concerns can be addressed through fairly simple amendments and we ask that the Committee consider amendments as outlined in my testimony.

As New Jersey's statutory representative of ratepayers, Rate Counsel's primary concern with the bill is that it strips away the BPU's authority to evaluate and decide how much of the purchase price being paid for these municipal water or sewer utilities should ultimately be included in the rates paid by the purchasing utility's customers. This is a technical, fact-sensitive inquiry that has always been within the BPU's jurisdiction and decided in the context of a regulated water or sewer utility's base rate case, where parties such as Rate Counsel can participate in the process on behalf of ratepayers. Sometimes the full purchase price is included in rates, and sometimes it is not. This is because some costs are more appropriately paid by the purchasing utility's shareholders or because the municipality may have already been fully compensated for some assets through other sources.

Rate Counsel urges that the provision mandating automatic ratemaking treatment be stricken from the bill. This provision will unfairly

add to the cost ratepayers of the purchasing utility will pay for the municipal system. If the utility knows in advance that the entire purchase price will be recoverable from ratepayers, the incentive to submit or negotiate a prudent purchase price will be undermined. Investor-owned utilities could run wild in an effort to submit the highest bid knowing that they bear no risk and will be subject to no regulatory oversight. Meanwhile, ratepayers will be required to pay for the full purchase price in rates, and will pay for these higher bids. Historically, the Board has determined the appropriate rate treatment, which may or may not include the entire purchase price. BPU oversight serves to encourage reasonable sales prices and protect ratepayers.

The bill also contains language stating that “reasonable and prudent transaction, closing and transition costs...shall be recoverable in rates.” These types of acquisition-related costs have generally been charged to shareholders, who will ultimately gain financially from the acquisition. This bill will change this long-standing Board policy and allow these costs to be recovered in rates. Rate Counsel asks that this language also be removed from the bill, and that the job of deciding what costs get charged to ratepayers and what costs get charged to shareholders be returned to the Board, who has the expertise to make these determinations.

Rate Counsel also believes that these objectionable provisions mandating full rate recovery may render the bill unconstitutional. The Legislature has required the BPU to set rates that are “just and reasonable,” (N.J.S.A. 48:2-21), and at the same time has prohibited the BPU from adopting any “preferential” rate. While the Legislature can alter a statute with a subsequent statute, these particular statutory provisions are grounded in ratepayers’ constitutional due process rights, and cannot simply be disregarded. A system such as the one being created by this bill – whereby a utility seeking to expand its business knows in advance that its purchase price will be automatically recoverable whether reasonable or not, may very well subject ratepayers to confiscatory rates without due process.

For all of these reasons, Rate Counsel cannot support passage of this bill from committee unless the language objected to by Rate Counsel, which is contained in Section 7(c)(2)(3)(4) and (5) is removed. I thank you very much for the opportunity to testify today. I am available to answer any questions.